

INSTITUTE OF CURRENT WORLD AFFAIRS

DAWJ-11:"A morbid anxiety"
or
Canadian sovereignty in the Arctic

Scott Polar Research Institute,
Cambridge,
England.

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Richard H. Nolte, Esq.,
Executive Director,
Institute of Current World Affairs,
535 Fifth Avenue,
New York 17, N.Y. 10017.
U.S.A.

Dear Dick:

In March of 1968 oil was discovered at Prudhoe Bay on the north coast of Alaska, - a reservoir now estimated to be about the sixth largest in the world. And in the summer of 1969 the American tanker Manhattan sailed from Chester, Pennsylvania to Point Barrow, Alaska, and back through the Northwest Passage to test the feasibility of oil export via Arctic waters.

The Canadian reaction to these two American events has been lively, pungent and predictable; a year and a half of argument about Canadian sovereignty in the Arctic.

This letter is a much compressed review of the sovereignty debate which took place in the House of Commons in Ottawa between February, 1969 and June, 1970. Hansard contains only a fraction of the total words on the subject but it brings together, step by step, the evolution of opinion and policy in Canada on this national question.

February, 1969. Early in 1969, it became clear that an American tanker was actually going to attempt the Northwest Passage. The Canadian newspapers put the story into the context of territorial claims in the north. In February, a Member of Parliament referred in the House to a Vancouver newspaper article which reported the following canvass of official opinion in Ottawa about Canadian control over the Northwest Passage:

- (i) the Department of Indian Affairs and Northern Development was "sure" that the Passage was Canadian water;
- (ii) the Department of External Affairs said the issue was "fuzzy";
- (iii) Transport officials said it was an international waterway; and
- (iv) "the Department of Justice has never heard of (it)."

All of which served as a forecast of what was to follow.

But the issue had no champion until the 28th February, when the Right Hon. J. G. Diefenbaker, Conservative member for Prince Albert asked this during Question Period:

"Mr. Speaker...in recent days maps have been issued by the United States indicating ownership of potentially valuable oil areas in islands in the northern archipelago. Have representations clearly defining Canada's right to sovereignty of the north been made to Washington...?"

And more of the same. Mysterious maps, American big-business, sinister acquiescence in Washington, and a timid Canadian government.

March, 1969. The Prime Minister's reply on the 7th March, did little to lay old ghosts. "It is a very complicated situation", he said. Diefenbaker retorted with the word "pussyfooted"; Mr. Speaker intervened three times and the matter was left in suspense.

These preliminary sallies, however, produced some clear definitions in the argument. As far as the Canadian government was concerned, there could be no dispute about land in the north. All the islands west of Greenland to the Canada-Alaska boundary were Canadian. It was the control of the sea in the north which the government admitted was "in dispute". And, to confuse its critics, the Government in the House threw in the question of winter ice and permanent ice in the arctic. The debate subsided.

On 27th March, this abrupt exchange took place in the Commons.

Mr. Stanley Knowles (Winnipeg North Centre):

Mr. Speaker, my question is for the Prime Minister.... In view of reports that the Governor General is to make a tour of the northern part of Canada to assert our sovereignty there, will the government consider shooting the Governor General into outer space so that we can assert our sovereignty out there as well?"

Some Hon. Members: Oh, oh.

May, 1969. It was not until 15th May, that the Prime Minister, Pierre Elliott Trudeau, made an official statement to the House on northern jurisdiction. What he said seemed to emphasize Canadian doubt. The islands and the continental shelf in the Arctic were Canada's and with the land went the implied three-mile territorial limits into the sea. The Prime Minister did not specify whether that three-mile limit extended from baselines drawn from headland to headland or whether it only followed the shore. This was a crucial point since the present Northwest Passage is, in at least two places, a narrow channel between the islands. Nor did Mr. Trudeau say how or where the northern continental shelf would be divided between Canada and Alaska. Finally, he implied that Canada's claim to arctic waters was purely a Canadian claim.

This was not the assertion of sovereignty the House had expected. In fact, the Prime Minister seemed to be saying that Canada would claim in Arctic seas what other nations would agree she might claim.

Five days later, on 20th May, there was a short exchange between the Member for York South and the Prime Minister which brought into the debate the concept of the Arctic ocean as an archipelago; an island studded sea where Canadian sovereignty extends over all the water between the islands.

In reply, the Prime Minister reiterated his previous statement but as an afterthought he said this:

"I do not wish...to give publicity to our claims which may be contrary to Canada's long-term interest."

This was a good ploy; a vague statement which could be taken in several ways. It seemed, perhaps, as a promise of more to come.

June, 1969. During the winter and spring of 1969 the Commons' Standing Committee on Indian Affairs and Northern Development had been holding extensive hearings. The Committee (like other Parliamentary Committees) sits outside the House and it can call witnesses to give expert testimony. This particular Committee had become for several weeks the centre in Ottawa of most of the opinion and controversy on the sovereignty issue. It had acted, in fact, as a kind of beneficial political poultice.

On 19th June, the spokesman for the Committee reported to the House and he summed up in this way:

- (i) he affirmed that Canada's claim to the arctic islands and mainland is undisputed and cannot be effectively disputed, but
- (ii) emphasized that sovereignty "over waters within the archipelago is less certainly defined", and
- (iii) stated that the House must announce a unilateral Canadian claim to all the seas within the archipelago and specify that the three miles of territorial waters should be drawn outward from that archipelago.

These statements evidently represented the unanimous opinion and recommendations of the Committee. The action was to be justified by the necessity of controlling pollution in the Arctic and on the assumption that Canada must own all land, air and sea navigational aids and facilities, in and for, the Northwest Passage.

Pollution needed no explanation to the House. It was accepted without question. The technical support for Arctic navigation would be largely land-based and therefore, so the argument ran, Canada must provide those facilities otherwise their existence on Canadian soil could constitute an encroachment on sovereignty.

It seems from the record of that discussion that the spokesman for the Committee was addressing an attentive and sympathetic House.

A few weeks later Parliament prorogued for the summer.

October, 1969. The second session of Canada's twenty-eighth Parliament began on October 23rd, and during the Throne Speech the Governor-General read this statement:

"While the Atlantic and the Pacific retain their traditional importance for Canada, the Arctic Ocean and its coastal regions may soon enter a period of rapid economic development. Much of this development will undoubtedly

occur on the islands of the Canadian archipelago, or in the adjoining continental shelf whose resources, under international law, we have the exclusive right to explore and exploit. With resource development,... may come grave danger to the balance of plant and animal life.... The Government will introduce legislation setting out the measures necessary to prevent pollution in the Arctic Seas."

On 27th October, the Hon. Robert Stanfield, Leader of the Opposition asked the Prime Minister this:

"...is it the position of (the) government that Canada now exercises and intends to assert full sovereign control over all the waters of the Canadian Arctic and particularly over the waters between the islands of the Arctic ?"

The Prime Minister replied, in part, -

"This government does take the position that it exercises sovereignty over all the waters of the Canadian Arctic."

It was this sort of arid, unrevealing dialogue which went on in Parliament during the autumn of 1969, the Government fending off similar questions almost every week. And during this time, too, there were several oblique approaches to the subject: was the government aware that U.S. Army Engineers were surveying water supply in northern Ontario? Would a Royal visit be made to northern Canada as a token of sovereignty? Were there not similar questions of sovereignty involved in the seas around St. Pierre and Miquelon, the French islands south of Newfoundland? Would changes be made in the constitutions of Canada's northern Territories? And what was the legal status of Soviet drifting stations in the Arctic?

January, 1970. After the Christmas recess, on 19th January, the Opposition made a concerted effort to force a full debate on the subject. There was almost an hour of acrid exchange:-

"This is not a time for national timidity."

"The claim for Canadian sovereignty...should be above partisan considerations."

"...it asks the government to get off its iceberg."

And so on. But what was at stake here was a knotty problem of Parliamentary procedure, specifically the role of Committees in Parliament. Should a matter under consideration outside the House by a Committee be introduced into the House during ordinary debate? The Government held that it should not and the Speaker took several days to decide in favour of the Opposition.

When the debate came on 22nd January, little new was added. It was an exercise in indignation. The Government listened but did not show its hand. It was an attitude that one member summed up as "Participatory autocracy!"

It was a socialist spokesman, Mr. T. C. Douglas, who probably best expressed the cause of the growing frustration in Parliament on this unresolved year-old issue. He said,

"Quiet diplomacy is not likely to bring a solution...."

It was this anxiety that the Government might be trying to reach an understanding with Washington before deciding what Canada's policy should be, which incensed many Members - and the public.

Then, at the end of January, 1970 the Liberian tanker Arrow broke up off the coast of Nova Scotia, a repeat, on a smaller scale of the Torrey Canyon. The Arrow left behind eighty miles of polluted beaches.

The incident was used frequently during the ensuing debate as a timely illustration of the need for Canadian regulation and control in the Arctic ocean. The Arrow was styled as "a rotten old tub of Aristotle Cnassis...." which had "spewed more than half of her three million barrels of bunker fuel over some 1,200 square miles of Canadian waters...."

February, 1970. It was in this month that the Government began to show its policy. On the 19th the Hon. George Hees referred to a statement by President Nixon that,

" 'the most pressing issue regarding the law of the sea is the need to achieve agreement on the breadth of the Territorial sea, to head off the escalating national claims over the ocean.' "

"...will the government (Mr. Hees asked) now proclaim Canada's sovereignty over our Arctic waters in clear, unmistakable terms so that we do not lose that sovereignty by default because of our continued silence on this matter ?"

Mr. Sharp, the Minister for External Affairs then said this:

"...we do not claim sovereignty over any waters that have been regarded as the high seas, except possibly where there has been an extension of territorial waters or inland waters as the result of the application of straight baselines. It would be difficult to argue that the Arctic waters between Canadian territory have been regarded as a part of the high seas. Indeed, the experimental voyage of the Manhattan in our waters, conducted with our acquiescence and our co-operation, is evidence to the contrary. So the President of the United States could not have been referring to Canada."

The House sensed a new firmness here.

"Now that the Secretary of State for External Affairs has dipped his toes in the water and found it not too cold...." etc.

March, 1970. The discussion during March shifted to the proposed second voyage of the Manhattan and it was the Minister of Transport who had to supply most of the answers in the Commons. What he eventually revealed was fundamentally important because it dealt not with general policy but with the precise conditions and facts of navigation in the Northwest Passage in 1970.

On 2nd March, a government spokesman told the House that Humble Oil (the chief sponsor of the Manhattan), had "notified the Canadian Government and we have given our acquiescence" to the second voyage. The next day the Minister of Transport added to this statement by referring to certain "stipulations" his department had set for the Manhattan's owners. No request for icebreaker assistance from the Canadian Coast Guard would be considered "unless there is agreement to comply with (Canadian) regulations...."

After a further question, the list of these stipulations was published as an Appendix to Hansard on 17th March. By the 24th of the month the Minister reported that Humble had agreed to all the conditions and he also confirmed that a Canadian officer would have to be on board the tanker and, as well, that there would be "a man responsible for the company in Ottawa during the trip."

This line of questioning followed into April when the Minister of Transport finally closed this aspect of the debate with this interesting statement on the 8th.

"The captain of the Manhattan, if so advised by the captain of the Canadian icebreaker, would be required to change direction in line with the recommendations of the captain of the Canadian vessel."

What seemed to be evolving here was a kind of "Commodore principle" for the navigation of the Northwest Passage; that ships in those waters would sail under Canadian instructions.

April, 1970. By mid-March the government had introduced the two Bills into the House which were to be the basis of its policy for northern waters; Bill C 202 entitled "Arctic Waters Pollution Act", and Bill C 203, the "Territorial Sea and Fishing Zones Act."

These immediately produced an unfavourable reaction from Washington but it was not until 16th April, 1970 that the formal discussion in the Commons got underway. On that day the Minister for External Affairs prefaced debate on the two Bills with this statement:

"...I hope we will proceed with our discussion of this legislation not in the light of United States objections but in the light of Canadian interests."

Briefly, Bill C 203 proposed to extend the existing three mile territorial limits along all Canada's coasts to twelve miles and Bill C 202 was to establish a further hundred mile limit in the Arctic over which Canada would enforce anti-pollution regulations.

By June 1970, after several weeks of debate, both Bills were passed unanimously.

And that, for the time being, is where matters stand.

But, what does it all mean ? What lies behind these fourteen months of debate and argument ?

It is probably true to surmise that, for several months after January, 1969 confusion and doubt predominated in Ottawa. Until the Manhattan, the Northwest Passage had been an academic question; a hypothetical route for non-existent ships, carrying undiscovered resources across the outer limits of Canada's least-known frontier.

It is also apparent that during 1969 the Government must have treated the problem as sensitive and secret; a complicated issue which could not be left even to the senior mandarins of the civil service in Ottawa. Ministers must have plunged into a kind of chaste political purdah for weeks at a time while they listened to their own exclusive council on public opinion, international law, economic repercussions, Canadian interests and their own political fortunes. Perhaps the question uppermost in the minds of the Cabinet was how far Canada could go with impunity in making its northern claims. And to take the measure of this, was a time-consuming, delicate exercise. It was in the Government's interests not to be stampeded into a sudden declaration of instant policy for northern sovereignty.

But the debate represented more than prudence and the techniques of political slow-motion. It was a strong dose of unembarrassed and near unanimous nationalism. Why, when an economic sea route in the Arctic would be to Canada's benefit; and why, when the experiment was costing Canada only a fraction of the total bill ?

It is twenty-five years since the U.S. Navy referred to Ellesmere as an island lying off the north coast of Canada but memories of this kind are tenacious. And Canadians are convinced that without their sporadic and half-hearted attempts over the last century to assert claims to the Arctic they might have lost or seriously jeopardized what they now have. This quotation from a speech in 1963 by a Canadian academic was used to good effect in the Commons in 1970:

"Canadians might be a little less complacent about the vast northern areas...if they understood that with little more ineptitude, or a little less luck on our part, or a little more aggressive competition...they might not have become ours." (Gordon W. Smith, 1963, speech to the Canadian Political Science Conference, Quebec City.)

The Commons obviously believed this to be a relevant message for 1970.

And, for any who had doubts, there was a swarm of gadflies from the United States. This editorial from the New York Daily News in April, 1970 is a good example:

"Canada's Prime Minister, Pierre Elliott Trudeau is big-mouthing about extending Canadian jurisdiction 100 miles northward in the Arctic Ocean for pollution-control purposes.

"We're anti-pollutant as anybody, but we think that in this case lucky (up to now) Pierre is mainly intent on snooting Uncle Sam for the Canadian home folks' edification.

"If our guess is correct, how about Washington leaning politely but heavily on Pierre until he drops this nonsense? He's been asking for such treatment for quite some while."

Sovereignty still is a principal motive for Canada in the north. Reading Hansard for the last few days put me in mind of a statement written by a Colonial Office official in 1861 when he commented on Canadian efforts to acquire the west from the Hudson's Bay Company and before it was absorbed into the expanding United States:

"They strike me as specimens of a fallacy which is very common to the American Continent, a morbid anxiety to anticipate the future."

The recent debate in Ottawa contained strong elements of this inherited "morbid anxiety."

There were, of course, other motives as well during 1969 and 1970. The threat of pollution was, both an excuse for, and a justification for, Canadian control in the Arctic. And it provided the Government with a relatively easy opportunity for anti-pollution legislation in a remote region where there are few established industrial interests.

The need for extensive and expensive navigational, search, and rescue facilities in the north was another persuasive argument for Canadian control. The fact that the Manhattan needed an icebreaker escort from Canada helped to strengthen the Canadian case. It was a happy coincidence for Canada that in 1969 and 1970 she possessed icebreakers more powerful than any in the United States' fleet.

But will this need for Canadian icebreaker escort and technical installations be a continuing vital factor in the future? Will Canada be able to, or will she have to, monitor shipping in the Arctic?

It is not a foregone conclusion. A three-hundred-thousand ton tanker, designed and powered specifically for the north, carrying its own helicopters, and linked to a satellite in polar orbit may be a self-sufficient and self-contained Arctic juggernaut. Canada should not count on being able to play sheep-dog and shepherd in a Northwest Passage of the future.

The legislation itself in Bills C 202 and C 203 is apparently based on strong precedent. Some fifty-seven nations now claim at least a twelve-mile limit to territorial seas, and the three-mile limit by only twenty-four countries. The hundred-mile pollution zone is not a totally unique innovation either. Ottawa, in a Note to Washington on 16th April, 1970 ticked off a list of United States' unilateral claims beyond the three mile limit which began in 1790 when the Americans claimed customs jurisdiction up to twelve miles and which by 1935 had extended as far out as 62 miles "in clear contradiction of applicable international law." *

*On 20th May, 1970 President Nixon asked Congress to establish a fifty mile offshore limit for pollution control over U.S. vessels.

As with customs and fisheries, Canada's arguments for a pollution zone extending into the high seas are "based on the overriding right of self-defence of coastal states to protect themselves...." And in the Arctic there is the added justification of preventing "permanent defilement of the environment...."

But while the legislation in Bills C 202 and C 203 seems straightforward and not representing anything more than an application of, or a logical evolution of, practice, they are still curious documents. In fact, they are not intended to be declarations of Canadian sovereignty in the Arctic and they certainly are not intended to limit or rule out further Canadian claims. There were several references to this in the debates although it was some time before the House recognized the subtlety. Evidently, the Canadian position is still that the Northwest Passage is not the high seas and that the water between the Arctic Islands is not international. But this has been left undefined for the time-being. Those who want to argue against the Canadian position are forced to argue against a twelve-mile limit to territorial waters and against Canada's right to protect her Arctic environment.

Ottawa may be trying to sidestep the whole issue of an archipelago and inland seas, of winter ice, permanent ice, and ice islands. But why? There is a certain shrewdness in the manoeuvre, a technical device to keep some matters out of court, so to speak. It may also be that the Government wants time to ponder Lester Pearson's proposal, made in October, 1969 that Canada should assert its claim over the whole Arctic sector either to control any nuclear weapons in the area or to prevent them from being deployed there.

In the meantime, the twelve-mile limit creates two Canadian "gates" in the Northwest Passage; Barrow Strait and Prince of Wales Strait. This, in the Government's view, is sufficient declaration for the time-being. As the Minister for External Affairs put it on 17th April, 1970:

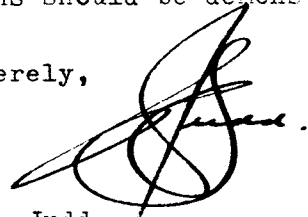
"Whether or not those who disagree with us to wish to allege that other waters are not Canadian, they cannot realistically argue any longer concerning these two bodies of water."

But the year and a half of debate and the resulting legislation skirted much more than Canada's final claims in the Arctic. If the Canadian north has any significance today it is because it represents surplus in a continent of growing shortage. For the United States, Canada is an unexploited, major hinterland of vital resources.

The fundamental question of sovereignty for Canada in the 1970's is whether her resources are going to be integrated into the United States' economy and, in this process of absorption, whether she will become part of that ominous power equation which exists between the USA and the USSR.

And it is on this point that Canadians should be demonstrating a thoughtful "morbid anxiety".

Yours sincerely,



David A. W. Judd