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Canadian Arctic Sovereignty and Security: Historical Perspectives

Edited by P. Whitney Lackenbauer



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Cover: The Mobile Striking Force, an air-portable and airborne brigade group designed as a quick reaction force for northern operations, was an inexpensive solution to the question of how Canada could deal with an enemy lodgement in the Arctic. During training exercises, army personnel from southern Canada learned how to survive and operate in the north. In this image, taken during Exercise Bulldog II in 1954, Inuk Ranger TooToo from Churchill, Manitoba relays information to army personnel in a Penguin. DND photo PC-7066.

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Calgary Papers *in Military and Strategic Studies*

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Edited by P. Whitney Lackenbauer

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The Manhattan Incident *Forty Years On: Re-assessing* *the Canadian Response*

Matthew Willis

The *Manhattan* incident has fuelled academic debate on Canada's foreign policy in northern latitudes – and, to a lesser extent, on the character of Canadian foreign policy generally – for over forty years. Maxwell Cohen, acknowledging the complex of historical, social, political, environmental and economic forces at play at the time of the transits, deemed the Canadian reaction on the whole “a sophisticated and constructive attack upon a problem for which the international community had no immediately effective administrative answers.”¹ John Kirton and Don Munton viewed Ottawa's policy response as “the product of a strong Canadian state redefining its foreign policy to complement its emerging new position in the world.”² Christopher Kirkey has argued that Canadian unilateral action, resulting from integrated as opposed to distributive bargaining methods, “produced a markedly one-sided outcome in favor of Canadian national interests.”³ On the other hand, E. J. Dosman⁴ and Franklyn Griffiths⁵, writing in the years immediately following the *Manhattan* voyages, criticized what they considered a reactive and indecisive response which, heavily influenced by American pressure, ultimately weakened Canada's grasp on its Far North.

Scholarly assessments of the government's response have tended to focus on its character or its significance, and sometimes both. Character refers to the state of mind of the policy-makers as they elaborated it: rational and determined (Kirton and Munton) or timid and indecisive (Dosman, Griffiths). Analyses of its significance focus on a range of themes, depending on the analyst's perspective: environmental, legal or political, domestic or international. From a political perspective, the central question is usually what the response meant for Canadian sovereignty in the Northwest Passage (specifically), the Archipelago (more generally), and the region as a whole (historically). Griffiths has described the Canadian response as resulting in a “net loss” of sovereignty,⁶ while Cohen has interpreted it as a robust political riposte that verged on the extreme.⁷ Combined, the two strands of *Manhattan*-focused literature provide a rich repository of thought

and argumentation on which present-day Arctic sovereignty narratives continue to draw.

The *Manhattan* incident has frequently been portrayed as an opportunity missed – a chance to put the sovereignty question to bed which the government, for a variety of reasons, failed to seize. In light of the current government’s avowed determination to stop *managing* the Arctic sovereignty question and instead *resolve* it, such an interpretation stands to gain currency – all the more so given the Conservatives’ efforts to differentiate themselves from their predecessors. The purpose of this chapter is to explain how and why Bills C-202 and C-203 became the Trudeau government’s definitive legislative response to the *Manhattan* transits. Its focus is two-fold. First, it examines the main factors influencing the character of the government’s response, arguing that while several realities which could be termed “external” shaped the space with which policy-makers had to work, the government’s demarche was very much its own. Second, it examines the reason for that specific demarche – one heavily geared towards environmentalism, arguing that the views and values of the prime minister and his close advisors played a far greater part than has been generally acknowledged. In sum, the argument here is that Ottawa’s response to the *Manhattan* episode was the product of a shrewd and reasoned assessment of the available options, and a creative and original conceptualization of the national interest.

*A Rough Chronology*⁸

In 1968, substantial quantities of oil were discovered in Prudhoe Bay, off the north coast of Alaska. Seeking a cost-effective means of transporting the oil to the rest of the continental United States, Humble Oil decided to send a refitted tanker, the S.S. *Manhattan*, east to west through the Northwest Passage to test the viability of the route. The *Manhattan*’s voyage, announced in October 1968, caused considerable consternation in Canada, where it was widely viewed as a challenge to Canadian sovereignty over the Arctic. Parliament, the press and the public demanded that the government take strong action to counter the American challenge; the government maintained that there was no challenge at all and that Canada stood to benefit from the experiment. In his 15 May address to the House of Commons, Prime Minister Pierre Trudeau reassured Canadians that Canada’s sovereignty over the Arctic mainland and islands was undisputed, as was its jurisdiction over the resources of the seabed. Controversially, however, he acknowledged that the government’s claim to sovereignty over the channels of the archipelago was

not unanimously recognized. Between June and October 1969, the ministries of Northern Development, Transport and National Defence all announced initiatives that expanded the country's presence in the Arctic, but no major policies were unveiled.

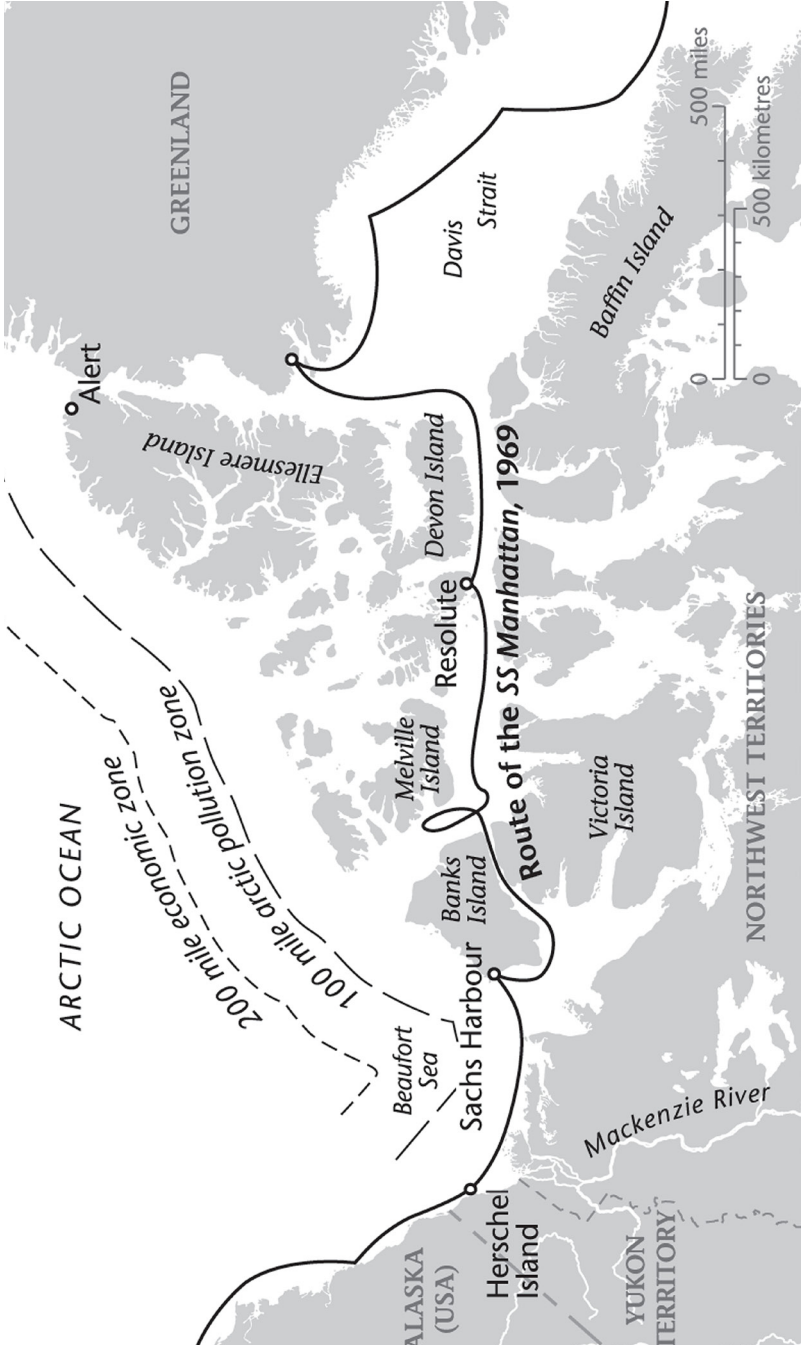
The *Manhattan's* first of two uneventful transits occurred in August and September 1969, and was followed closely across the country. In its October Throne Speech, the government declared its intention to draft the legislation that would become the *Arctic Waters Pollution Prevention Act*. In so doing, it emphasized its responsibility to Canadians, as well as the global community, to establish a regime that would protect international and Arctic waters from the hazards of commercial shipping activity. Later in the month, the government announced a series of defence measures that included plans for a mobile Arctic strike force, the construction of six new airfields and, for the first time, military exercises in the Arctic islands.

The public furor died down over the winter, while the government elaborated its legislation. Interest picked up again with the approach of the *Manhattan's* return voyage on 1 April 1970, but this voyage proceeded under much tighter controls. On 8 April, the government announced the tabling of Bills C-202 and C-203 – the *Arctic Waters Pollution Prevention Act* and an amendment to the *Territorial Sea and Fishing Zones Act*. The first asserted Canadian jurisdiction over a 100-mile-wide coastal zone, with the aim of preventing pollution in waters adjacent to Canadian land and islands. It contained provisions relating to the regulation of shipping, including ship-construction and navigation. It also provided for pollution-prevention officers with the right to board and inspect ships within the zone and order them to take the actions required by the regulations or the statute itself. Powers were also provided for the seizure and forfeiture of goods and cargo. Other articles addressed the improved administration of the whole programme of pollution and navigation control. The second bill expanded Canada's territorial sea from three to twelve miles, and also provided for the establishment of new, exclusively Canadian fishing zones. Anticipating an international legal challenge to its measures, the government exempted them from the compulsory jurisdiction of the International Court of Justice. Canada's seeming departure from post-war Canadian foreign policy doctrine, one which had consistently privileged multilateralism and an abidance by international law, took much of the international community by surprise, but the Canadian public's reaction was overwhelmingly favourable.

The Challenge

Although the *Manhattan* attracted the more attention, the US challenge (if indeed that is what it was) actually came from the far smaller US Coast Guard Ship *Northwind*, which Washington dispatched to accompany the *Manhattan* without seeking Canadian permission. As long as the issue revolved around the icebreaker and remained at the official level, handling it was a delicate but relatively straightforward diplomatic matter. When news of the planned transit hit the public domain, however, a second front opened up. The public and press were far less interested in the *Northwind* than in questions surrounding the *Manhattan*: Was the government in a position to protect Canada's natural resources and environment? Did it have legitimate authority over the full extent of Canadian territory? Did it have the means to enforce its authority? Could a lack of said means leave the Canadian Arctic vulnerable to rapacious foreign encroachment? Parliamentarians, Liberal and Opposition, were equally concerned, with the House Standing Committee on Indian and Northern Affairs fearing that the *Manhattan's* transit and subsequent traffic could alter the legal status of the Northwest Passage and create an internationally-accepted presumption that the ice-covered route was an international strait. It was even suggested that Canadian claims to the land and the adjacent continental shelf in the northern archipelago could be contested if oil was found in quantity, which was geographically possible.⁹

The sovereignty challenge was thus multi-dimensional: it comprised a short-term political aspect, involving defusing the domestic furor; a short-term legal aspect, relating to the handling of the *Northwind* challenge; and a key longer-term legal aspect relating to potential international legal changes the transit might catalyse. The managing of Canadian-American political relations was another key dimension. The inter-related nature of these aspects prevented any attempt to deal with them separately: care needed to be taken in handling the domestic political uproar lest clumsy wording strain cross-border relations; measures taken in reaction to the *Northwind* needed to be compatible with a future Arctic policy of as-yet-uncertain description. When it became publicly impossible to deny that something was up, the resulting friction between the government and the Canadian public began feeding into, and exacerbating, the pre-existing diplomatic strain between Ottawa and Washington, putting the latter increasingly on edge. All in all, the *Manhattan* incident was an exceptionally delicate one to handle.



Map 11. From P.W. Lackenbauer and Matthew Farish, "The Cold War on Canadian Soil: Militarizing a Northern Environment," *Environmental History* 12/3 (October 2007).

PART I: The How and Why of Canada's Response

Canadian policy options at the time of the transits were defined – which is not to say they were necessarily *limited* – by a set of historical, political, legal and environmental realities. Historically, Canada had not expressed itself in unequivocal terms on its position as to the extent of its jurisdiction over the waters of the Arctic archipelago. Politically, the US was a staunch defender of the principle of freedom of the seas and had made it clear that it was dead-set against any Canadian attempts at jurisdictional extension. Legally, the status of the Northwest Passage (or more correctly, the numerous channels it comprises) was a matter of debate under international law. Likewise, the viability – meaning the likelihood of international acceptance – of certain courses of action Ottawa might consider to assert its rights to control those waters could not be predicted with certainty. Environmentally, the mainly-frozen character of the waters in question at once contributed to the legal complexity of the matter and drew policy considerations into the abstract world of the theoretical and hypothetical.

In one sense, these realities limited policy-makers by ruling out certain courses of action. The decision not to implement straight baselines around the archipelago, for instance, is sometimes said to have been driven by Ottawa's desire not to upset US-Canadian relations.¹⁰ Incidentally, such a portrayal suits commentators who view the Canadian response as having been hesitant and weak-kneed. In fact, as will be discussed, a report issued by the legal department of External Affairs in 1969 had concluded that the US would almost certainly retaliate – and not just economically – if the baselines were declared, so the political constraint on that option was virtually binding.

In another sense, however, the historical, political, legal and environmental context in which Ottawa was operating gave it remarkable freedom of manoeuvre. Not having established an explicit position on the national or international status of the archipelagic waters, for example, meant that it was not locked into defending a set stance. Although it has been cast as having been problematic, the ambiguity of Canada's position also gave policy-makers room to think creatively and laterally about effective approaches to protecting Canadian interests.

In the immediate aftermath of the transits, scholars paid particular attention to the government's high state of unpreparedness, the resulting pressure under which it found itself, and the ostensible effects of that pressure on its policy response.¹¹ The Canadian public's high state of nationalistic arousal on the one hand, and the US's resolute refusal to budge on the other, are widely seen as having trapped the government in the middle with nowhere to go.

Commentators sharing this view typically fault it for two things. First, when it should have been decisive, it was indecisive. As a result, it relinquished the initiative, limiting itself to reacting to events and sacrificing its ability to put Canadian interests first. Second, when it should have been bold, it was cautious. Rather than taking the courageous step of formalizing Canadian pretensions to the archipelagic waters by implementing the straight baseline principle, Ottawa opted to acknowledge the weaknesses in its own case and pass up the chance to secure a Canadian victory.

Later re-assessments of the Canadian reaction have been somewhat different, notably Christopher Kirkey's, in which the impression is conveyed that the government was an actor united in purpose from the beginning, with a clear take on where Canadian interests lay and a ready strategy for pursuing them.¹² In contrast to the more critical assessments offered by Dosman and Griffiths, Kirkey (as well as Kirton and Munton) tends to downplay the influence of forces external to the government, particularly Canadian public and American diplomatic pressure. Indeed, one of Kirkey's central arguments is that Canadian intransigence in the face of American diplomacy explains the lopsided look of the final policy, one which satisfied Canadian national interests but left American interests unfulfilled.

The reality was somewhere in the middle. Let the reader recall the multifaceted character of the challenge: not everything *could* be done at once, nor did everything *need* to be done at once. There was certainly suspicion that the *Northwind* was something of a Trojan Horse, and that the US Navy was more involved in the venture than it appeared. But it would have been premature – from the point of view of maintaining friendly relations at least – to take drastic action. The immediate concern as regards sovereignty was to neutralize the potential *Northwind* challenge tidily.

The government did the minimum necessary to have the required effect: through the Department of Transportation, it notified the State Department that Canada would supply the *Manhattan* with its own icebreaker, the *John A. MacDonald*. It also pointedly suggested that both countries' coast guard vessels accompany the tanker in American as well as Canadian waters. As Dosman acknowledges, "[s]uch joint arrangements involving the oil companies and the two governments would make it difficult for the U.S. to refuse co-operation and might avoid a confrontation."¹³ The Canadian suggestion was adopted.

This pair of measures, designed to bolster Canada's *de facto* sovereignty and guard against retroactive claims by the US that Canada had stood idly by while the *Northwind* sailed the Passage, was followed by others, none

of which – it should be noted – was especially substantive. In March and April 1969, the government made several announcements, all emphasizing Canadian sovereignty without amounting to a definitive statement concerning Canadian ownership of Arctic waters. A tour by Governor-General Roland Michener, to occur in April, was announced on 27 March.¹⁴ A week later, Trudeau laid out Canada's new defence priorities, featuring bolstered surveillance over Canadian territory and coastlines. On 22 April, the government introduced a bill amending the Territorial Sea and Fishing Zones Act to give Canadian fishermen exclusive fishing rights.

It should be emphasized that the government's soft-peddalling was not a function of "fear" or "timidity,"¹⁵ but rather of pragmatism. As is the case today, positive relations with Washington were always one of Ottawa's top priorities, and maintaining them required skill. DEA's circumspect demarche ought to be viewed as a discreet effort to manoeuvre the US into a position amenable to Canadian interests rather than as a sign of powerlessness. Indeed, the *sotto voce* approach was one of the hallmarks of Canada's post-war foreign policy, and its skilful prosecution helps explain the significant international influence Canada exercised in world affairs for two decades after 1945.

What we are looking at is a series of promptly-taken measures carefully calibrated to blunt a potential sovereignty challenge while keeping Ottawa's options open. They constitute pro-action on the government's part because it was as yet unclear whether Canada was dealing with a challenge to its sovereignty or not. Nevertheless, Ottawa's deft lever-pulling should not be taken to mean that the broad outline of Canada's eventual policy response was already established. Kirkey writes that by the spring of 1969, Canadian officials were turning "their attention to formulating legislative policy and exercising diplomatic options that would unambiguously assert Canada's national interests over the Northern Arctic archipelago." Their aim, he asserts, was to "adopt an indirect approach that would implicitly reinforce Canada's territorial maritime claims over the waters of the Canadian Arctic archipelago while simultaneously addressing new concerns arising from increased levels of Northern development – particularly environmental regulation."¹⁶ The impression conveyed is that all this was being sorted out as early as the spring of 1969, with the Canadian national interest already well-defined and agreed upon by the many Canadian governmental stakeholders involved in the policy-formulation process.

In fact, this was far from the case. Both the commentators who fault the government for its indecisiveness and those who exaggerate its clarity of pur-

pose make the same mistaken assumption: namely, that it had the necessary information to move swiftly ahead. Based on the evidence, it is clear that it did not. In the spring of 1969, Ottawa was only slightly further along than it had been at the end of 1968 with respect to coming to grips with the nitty-gritties of the sovereignty question. Although it had enough information to outflank the immediate *Northwind* challenge, it was still in the process of sketching out the legal landscape of the matter. Only once that had been done could those in charge of policy-making begin to assess avenues open to the government, and only once all the avenues had been established could a final course of action begin to be charted. Bearing in mind the double uncertainty on the Canadian end as to (1) the international legal regime applicable to the Arctic ice and waters, and (2) the country's position with respect thereto, it should come as no surprise that time was required for the process to play itself out. It would be months before the prime minister and Cabinet even discussed an oblique, environmentally-premised legislative response.

The prime minister alluded to the extended policy-formulation process in March 1969, when he told the House of Commons that his government was undertaking "an extensive review of Canada's legal position in the North" and would be reporting to the House once that report was ready.¹⁷ In response to Diefenbaker's call for the government to make an immediate statement on the Canadian position, he replied that while:

over the years the intentions and the policy of the Canadian Government under various administrations have been clear... this particular aspect of it [ie. relating to the status of the archipelagic waters] has never been established. Because of the international implications which would result from a claim made by us regarding territorial rights it is important that all the departments report on this matter before a statement is made.¹⁸

The review in question was submitted to the Cabinet for consideration over the Easter recess, the promised report following in the form of a speech to the House in May. As far as the legalities went, Trudeau limited himself to stating that the *Manhattan's* transit in no way altered the legal status of the Northwest Passage; that Canadian sovereignty over the mainland and islands was undisputed, as it was over the resources of the seabed; and that while the government regarded the Arctic waters as "our own", a contrary view existed – namely that Canada's sovereignty was limited to the territorial sea around each island.¹⁹

The contents of the speech, in the sense both of what it did and did not say, are a clear indication of how far along the policy process was: the government now knew where it stood, but was not yet prepared to state where it was going. The leaders of the Opposition parties decried the delay, but the importance of not prejudicing long-term Canadian interests – which Trudeau had alluded to only obliquely when speaking of “international” implications of a territorial claim – undoubtedly goes a long way towards explaining the restrained character of his speech.

A memorandum entitled “Canadian Sovereignty Over the Waters of the Arctic Archipelago,” prepared by DEA, addressed to the Cabinet and dated 15 September 1969, gives a sense of the government’s progress. The stated purpose of the document was to “examine various courses of action which may be open to the Canadian Government, in the wake of the S.S. ‘Manhattan’s’ voyage through the Northwest Passage, with a view to protecting the Canadian position concerning the status of the waters between the islands of the Arctic archipelago.”²⁰ It thus represents – four months later – the step following the review of the Canadian legal position.

The advice contained in the memorandum helps explain – and vindicate – the government’s refusal to make the firm statement on sovereignty. The report lays out four possible courses of action: implicit or explicit abandonment of the Canadian claim; maintenance of the *status quo* without explicit assertion of any claim; outright assertion of the waters’ status as internal by implementation of straight baselines; and adoption of a 12-mile territorial sea. Conspicuous by its absence is any mention of a course of action built around environmental protection. The report dismisses the first course of action as manifestly contrary to Canadian interests, since Canada would lose all control over most of the archipelago’s channels, including the Passage. It argues against the second on the grounds that “heightened interest in commercial navigation,” should it follow the *Manhattan’s* voyage, would render the government’s position inadequate, especially in the (likely) event that the legal status of the strait required clarifying.²¹

The third course of action is what many commentators were advocating. It involved declaring straight baselines around the Archipelago as part of making explicit the basis for Canadian jurisdiction. Recognizing that such a move would, in the long term, be ideal, the report nonetheless advises against pursuing it because “the Canadian claim considerably surpasses in scope and scale any generally accepted claim by any other country. It has been concluded that Canada would have *no more than a 50-50 chance of succeeding with*

such a claim."²² The report then expands on the dangers of chancing it, with emphasis on a series of explicit US threats:

The US has threatened litigation if Canada attempts to implement its claim to these and other "special bodies" of water (such as the Gulf of St. Lawrence). The US government has also warned that it would instruct its ships and aircraft to disregard such a claim by Canada. Canada would, of course, be in an extremely difficult position if the USA were to send a warship through the Northwest Passage in an open challenge to Canada's action. The possibility of economic retaliation... has also been mentioned...; such action could, of course, take the form of a simple refusal to grant special concessions requested by Canada in such matters as the US oil import policy.²³

Presumably, the government's most vocal critics were unaware of these threats when they advocated aggressive action. Assuming the Nixon administration was not bluffing – and its very real refusal to make concessions on Canadian oil exports in March 1970 suggests that it was not – an outright declaration of straight baselines could well have been the surest way of torpedoing Canadian Arctic pretensions.

The final course of action – adoption of a 12-mile territorial sea – was a DEA favourite, which it would press for in Cabinet meetings right through the fall and winter. The move could be accomplished through an amendment to the *Territorial Sea and Fishing Zones Act*, with the effect of "establishing Canadian sovereignty, over the entire width of the Northwest Passage at three of its most strategic points..." and even allowing for the suspension of the right of innocent passage if Canada's security called for it.²⁴ The report's subsequent in-depth discussion of the legal basis for a territorial sea expansion speaks to the extensive analysis the sovereignty question had been subjected to in the preceding months.

The charge that Canada's failure to act assertively cost it a strong bargaining position should thus be treated with skepticism, but so too should the suggestion that Ottawa knew where it wanted to go from the start. The strong bargaining position it is purported to have had was in fact weak: neither did it have the information to take hasty action, nor would such action – in the form of a formal sovereignty claim – have been wise. It might even have been disastrous. Meanwhile, the prime minister's comments to the media and the contents of the governmental memos demonstrate that while

the government was mapping out its options methodically and with emotional detachment, it lacked any clear idea of the final direction it would take until well into the summer and perhaps even the fall. In the end, it mattered little, however, since so long as Ottawa kept its deliberations to itself, it gave the US little to push against, and the situation was not evolving so quickly that even several months' delay could worsen Canada's position vis-a-vis the international legal regime. Parliament, the public and the press, while exercised, lacked effective levers with which to move the government in any meaningful way.

PART II: Trudeau and the National Interest

Analyses of the *Manhattan* transit are often heavy on discussion of the national interest. Those favourable to the government's response and those less so both evaluate its actions based on their conduciveness to securing Canada's interests. Yet the idea of the national interest is slippery. Despite its centrality to neorealist and neoliberal International Relations theory, and the accompanying assumption that states pursue it on the basis of rational analysis, the national interest remains more imagined than real. That is to say, what is or is not the national interest depends on the point of view of the individual, and what he or she thinks would be good for the country. Although some things can generally be agreed upon – the survival of the country as an entity, for instance – others are far trickier since they relate to the values and beliefs one wishes the country to embody.

Determining whether a country's policies accomplished their purpose requires first identifying what that purpose was: not what it ought surely to have been in the view of the commentator, but what it was in the view of the actors who drew it up. It also involves recognizing that *how* the national interest is pursued can sometimes be as important to the policy-maker as its actual attainment. Indeed, its attainment may *depend* on its being pursued in a way consistent with policy-makers' own values and beliefs. Failure to discriminate between one's own conceptions of the national interest and those that actually drove national policy can leave the analysis adrift and commentators talking past the point.

In viewing the case of the *Manhattan* as one of Canadian sovereignty challenged, critics of Canada's response have tended to assume that the national interest was to reinforce Canadian exclusive jurisdiction as such. Canadian and American relations on the matter are considered to have been such that a policy approach that did not treat the US threat for what it was and counter it head-on constituted a retreat – and entailed what Griffiths

once termed a “net loss” of sovereignty.²⁵ This view, intuitive as it is, is not the best starting point for an analysis of Canadian policy. Nor, for that matter, is the apparently even more basic premise that within the government there was collective agreement as to what the national interest was.

There is no doubt that some ministries favoured countering the US challenge to Canadian sovereignty with a direct push-back, External Affairs being the most prominent among them. But while Mitchell Sharp’s department was the nominal leader on the file, its views on what the focus of policy should be had limited currency: Indian Affairs and Fisheries, for example, each had its own preferred solution and the Cabinet was split.²⁶ More importantly, however, neither DEA nor any of its sister departments shaped the policy-making process as much as did the prime minister and his closest advisers. Trudeau’s understanding of the concepts of sovereignty and nationalism; the backgrounds of those with whom he consulted closely in the second half of 1969; and his take on the purpose of foreign policy all combined to produce an original understanding of the national interest whose impact on the government’s eventual policy was pivotal. This is a crucial point: coupled with the evidence that Ottawa’s caution was the result of reasoned expert analysis as opposed to mere timidity, it anchors the argument that the drivers of government policy were not external but internal.

Trudeau and “sovereignty”

Bruce Thordarson, in his study of Trudeau’s approach to foreign policy, observes that Trudeau regarded nationalism with distrust. Viewing it as an emotional – as opposed to rational – basis for state action, and one generally geared towards satisfying a country’s collective ego more than its true interests, Trudeau saw nationalism as having the potential to be a dangerous catalyst that could turn sovereignty into the end of policy. Properly exercised (that is to say judiciously and with moderation), Trudeau believed that sovereignty was something that could aid in the “attainment of human objectives.”²⁷ When triggered by nationalistic feelings, however, the exercise of sovereignty could become an “obsession” that made nations intolerant, exclusive and prone to conflict. “Sovereignty for sovereignty’s sake,” he once wrote, “is a hollow and self-defeating concept.”²⁸

The Cabinet Conclusions from 15 October 1969 show how Trudeau’s principled, reasoned and deep-seated views influenced the outcome of the policy-elaboration process. The document indicates a clear willingness in Cabinet to pursue the 12-mile territorial sea extension promoted by External Affairs and, generally-speaking, to act more rather than less aggressively. It

notes that, besides DEA, both the Cabinet Committee on External Policy and Defence and the Interdepartmental Committee of Officials favoured a 12-mile territorial sea and that "some ministers" felt it "would be useful for Canada to claim twelve miles" as well. The Minister of Fisheries was pushing a plan to draw four fisheries closing lines across key channels and thus "close the whole Arctic Archipelago."²⁹ The only comments which could be taken as dissenting are those of Trudeau himself who, near the end of the discussion:

suggested that in the Throne Speech, in his own speech, and in the Minister's [sic] speeches, the government could develop the two themes of pollution control and economic development in the Arctic without mentioning the twelve mile limit and Canada could then go to the United States Government and advise it that Canada wanted to control pollution.³⁰

The following line, coming immediately after the excerpt above, is also significant, for it relates the substance of the Cabinet's reaction to some additional, unrecorded, comments which Trudeau can be presumed to have made: "Some ministers felt that ownership of Northern Canada was a very real force in the spirit of many Canadians, and these strong feelings should not be dismissed by calling them jingoism."³¹

The Cabinet agreed to "defer the matter for further consideration" at its 21 October meeting.³² Those minutes are still classified, but the impact of Trudeau's intervention is clear: in his address to Parliament on 24 October following the Throne Speech, the prime minister announced that Canada would "propose a policy of use of the Arctic waters which will be designed for environmental preservation. This will not be an intolerable interference with the activities of others; it will not be a restriction upon progress."³³ What is more, in a formerly confidential document dated 18 November and entitled "Arctic Policy," Colonel K. W. Macdonald refers to the government's "new initiative" as having "apparently supplanted immediate consideration by the government of a declaration by Canada of a 12-mile territorial sea."³⁴ There can be no doubt that Ottawa's eventual policy response was the product of prime ministerial involvement driven by an instinctive resistance to the Cabinet's own leanings and a preference for an alternative line of attack.

The environmental tack: Origins

If Trudeau's dislike for the "nationalistic" approach conditioned him to seek alternatives, where did the environmental one come from? Ivan Head

and Trudeau, in their subsequent book, provide part of the answer, writing that the idea of taking an environmental tack was put to Head by Gordon Robertson, the Clerk of the Privy Council, who prompted Head to speak to Trudeau about it.³⁵ Presumably, the authors have their facts straight. This is only part of the answer, however, for while it locates the idea's origins within the PM's circle of advisers (not DEA or another department) it passes over the fact that the basis of the idea was not new in 1969. In fact, it was a decade old.

The cornerstone of the pollution-control concept – what made possible the devising of multi-purpose legislation – was the idea that sovereignty could exist in degrees. The idea for this differentiation between full territorial sovereignty on the one hand, and simple functional jurisdiction on the other, had been hit upon in 1958 by Canadian officials involved in establishing Canada's position going into that year's Law of the Sea conference. The context then had been largely one of fisheries and the desire on the part of certain states to exert control over the living resources beyond what was at the time a three-mile territorial sea. While many countries were advocating a straightforward extension of the limit to twelve miles, others, including Canada, opposed such a move on the grounds that it would give states too much control – most notably and undesirably in the domains of air and sea navigation.

Allan Gotlieb³⁶ and Ivan Head had been among the officials responsible for establishing the Canadian position going into the conference. Their creative thinking, writes Gotlieb, had

crystallized into a realization that there were two possible ways of extending control over fishing: either by establishing a twelve-mile territorial sea or a fishing zone of the same limit beyond the territorial sea.... The Canadian approach [of establishing a fishing zone] was immediately seen to be a valuable method for reconciling the position of states opposing an extension of the territorial sea because it would interfere with the freedom of the high seas and those wishing to acquire greater control of their off-shore fisheries.³⁷

The government's pollution-control policy, in effect an application of the fisheries-inspired principle of functional jurisdiction to a new issue area, thus originated with members of the Trudeau inner circle with an exceptional understanding of the possibilities offered by shrewdly-calibrated legal

concepts. These individuals had the experience and the knowledge to find alternatives to blunt-force policy, and the creativity and vision to see when several birds might be killed with a single stone.

Let us recall the context in which they were by now operating. The acute sovereignty dimension (embodied by the *Northwind*) had been disposed of in the spring, and the chronic one, though needing to be addressed, was still hypothetical – depending as it did on changes in international maritime traffic patterns which had yet to occur. In this regard, the difficulties encountered during the recent transit (the *Northwind* had in fact been forced to return to port) had just underscored how hypothetical it was. The political dimension, which necessitated the government *to be seen to be* responding, did not dictate any one course of action. Meanwhile, the interlinkages between the sovereignty dimension and others, notably economic development and the environment, invited the drafting of something ambitious and polyvalent. The idea of developing pollution-control legislation was thus not an escape hatch through which the government crawled when all other hatches for defending sovereignty had been shut. If we accept that, in the minds of Trudeau and his colleagues, sovereignty was just one of several important areas policy must address, it was an ideal course of action.

Trudeau's views on foreign policy

Nor is it any surprise that Trudeau was receptive to it. Of course, elaborating pollution-control measures was a way to address the sovereignty question without resorting to the nationalistic approach. That was a major plus: bolstering the case for Canadian jurisdiction in the Arctic was a *bona fide* policy priority. However, it also offered the prospect of tabling a response that accorded with Trudeau's views on foreign policy. As Peter Dobell observes, "Trudeau and some of his closest and most powerful ministerial associates... shared, when they came into office, an evident dissatisfaction and even frustration with the foreign policy of the Pearson government."³⁸ They sympathized with those who felt, rightly or wrongly, that Canada had become too taken up with its role and influence in the world, to the point of losing sight of its policy objectives and actual interests.³⁹ It was time, they believed, for Ottawa to stop trying to "react to all international events and have a policy on everything that happened in the world" and rather focus its energies and resources on a narrower range of issues of real consequence to Canada.⁴⁰

Almost certainly, this belief was motivated by pragmatism – the acceptance that Canada's resources were limited and its clout on the world stage

had declined relative to what it had been in the immediate post-war period. But it was also the product of one of Trudeau's key personal beliefs: that foreign policy should be the extension abroad of national policies. This meant that, while Canada would continue to have policies geared expressly towards the outside world and it would not shirk its international responsibilities, much of its foreign policy would no longer be foreign *per se*. Rather, it would take the form of ripples coming off Canadian domestic policies.

The pollution-control proposal represented an opportunity to develop policy precisely along those lines. The environmental issues raised by the *Manhattan* were sufficient in and of themselves to warrant a policy response, but the recent *Torrey Canyon* disaster underscored the point further.⁴¹ What is more, the environment was a true government priority. As John Roberts observes, Trudeau's Liberals were swept to power amid growing worldwide awareness of the damage industrialized society was doing to its ecological base, and "[n]o country reflected this rising environmental consciousness more intensely than Canada."⁴² Over the decade that followed his election, Trudeau would preside over a government that responded vigorously to the public's demands for pro-action. The creation of Environment Canada, formalized in 1971, was the most tangible sign of its commitment, but it was accompanied by a veritable host of initiatives aimed both at regulating pollution-causing activities and preventing pollution in the first place. The Mackenzie Valley Pipeline Inquiry, which resulted in a landmark report advising the government against pursuing the project, was without question foremost among the latter category initiatives.⁴³

Given the dual domestic and international implications of an environmental disaster, formulating legislation to guard against it was an urgent matter of Canadian interest, and one via which policy with a significant foreign dimension could easily be developed. Trudeau alluded to the dual domestic and international aim of the government's eventual policy in his address on 24 October, when he said that:

[p]art of the heritage of this country, a part that is of increasing importance and value to us, is the purity of our water, the freshness of our air, and the extent of our living resources. For ourselves and for the world we must jealously guard these benefits. To do so is not chauvinism; it is an act of sanity in an increasingly irresponsible world.⁴⁴

Elsewhere in the speech, he told the House that the government's policies would:

reflect Canada's proper interest not only in the preservation of the ecological balance which I have already mentioned, but as well in the economic development of the north, the security of Canada, and in our status and reputation in the world community.⁴⁵

The decision to pursue the environmental route was thus the product of several converging forces. The inability of the Cabinet to agree on a course of action was the impetus for the prime minister – and by extension his close advisers – to become personally involved. Trudeau's strong intellectual aversion to nationalistically-motivated measures led him to seek an alternative to the approaches under consideration and made him receptive to new suggestions and thus new takes on the national interest. The government's own predisposition to protecting the environment, the environmental awareness characterizing Canadian society at the time, and the obvious implications of oil exploitation and transport in the Far North suggested to Trudeau's colleagues a response couched in environmental terms. The experience that several of them had had at the 1958 Law of the Sea conference, particularly Gotlieb and Head, explains the origins of the functional jurisdiction idea applied in the service of environmental custodianship-cum-sovereignty protection. Trudeau's desire to see Canada's foreign policy embedded in matters of distinctly Canadian relevance, coupled with his interest in projecting those policies abroad as an example to be emulated, accounts for his enthusiasm for the idea.

Bill C-203, which complemented the *Arctic Waters Pollution Prevention Act* and extended the territorial sea to twelve miles, deserves mention as well. There was considerable debate as to whether it should be implemented and Trudeau appears to have been suspicious of DEA's motivations in pushing the idea. That it was eventually adopted speaks to the weight the prime minister accorded not only to the effect of a policy, but to the reasons behind it. Extending the territorial sea had implications far beyond the Arctic, because it involved bringing under Canadian jurisdiction the waters on Canada's east and west coasts as well. The importance of asserting control over those waters, particularly for the purposes of fisheries-control, was a matter of national interest that long pre-dated the *Manhattan* transits. Gotlieb suggests that what tipped the scales in Cabinet in favour of proceeding with the extension was "the strident political support on both coasts"⁴⁶ for the move. Thus, while the effect the bill would have on extending Canada's control over certain key Arctic channels remained a major reason for drafting it, its utility in furthering a second and only loosely-related set of maritime interests was what clinched its acceptance.

Drafting and promoting Bills C-202 and C-203

A committee of senior civil servants was charged with elaborating what became Bills C-202 and C-203 in the fall of 1969, and carried its work forward into 1970. Cabinet vigorously debated the character of the legislation, particularly the extent of the authority Canada ought to legislate to itself. Trudeau's personal engagement helped his close advisors – notably Robertson, Head and Gotlieb – “keep the process on course and on time.”⁴⁷ In March 1970 the government decided to proceed with both the legislation involving the 100-mile-wide pollution-control zone and that extending the territorial sea. The accompanying decision to exempt both acts from the compulsory jurisdiction of the International Court of Justice was not made without a struggle (with Sharp and particularly Paul Martin Sr. being very much against the move). However, the majority of ministers were motivated by the desire to see Canadian interests prevail in the face of the heavy opposition they expected from the U.S. and other maritime powers. They sided with Donald Macdonald, the government House Leader and lawyer, who recognized “the importance of building the international legal system through the use of the Court” but “argued that Canada’s interests were more important than the system in the particular case at hand.”⁴⁸

Simultaneous with the drafting of the bills, and extending into 1971, Canada promoted its agenda diplomatically and succeeded in heading off a US-sponsored conference to discuss Arctic issues where, it was widely suspected, Washington hoped it could overwhelm the Canadian delegation with pressure from other major maritime states. After sending Bills C-202 and C-203 to numerous foreign capitals, Canada entered into informal bilateral talks with several important countries, including the Soviet Union, Sweden and Great Britain. All were convinced to support the Canadian position. The Canadian diplomatic machine also secured the support of Norway and Iceland. Kirton and Munton observe that:

of the 14 states (apart from Canada) that the U.S. was known to have approached with invitations...only the Dutch seemed in favour, with the Spaniards and Finns noncommittal. Japan, Britain, Belgium, and Denmark refused to accept until the terms of reference were clarified by the United States and/or the conference was limited to technically based aspects of pollution and navigation.⁴⁹

By mid-1970, it was clear that the Nixon administration lacked the international support necessary to organize a conference that would support

its foreign policy aims. Moreover, by winter, international attention was turning to Geneva, where preparatory work for the 1973 UN Law of the Sea Conference (UNCLOS) was getting underway. Canada had achieved something approaching *de facto* endorsement of its course of action.

Conclusion

What this analysis has shown, therefore, is how and why the Canadian government's response to the *Manhattan* transits took on the character it did, and how the environmental slant it was given accorded with the national interest as interpreted by influential policy-makers. As with any foreign policy, this one was affected by a range of realities largely beyond the government's influence. Insofar as it had the ability to craft an independent policy, however, it did. Initially uncertain as to the options available to it as well as to the precise effect it wished to achieve, the government spent several months studying the legal and political landscape before beginning to weigh specific courses of action. Although American pressure was real and would have discouraged the declaration of straight baselines had it been considered seriously, it seems clear that forces at the heart of the Canadian government would always have vetoed such a drastic step. The time it took Ottawa to table a substantive response and its unwillingness to commit itself early to any particular definition of the national interests were thus the signs of a methodical, open-minded government considering its options carefully.

The eventual flavour of the legislation tabled was heavily influenced by the values, beliefs and experience of Pierre Trudeau, Ivan Head, Gordon Robertson and Allan Gotlieb. Increasing Canada's scope for control over northern waters was always understood to be the end objective, but the "how" rivaled the "what" in importance. The decision to use pollution-control measures and an extended territorial sea as the vehicle embodied the Trudeauvian conviction that foreign policy be guided first and foremost by domestic policy, with the exercise of sovereignty being the means of advancing a country's interests, not an end in itself.

What makes the *Manhattan* incident so relevant today is the striking similarity between the current Canadian landscape and that in 1969. Now as then, the public's awareness and the government's interest in questions of resource exploitation, economic development, maritime traffic, national jurisdiction and environmental conservation are extraordinarily high. Governmental, intellectual and popular efforts to conceptualize more accurately the nature and importance of the circumpolar region are intense. Efforts to apply the resulting ideas to the handling of the myriad issues

comprising the Arctic Question have probably never been more sustained. Hindsight is said to be 20/20, but it is of little use to policy-makers planning for the future. The *Manhattan* episode is thus a rare and valuable chance to apply the benefits of hindsight to the present, and to contrast the Trudeau and Harper governments' approaches to tackling Arctic sovereignty.

The Trudeau government's demarche was characterized by circumspection and expectation-management. First, it strove to limit the potential for conflict which the *Manhattan* transits represented. Beyond the intense diplomatic activity between it and the US (best described in Kirkey, Kirton and Munton, and Trudeau and Head) the government directed the bulk of its energies in this regard to resisting the heavy nationalistic pressure it was under to drop the gloves and become combative. Notwithstanding what differences of opinion may have existed within Cabinet, the government's public attitude was one of dispassionate engagement, Trudeau and Sharp themselves consistently using measured language to describe how the government saw the situation and how it was proceeding. The policy that emerged, similarly, reflected a balanced, deliberate and focused thought process, pushing the sovereignty envelope as far seemed useful and no farther. The national interest was front-and-centre, but not provocatively so.

Second, the government admitted from the start to not having answers to all the questions raised by the *Manhattan* transits. It also refused to hazard a guess as to what they would be. Instead, it chose to soak up public pressure in the immediate term while defining for itself what questions it needed to answer, and preparing responses that would prove satisfactory in the long term. As a result, it kept its hands free to define and pursue Canada's interests on its own terms. By not seeking to do the impossible – assert full jurisdiction over the waters of the archipelago, for instance, or resolve the Northwest Passage dispute once and for all – it succeeded in making defensible gains while crafting a response that earned it the Canadian public's approval. Although the question of the Northwest Passage was not stitched up, no compelling argument has yet been made that Canadian interests suffered as a result.

The Harper government, meanwhile, has always depicted Canada's Arctic interests and the government's strategy for furthering them against a threatening geopolitical landscape. It has promised to defend Canada's sovereignty over its Arctic against anyone who would challenge it – implying on various occasions both the US and Russia – despite the absence of any credible threat. The effects of its aggressive approach have been to raise the profile of Arctic sovereignty; engage the public, the media and the academic

community; generate widespread support for Arctic-related spending; and earn the government praise for its determination and proactiveness. This approach may yet yield dividends.

As a number of academics have already pointed out, however, the Conservatives' portrayal exaggerates the threat if it does not misrepresent it outright. Ron Macnab has observed, for example, that:

... under present conditions it is difficult to believe that Canada could be in imminent danger of having portions of its Arctic territory appropriated through the unilateral action of a foreign power. Labeling the current situation as a "use it or lose it" scenario is unrealistic, if not misleading.... A more open stance that permitted transit passage through the Arctic Archipelago, coupled with enforceable measures to ensure navigational safety, international security, and environmental protection, would actually enhance Canada's authority in this area.⁵⁰

The effectiveness of the Trudeau government's legislative response depended heavily on its acceptance by the international community, ultimately embodied by Article 234 of UNCLOS but demonstrated in the immediate term by Canada's success in rallying the countries invited to the US-sponsored Arctic conference to its cause. It also rested on the government's concerted, and quite possibly earnest, efforts to be seen to be acting on behalf of the international community, and not just for itself. Without Canada's sincere efforts to include other countries in its plans, the validity of the goals it pursued through Bills C-202 and C-203 would not have received the same recognition. The Harper government should take care that an Arctic policy that has brought it short-term domestic popularity does not, by its very character, jeopardize equally (or more) important long-term gains in the international arena.

Notes

- 1 Maxwell Cohen, "The Arctic and the national interest," *The International Journal* 26 4 (Winter 1970-1), 78.
- 2 John Kirton and Don Munton, "The Manhattan voyages and their aftermath," in *Politics of the Northwest Passage* ed. Franklyn Griffiths (Kingston: McGill-Queen's University Press, 1987), 70.
- 3 Christopher Kirkey, "The Arctic Waters Pollution Prevention initiatives: Canada's response to an American challenge," *International Journal of Canadian Studies* 13 (Spring 1996), 42.
- 4 E. J. Dosman, "The Northern sovereignty crisis," in E. J. Dosman, ed., *The Arctic in Question* (Toronto: Oxford University Press, 1976), 34-57. See also

- Dosman, *The National Interest* (Toronto: McClelland and Stewart, 1975).
- 5 Franklyn Griffiths, "Canadian sovereignty and Arctic international relations," in Dosman, *The Arctic in Question*, 140-162.
- 6 Griffiths, "Canadian sovereignty and Arctic international relations," 143.
- 7 Cohen, "The Arctic and the national interest."
- 8 The material for this overview was drawn mainly from Kirton and Munton, "The *Manhattan* voyages and their aftermath"; Dosman, *The National Interest*; and from Ivan Head and Pierre Trudeau, *The Canadian Way: Shaping Canada's Foreign Policy, 1968-1984* (Toronto: McClelland & Stewart, 1995).
- 9 Peter C. Dobell, *Canada's Search for New Roles: Foreign Policy in the Trudeau Era* (Toronto: Oxford University Press, 1972), 69.
- 10 Dosman, *The National Interest*, 52-54.
- 11 Cohen, "The Arctic and the national interest," 72, as well as Dosman, *The National Interest*, 15-17, 46-54.
- 12 Kirkey, "The Arctic Waters Pollution Prevention initiatives," 44-45.
- 13 Dosman, *The National Interest*, 47.
- 14 According to Scott Young, the Governor-General's trip had been planned long before. Scott Young, "Caught in the Ottawa cocktail go-round," *Globe and Mail*, 12 April 1969, 7.
- 15 See Dosman, *The National Interest*, 52.
- 16 Kirkey, "The Arctic Waters Pollution Prevention initiatives," 44.
- 17 David Crane, "Trudeau admits Arctic jurisdiction is in dispute," *Globe and Mail*, 8 March 1969, 4.
- 18 Crane, "Trudeau admits Arctic jurisdiction is in dispute." DEA took a lead role in crafting the government's response, but owing to the transit's far-reaching implications, the Departments of Indian and Northern Affairs, of Transport, of Energy and Natural Resources and of Fisheries were all seized of the matter as well and vying to shape the final policy.
- 19 Dosman, *The National Interest*, 48-49.
- 20 Memorandum to Cabinet, "Canadian Sovereignty Over the Waters of the Arctic Archipelago," 15 September 1969," in P. Whitney Lackenbauer and Paul Kikkert, eds., *The Canadian Forces and Arctic Sovereignty: Debating Roles, Interests and Requirements, 1968-1974* (Waterloo: Wilfrid Laurier University Press, 2010), 93.
- 21 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 94.
- 22 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 96. Emphasis added.
- 23 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 97.
- 24 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 97-98.
- 25 Griffiths, "Canadian sovereignty and Arctic international relations," 143.
- 26 Head and Trudeau, *The Canadian Way*, 30-31.
- 27 Bruce Thordarson, *Trudeau and Foreign Policy* (Toronto: Oxford University Press, 1972), 64.
- 28 Head and Trudeau, *The Canadian Way*, 34.
- 29 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 106.
- 30 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 107.
- 31 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 107.
- 32 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 107.
- 33 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 111.
- 34 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 110.

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- 35 Head and Trudeau, *The Canadian Way*, 39.
- 36 Deputy Minister of Communications under Trudeau, 1968-1973.
- 37 Allan Gotlieb, "The Canadian contribution to the concept of a fishing zone in international law," *Canadian Yearbook of International Law* 2 (1964), 64. The idea for the fishing zone was itself based on the concept of a contiguous zone extending beyond the territorial sea, as formulated by the International Law Commission. States' rights to control foreign activity in the contiguous zone proposed by the Commission were very limited.
- 38 Dobell, *Canada's Search for New Roles*, 69.
- 39 Dobell, *Canada's Search for New Roles*, 7.
- 40 Dobell, *Canada's Search for New Roles*, 5.
- 41 The grounding of the *Arrow* in Chedabucto Bay, Nova Scotia, bolstered the case for environmental protection legislation, but did not occur until 4 February 1970.
- 42 John Roberts, "Meeting the environmental challenge," in *Towards a Just Society* eds. T.S. Axworthy and Pierre Elliott Trudeau (Markham, ON: Viking, 1990), 149.
- 43 Roberts, "Meeting the environmental challenge," 152-160.
- 44 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 112.
- 45 Lackenbauer and Kikkert, *The Canadian Forces and Arctic Sovereignty*, 113.
- 46 Allan Gotlieb, *Romanticism and Realism in Canada's Foreign Policy* (C.D. Howe institute Benefactors Lecture, Toronto, 3 November 2004), 9.
- 47 Head and Trudeau, *The Canadian Way*, 44-45.
- 48 Head and Trudeau, *The Canadian Way*, 90.
- 49 Kirton and Munton, "The Manhattan voyages and their aftermath," 95.
- 50 Ron Macnab, "'Use it or lose it' in Arctic Canada: action agenda or election hype?" *Vermont Law Review* 34 (2009), 13.

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ABSTRACT: Climate change is transforming the Arctic. Questions abound about what this will mean for the Canadian Forces, for Canada's sovereignty position, for northern peoples, and for stability and security in the circumpolar world. Fortunately, Canadians have encountered and debated similar issues in the past. This volume, featuring chapters by established and emerging scholars, offers essential historical analysis on Canadian Arctic security and sovereignty policies and practices since the Second World War. The "lessons learned" lay a solid foundation for future research and historiographical debate in this dynamic field, and should inform Canadian thinking on what is necessary to protect national interests in the twenty-first-century Arctic.

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