

UNIVERSITY OF CALGARY

Emergent Arctic, Divergent Approaches: The impact of federal organizations on
Canada's pursuit of sovereignty over its Arctic waters

by

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Canada

Abstract

Climate change has reduced the width and breadth of sea ice in the waters of the Canadian Arctic, rendering the region more accessible to southern interests, particularly shipping, than at any time in its history. The realities of an emergent Arctic have rekindled old fears regarding the nature and extent of Canadian sovereignty over the waters of its Arctic Archipelago. These fears are related to the historically and legally contested nature of Canadian claims. While the Canadian government is asserting its sovereignty in the Arctic region, the federal organizations that are the instruments of sovereignty assertion are both impacting the manner in which Canada's Arctic foreign policy is conducted and affecting Canada's sovereignty claims. This paper investigates said organizational effects through interviews conducted with high ranking members, current and retired, of the Royal Canadian Navy, The Canadian Coast Guard, Transport Canada and the Department of Foreign Affairs and International Trade.

*To Amber, who made everything easier,
and to my family who pretended to understand.*

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Chapter 1: Introduction

The Arctic is new again in Canadian politics and international relations. The fact that the region is becoming more accessible due to global warming¹ has rekindled old debates over sovereignty and has raised the prospect of a “gold rush” to access newly opened resources and shipping lanes.² Thus, the Arctic is an emergent region in both the sense of geostrategic importance and the more literal sense that it is becoming easily accessible to southerners for the first time. This has understandably created concerns as well as opportunities, particularly in Canada where relatively little Arctic development has occurred in the past. This is in stark contrast to the other littoral Arctic states which have historically placed a much greater economic and strategic interest on their Arctic coastlines and lands.³

The focus of this paper will be on sovereignty issues in the Canadian Arctic waters and how government organizations influence them. There are currently a great variety of topics being studied in the Canadian Arctic, including environmental issues, relations among Arctic states, the human dynamic of the region, and the potential for economic development.⁴ While these are important venues of study, this paper will focus on maritime sovereignty issues in Canada’s Arctic waters. Maritime sovereignty issues in the Arctic are hotly contested internationally and the focus of substantial Canadian

¹ National Snow and Ice Data Centre. “September 15, 2011: Arctic sea ice at minimum extent.” Accessed on March 20, 2012. <http://nsidc.org/arcticseaicenews/2011/09/>

² See, for example: R. Howard, *The Arctic Gold Rush: The New Race for Tomorrow's Natural Resources*. (London: Continuum, 2009.)

³ E. Piskunova, “Russia in the Arctic: What’s lurking behind the flag?” *International Journal* 65, no. 4 (2010): 851-864, p.853

⁴ See, for example: R. Huebert, “New Directions in Circumpolar Cooperation: Canada, the Arctic Environment Protection Strategy, and the Arctic Council.” *Canadian Foreign Policy* 5, no. 2 (1998): 37-5; M. Simon, “Canadian Inuit: Where we have been and where we are going.” *International Journal* 66, no. 4 (2011): 879-891; Howard, *The Arctic Gold Rush*; W. Lackenbauer, “Mirror Images? Canada, Russia, and the Circumpolar World.” *International Journal* 65, no. 4 (2010): 879-897

attention, making them an interesting case study on the development of Canadian foreign policy. Land disputes, conversely, are no longer an issue in the Canadian Arctic, with only the disagreement between Canada and Denmark over the tiny and inconsequential Hans Island remaining.⁵ It is therefore the delineation of Canadian and international maritime rights in the Canadian Arctic waters that dominate the current sovereignty debate. Ultimately, the current discourse is one of dramatic changes in the Arctic and the manner in which these changes are shaping how Canadian policy makers and government organizations understand their roles and rise to the novel challenge of an emergent Arctic.

“Arctic” Definitions

With so much of the focus of this paper revolving around Arctic issues, it is helpful to begin by outlining precisely what is meant by Arctic. There is debate as to what constitutes the Arctic, both on land and at sea.⁶ Potential lines of demarcation for the Arctic have been proposed as the tree-line, the 10°C July isotherm, or other indicators based on geography and vegetation.⁷ There are therefore numerous ways to delimit the Arctic. Nevertheless, the boundary proposed by the Arctic Monitoring and Assessment Program (AMAP) of the Arctic Council will be employed in this thesis, as it is an internationally legitimate and science based boundary that accommodates different indicators.⁸ The AMAP zone is comprised of:

⁵ S. Lalonde, and M. Byers. “Who controls the Northwest Passage?” *Vanderbilt Journal of Transnational Law* 42, no. 4 (2009): 1133-1210, p.1146

⁶ For an example of different conceptualizations of the Arctic, see: A. Dubreuil, “The Arctic of the Regions.” *International Journal* 66, no. 4 (2011): 923-938

⁷ Arctic Monitoring and Assessment Program Secretariat. “Geographical Coverage”. Accessed on March 19, 2012, from: <http://www.amap.no/AboutAMAP/GeoCov.htm>

⁸ Arctic Monitoring and Assessment Program Secretariat, “Geographical Coverage”

the terrestrial and marine areas north of the Arctic Circle (66°32'N), and north of 62°N in Asia and 60°N in North America, modified to include the marine areas north of the Aleutian chain, Hudson Bay, and parts of the North Atlantic Ocean including the Labrador Sea.⁹

The use of the AMAP zone to define the term “Arctic” in this paper is important in that it imposes a uniform and technically proficient definition for a term that can be interpreted in a number of ways.

It is also essential to delineate a definition of “Canadian Arctic waters”, in order both to maintain a uniform definition of the term within this thesis and also to ensure that the term is used here in a manner that conforms to its official usage among federal organizations. As this paper’s analysis is made within the context of Canadian federal organizations, it is vital that it employs the definition used by those organizations in order to ensure consistency. To that end, the definition of Canadian Arctic waters within the *Arctic Waters Pollution Prevention Act* will be employed. This is due to the act’s role as one of the first and most influential pieces of modern legislation relating to the Canadian Arctic waters, and the fact that it is a recently updated definition that remains in force. It defines Canadian arctic waters as:

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 60th parallel of north latitude, the 141st meridian of west longitude and the outer limit of the exclusive economic zone.¹⁰

The zone outlined in the Act thus essentially runs from the border of the Yukon Territory with Alaska to where the 60th parallel intersects with the eastern Canadian maritime boundary, encompassing all the waters out to the end of the exclusive economic zone or equidistance line.

⁹ Arctic Monitoring and Assessment Program Secretariat, “Geographical Coverage”

¹⁰ Department of Justice. *Consolidation: Arctic Waters Pollution Prevention Act R.S.C., 1985, c.A-12*. (Ottawa: Department of Justice, 2011.), p.2

Environmental Transformations in the Arctic

Given the focus of this thesis on the Arctic waters, it is essential to outline the extent of the environmental transformation underway, particularly given said transformation's role as a catalyst for the sovereignty issues being examined. Environmental changes in the Arctic act as a catalyst for sovereignty issues primarily by decreasing ice cover and increasing access to the region. Over the past decades the trend of global warming has led to a steady decline in the extent and thickness of sea ice in the Arctic Ocean.¹¹ The National Snow and Ice Data Center recorded that the average extent of Arctic Ocean sea ice in the month of February decreased from 16.4 to 14.5 million square kilometers.¹² Not only has winter sea ice in the Arctic steadily retreated, it has been posited that it will soon disappear altogether in the summer months. Summer sea ice in the Arctic has retreated dramatically to a 2011 minimum of 4.33 million square kilometers, a drop of 2.38 million square kilometers from the 1979-2000 average minimum.¹³ The National Snow and Ice Data Centre commented in October 2011 that the southern passage of the Northwest Passage was open for the fifth year in a row, with record lows also reported in the wider and more practical Parry Channel, which fully opened briefly in September 2011.¹⁴

The 2009 Arctic Marine Shipping Assessment (AMSA) report produced by the Arctic Council's Protection of the Arctic Marine Environment (PAME) working group

¹¹ Arctic Council. *Arctic Marine Shipping Assessment 2009 Report*. (Tromsø: Arctic Council, 2009.), p.4

¹² National Snow and Ice Data Centre. "February Ice Extent Low in the Barents Sea, High in the Bering Sea" Accessed on March 20, 2012. <http://nsidc.org/arcticseaicenews/>

¹³ National Snow and Ice Data Centre. "September 15, 2011"

¹⁴ National Snow and Ice Data Centre. "October 4, 2011: Arctic sea ice near record lows." Accessed on April 2, 2012. <http://nsidc.org/arcticseaicenews/2011/10/>

posited that summer sea ice may disappear from the Arctic Ocean by as early as 2015.

The report states that:

There is a possibility of an ice-free Arctic Ocean for a short period in summer perhaps as early as 2015. This would mean the disappearance of multi-year ice, as no sea ice would survive the summer melt season. It is highly plausible there will be greater marine access and longer seasons of navigation.¹⁵

The absence of multi-year ice would indeed be a substantial boon for Arctic navigation, as ice that has survived more than one season is considerably more solid than first year ice and poses an exceptional hazard to navigation. First year ice is relatively soft and rarely more than a meter thick, making it possible for lightly ice-strengthened vessels to navigate in the ice. Multi-year ice, by contrast, can be five meters thick and becomes highly compacted, to the extent that it is harder than concrete.¹⁶ While the indications are thus that navigation in the Arctic Ocean will become freer, this is not a universal opinion.

There are those who argue that a warming Arctic will in fact lead to more hazardous conditions.¹⁷ One reason for this opinion is that, as the summer ice recedes in the Arctic Ocean, more multi-year ice will become mobile and enter shipping lanes. Thus, it is argued, a reduction in overall ice in the Arctic Ocean can lead to more mobile ice, particularly multi-year ice. This threat is particularly relevant in the Canadian Arctic due to the Beaufort Gyre, a geological formation whereby the wind patterns and currents in the Arctic Ocean cause mobile sea ice to be forced up against the western fringe of the Arctic Archipelago, thence entering and imperilling shipping lanes such as the Northwest Passage.¹⁸ While these issues may be complicating factors to increased shipping in the

¹⁵ Arctic Council, *Arctic Marine Shipping Assessment 2009 Report*, p.4

¹⁶ *Ibid.*, p.22

¹⁷ E. Stewart et al., "Sea Ice in Canada's Arctic: Implications for cruise tourism." *Arctic* 60, no. 4 (2007): 370-380, p.372

¹⁸ Stewart et al., "Sea Ice in Canada's Arctic", p.372

Canadian Arctic, they arguably pose less of a challenge than high levels of multi-year sea ice. Further, if the predictions of ice free summer waters hold true, the threats posed by mobile multiyear ice and the Beaufort Gyre will all but vanish.

Issues Driving the Current Sovereignty Debate

The current focus on Arctic sovereignty is driven by a series of novel threats to the environment, peoples and general security of the Canadian north, and largely rooted in the increased access to the region enabled by global warming. Some of the most vexing potential threats to the Canadian Arctic are tied to shipping. There has been much recent scholarship on the potential harm from international and destination shipping in the Arctic, including the expulsion of oily bilge water, the introduction of invasive species through ballast water expulsion and the human and environmental risks associated with collisions and accidents at sea.¹⁹ It has also been posited that the increase in Arctic cruise tourism, and the potential for explosive growth in the sector given declining summer sea ice, will lead to social and cultural dislocation among the residents of the north, alongside increased criminality.²⁰ These are simply a few of the scenarios being discussed that highlight the growing importance of maritime issues in the Canadian Arctic. As such, the extent of Canadian regulatory rights, and the capacity to enforce these regulations domestically, has leapt to the forefront of the debate.

The central feature of the renewed Canadian interest in the Arctic is a strong focus on questions of sovereignty and the potential for shipping through the fabled Northwest

¹⁹ Arctic Council, *Arctic Marine Shipping Assessment 2009 Report*, p.136

²⁰ *Ibid.*, p.125; See also: D. Draper et al, "Cruise Tourism and Sea Ice in Canada's Hudson Bay Region." *Arctic* 63, no.1 (2010): 57-66.; D. Draper and E. Stewart. "The Sinking of the MS Explorer: Implications for Cruise Tourism in Arctic Canada." *Arctic* 61, no.2 (2008): 224-228.; B. Stonehouse and J. Snyder. "Polar Tourism in Changing Environments." In *Prospects for Polar Tourism*, edited by Snyder, J., & B. Stonehouse, 32-50. (Wallingford: CABI, 2007.)

Passage. The Northwest Passage is not one but a series of waterways that connect the Atlantic and Pacific Ocean via the Canadian Arctic Archipelago. The potential importance of the Northwest Passage as a shipping route is evident in the fact that it cuts roughly 3600 n.m's off the voyage from Rotterdam to Tokyo, as well as avoiding the cost of using the Suez Canal, a prospect that is enticing given the growing importance of access to East Asian markets for European and North American traders.²¹ The key sovereignty issue at stake in the Northwest Passage is whether it constitutes an international strait or is composed of the internal waters of Canada.

Potential threats to Canadian sovereignty over the Northwest Passage have previously resulted in impassioned responses from the Canadian polity, making the issue of key nationalistic importance. The current federal government has been aggressive in advancing the need for greater defense of Canadian sovereignty in the region, and there is substantial evidence that the issue remains a vital one to Canadians. In a 2011 poll conducted for the Munk School of Global Affairs it was found that a majority of Canadian's believe Arctic sovereignty should be Canada's top foreign policy priority.²² The poll further reveals that the Northwest Passage is largely conceived of by Canadian's as an internal waterway, whereas the citizens of other Arctic states see the passage as an international strait.²³

While the term "sovereignty" will be examined in more depth below, in the context of the Northwest Passage it refers to the Canadian right to enforce domestic

²¹ F. Griffiths "Pathetic Fallacy: That Canada's Arctic Sovereignty is on Thinning Ice." *Canadian Foreign Policy* 11, no. 3 (2004): 1-16, p.10

²² J. Mahoney, "Canadians Rank Arctic Sovereignty as Top Foreign-Policy Priority." *The Globe and Mail*, January 24, 2011. <http://www.theglobeandmail.com/news/politics/canadians-rank-arctic-sovereignty-as-top-foreign-policy-priority/article563348/>

²³ Mahoney, "Canadians Rank Sovereignty as Top Foreign-Policy Priority"

regulations and control shipping in the region. The nature of sovereignty itself is contested in international relations theory, as will be examined in Chapter two. At its most fundamental level, however, sovereignty is about control.²⁴ While there is no debate as to whether the Northwest Passage is Canadian, the true debate is to whether international shipping is subject to international or domestic administration and regulations when transiting it. This issue will be examined at length in the following chapters.

Organization and Methodology

This paper will be organized into five chapters. The second chapter will include a problematization, an outline of the theoretical framework to be employed in the paper and an overview of the theoretical approaches and debates regarding Arctic sovereignty. The third chapter will give a history of the threats to Canadian Arctic sovereignty and the measures undertaken to bolster Canada's claims, laying the foundations for this paper's investigations of current issues in Canadian Arctic sovereignty. The fourth chapter outlines the precedents in international law relevant to Canada's sovereignty claims, as well as the legally contested nature of said claims. The fifth and final chapter is comprised of an examination of organizational impacts on Canada's Arctic sovereignty claims and Arctic foreign policy.

The methodology of this paper will be comprised of literature reviews on the historical development of Canada's Arctic sovereignty claims and their status in international law as well as interviews conducted with high ranking members of federal

²⁴ R. Huebert, *Canadian Arctic Sovereignty and Security in a Transforming Circumpolar World*. (Toronto: Canadian International Council, 2009.), p.6

organizations. The interviews are employed to test the hypothesis of this paper, that federal organizations are impacting Canada's pursuit of sovereignty in its Arctic waters.

The historical and legal literature reviews carried out in chapters three and four create a context in which organizational effects and their impact on Canada's sovereignty claims and Arctic foreign policy can be understood. The content within chapter three draws heavily on primary government documents as well as on some secondary sources to create a historical context to the development of Canada's Arctic sovereignty claims. The fourth chapter also relies heavily on primary sources, but from international bodies such as the United Nations and the International Court of Justice. Its content is complemented by a review of the opinions of legal scholars on issues relevant to the status of Canada's Arctic waters in international law.

The fifth chapter is comprised primarily of the results of interviews conducted by the author with high level members of the Royal Canadian Navy, the Canadian Coast Guard, Transport Canada and the Department of Foreign Affairs and International Trade. These organizations were selected due to their central importance to the application of sovereignty in Canada's Arctic waters. While there are numerous other federal agencies and departments that interact with Arctic sovereignty issues, it was necessary due to the limited scope of this paper to examine only the most relevant federal organizations.

The organizations outlined above were selected before the interview process began, with candidates for interview sought after the scope of this paper's investigation was set. Interview candidates were selected based on their importance in the aforementioned organizations as well as their past involvement in Arctic sovereignty

issues. They were suggested to the author by third parties within the organizations involved as well as contacted directly by the author based on their relevance to Arctic sovereignty issues. The candidates were offered several different levels of anonymity, with all but one agreeing to go on the record. All of the candidates who granted interviews and agreed to be quoted in this paper have been cited in chapter five, with no interview having been excluded by the author for any reason.

The questions posed to the interviewees by the author were crafted, as much as was feasible, to ensure that similar issues were addressed and organizational effects were exposed. The challenge in crafting the interview questions for members of such varied organizations as the ones examined in this paper is that there was some difficulty in posing similar questions to interviewees with varied expertise. As much as was feasible, questions that struck at organizational effects were posed with a similar wording to all the candidates, with identical questions employed as much as possible. There was also a concerted effort to have interviewees speak to their organization as a whole rather than simply offering their opinion when organizational effects were being examined. That being said, it was necessary to pose distinct questions to some interviewees in order to access knowledge that was limited to them.

There was a concerted effort throughout the interview process to ensure that factual and relevant answers were received, with a great deal of secondary research being used to ensure that appropriate questions were being asked and that answers were placed within the proper contexts. While it was necessary to truncate interviews due to the limitations imposed on this paper, as well as their relevance to the hypothesis and investigation of this paper, this was done in such a manner so as not to unjustly edit out

any information that failed to concur with the paper's thesis. Ultimately it was the necessity to present interviews in a concise and coherent manner that drove the editing process, resulting in the interview texts presented in chapter five.

Chapter 2: Problematization, Theoretical Framework and Conceptualizations of Sovereignty

Problematization

While there are innumerable topics of study relating to Arctic sovereignty, and indeed different conceptions of the term itself, this paper will focus primarily on the effect of federal organizations on the Canadian government's focus on asserting Canadian Arctic sovereignty. There is a widespread conception, especially among the media and some academics, that the pursuit of Canadian Arctic sovereignty is a centrally directed and vertically integrated issue, with the Harper government simply dictating the form that Canadian policies and regulations in the Arctic should take. However, it is evident that the federal organizations involved in the application of Canadian sovereignty in the Arctic often pursue substantially varied policies and seemingly harbour different fundamental logics regarding the application of sovereignty.

It is difficult to square the circle of supposedly tight control and direction at the top levels of government with the individually distinct approaches of the organizations that are the instruments of the federal government. This apparent paradox has not been examined in any substantial or methodical manner within the existing Canadian literature on Arctic sovereignty issues, a matter this paper seeks to address. The research question of this paper is therefore as follows: How do the organizations of the Canadian federal government influence the manner in which sovereignty is pursued in and applied to the Canadian Arctic waters; how do they affect the Canadian government's foreign policy in the Arctic?

The research hypothesis for this paper is as follows: The Department of Foreign Affairs and International Trade (DFAIT), as the lead federal department in regards to sovereignty issues and foreign policy, has pursued an approach to Arctic sovereignty that is consistent and well founded in international law. However, there are numerous and varied approaches to Arctic sovereignty undertaken by other organizations of the federal government that deviate from DFAIT's approach and are resistant to government direction. This is due to the fact that, while there is a centrally directed movement towards enhancing Arctic sovereignty by the current government, it results in outcomes that are heavily shaped by the organizational effects of the departments and agencies that administer the sovereignty enhancing initiatives. These organizational effects on Canada's pursuit of Arctic sovereignty are significant in that they diminish the capacity of the federal government to affect a coherent foreign policy and are potentially damaging to Canada's claims in international law.

Theoretical Framework

The research and argumentation contained in this paper will be undertaken using a theoretical model of organizational behaviour in international relations. Employing this model is essential to the thesis of this paper, enabling foreign policy creation to be analyzed in a comprehensive and replicable manner. In order to understand the effects that are being studied in this paper, it is essential to have a stable understanding of how federal organizations interact in the creation and application of foreign policy. Further, this paper's subject matter makes a fixed understanding of the nature of organizations vital. Focusing on the role of government organizations in forming and executing foreign

policy within this paper is not unique in itself, with an established literature on the topic of institutional theory already available.²⁵

Over the past decades, international relations theory has increasingly been applied to the study of foreign policy. This has resulted in numerous conceptual models for understanding the creation and practice of foreign policy. From a realist perspective, foreign policy is rooted in the management of relations among states existing in an anarchical society, with major powers seeking to establish an international system that reflects their values and interests.²⁶ A liberal perspective on foreign policy, conversely, focuses on interdependence and cooperation among states, with an emphasis on absolute rather than relative gains.²⁷ Both liberal and realist conceptions of foreign policy rely on a unitary, rational actor model of the state, wherein the state is the most important actor in the international arena.

Institutional theory deviates from more traditional realist or liberal approaches to foreign policy in that it examines how foreign policy is created and implemented within the structure of a state. While institutional theory as a field of study is divided into many subfields, including rational choice, organization theory and historical institutionalism, there is a commonality that unites the field of study.²⁸ At its most fundamental level, institutional theory aims to “analyze the effects of rules and procedures for aggregating

²⁵ Note on terminology: The theoretical model being used in this paper is widely known as “Institutional Theory”. However, the model employed in this paper refers to “organizations”, not “institutions”. The term “organizations” will be the one used in this paper’s analysis. It was chosen to provide a stable terminology throughout the paper and also due to the model employed in this paper’s use of the term. This has the added benefit of avoiding confusion with the term “liberal institutionalism” for the reader.

²⁶ A.J.R. Groom, “Foreign Policy Analysis: From Little Acorn to Giant Oak?” *International Studies* 44, (2007): 195-215

²⁷ S. Burchill, “Liberalism.” In *Theories of International Relations*, edited by Burchill, S., Linklater, A., Devetak, R., Donnelly, J., Nardin, T., Paterson, M., Reus-Smit, C., and J. True, 31-56. (New York: Palgrave Macmillan, 2009.), p.66

²⁸ E. Immergut, “The Theoretical Core of New Institutionalism.” *Politics Society* 26, no.5 (1998): 5-34

individual wishes into collective decisions.”²⁹ The focus of institutional theory research is on the “black box” that exists between political demands and outcomes.³⁰ Institutional theory therefore differs from realist or liberal conceptualizations of foreign policy in that it is not so interested in the nature or content of a state’s foreign policy, but how it is developed and implemented.

The institutional theory employed in this paper’s analysis, largely in chapter five, is Graham Allison’s *Organizational Behavior* model.³¹ The *Organizational Behaviour* model is appropriate to this paper as it provides a parsimonious and replicable means by which data gathered relating to diverse federal organizations can be analyzed within a unified framework. It allows for a greater consistency and more effective analysis throughout this paper. Allison’s model also provides a means to understand how government operates, and more specifically how government organizations treat a variety of issues differently, and what the impact of these differences can be.

Allison’s *Organizational Behaviour* model is one that remains relevant today, with even his earliest paper on the topic having been cited in hundreds of peer-reviewed journals and remaining popular with academics to the present day.³² While the study of organizational theory has made great strides since Allison’s 1971 work, he updated his model in a revised edition on which this paper draws heavily. The updated and revised concepts relative to the *Organizational Behaviour* model in Allison’s more recent book

²⁹ Immergut, “The Theoretical Core of New Institutionalism”, p.25

³⁰ *Ibid.*, p.25

³¹ G. Allison, *Essence of Decision Making: Explaining the Cuban Missile Crisis*. (Boston: Little, Brown and Company, 1971.)

³² See G. Allison, “Conceptual Models and the Cuban Missile Crisis.” *The American Political Science Review* 63, no. 3 (1969): 689-718.

are related to organizational efficiency, organizational culture, organizational tendencies and interactive complexity.³³

Allison's model rejects a unitary, value maximizing rational actor model of government action in favour of understanding government as "a vast conglomerate of loosely allied organizations, each with a substantial life of its own."³⁴ For Allison, while governments may often act as monoliths, this reality must be balanced by the facts:

(a) that monoliths are black boxes covering various gears and levers in a highly differentiated decision-making structure, and (b) that large acts are often the consequence of innumerable and often conflicting smaller actions by individuals at various levels of bureaucratic organizations in the service of a variety of only partially compatible conceptions of national goals, organizational goals, and political objectives.³⁵

The model therefore rests on the logic that government action can be understood less as consisting of centrally directed choices and more as "outputs of large organizations functioning according to standard patterns of behavior."³⁶ Under this model, government organizations divide responsibilities and tasks in response to the large variety of issues to be dealt with, acting semi-autonomously. Important issues, however, often fall within the domain of multiple organizations. In attempting to deal with this problem of coordination, government leaders can disturb an organization's behaviour, but are unable to precisely control it.³⁷

Allison argues that in order to effect the organization of large groups of people, organizations must develop standard operating procedures and programs. These procedures and programs are subject to change only incrementally. However, on some

³³ J. Rosati Review of: *Essence of decision: Explaining the Cuban missile crisis*, by Graham T. Allison" *Presidential Studies Quarterly* 30, no.2 (2000): 395

³⁴ P. Zelikow and G. T. Allison. *Essence of Decision: Explaining the Cuban Missile Crisis*. (New York: Longman, 1999.), p.143

³⁵ Allison, "Essence of Decision Making", p.63

³⁶ Zelikow and Allison, *Essence of Decision*, p.143

³⁷ *Ibid.*, p.143

rare occasions they may change drastically in response to critical failures or disasters.³⁸ Allison refers to these ingrained procedures and programs as “tendencies”, which hold, more or less, in the face of changing environments. Given their generally static nature, however, tendencies are responsible for pre-determining how specific government organizations approach particular situations.³⁹ Therefore, under Allison’s *Organizational Behavior* model states are not anthropomorphized and analysis does not rest on individual actions. Rather, action is explained at the organizational level by referencing the tendencies of the organization at issue and the shared practices of its members.⁴⁰

According to Allison’s model, organizations produce a variety of effects within a government. Importantly, they allow for more useful cooperation and create capabilities that otherwise would not exist. By dividing responsibility and encouraging specialization they produce vastly superior results relative to individuals working independently.⁴¹ Organizations also have the effect of constraining behaviour, however, as existing procedures and routines that allowed past efficiency cause future, and potentially quite different, cases to be dealt with within the existing framework.⁴²

There is also a tendency for organizational cultures to emerge, a process wherein the behaviours of individuals are shaped in manners that conform to formal and informal norms within particular organizations. Organizations can thereby develop distinctive identities with their own momentum.⁴³ In addition to organizational cultures and routines acting to constrain behaviour, “the existing organizational capacities for employing

³⁸ Zelikow and Allison, *Essence of Decision*, p.144

³⁹ *Ibid.*, p.144

⁴⁰ *Ibid.*, p.144

⁴¹ *Ibid.*, p.145

⁴² *Ibid.*, p.145

⁴³ *Ibid.*, p.145

present physical assets constitute the range of effective choice open to government leaders confronted with any problem.”⁴⁴ This is a particularly important qualification in the Arctic, where the absence of physical assets or a lack of capacity to operate them in the harsh and remote Arctic region often acts as a constraint on government action.

Allison ultimately compares organizations to technology, whereby capacities are regulated by standard operating procedures, allowing for a reliable recreation of results. More succinctly, just as mechanical hardware should allow for reliable standards to be met in numerous different situations, so the programs and procedures of an organization should create similar results over different situations, by both creating certain capabilities and limiting action through constraints and organizational culture.⁴⁵ This has also been described as the logic of appropriateness, or the matching of rules to situations, whereby:

Actions are chosen by recognizing a situation as being of a familiar, frequently encountered, type, and matching the recognized situation to a set of rules... the logic of appropriateness is linked to conceptions of experience, roles, intuition, and expert knowledge. It deals with calculation mainly as a means of retrieving experience preserved in the organization’s files or individual memories.⁴⁶

This is in contrast to the logic of consequences, which is an analytical reasoning model more appropriate to unitary, value maximizing, rational actor models.⁴⁷ While the logic of consequence model may seem preferable, and is certainly more adaptable to changing environments, it must be remembered that the role of organizations is to provide reliable, replicable responses to different situations, a reality that largely precludes use of analytic rational models. The larger and more developed organizations become, the stronger the logic of appropriateness becomes.

⁴⁴ Zelikow and Allison, *Essence of Decision*, p.164

⁴⁵ Ibid., p.146

⁴⁶ Ibid., p.146

⁴⁷ Ibid., p.146

Allison's model is the most applicable to this paper's study of organizational approaches to Canadian Arctic sovereignty for practical as well as theoretical reasons. Perhaps the most important is that it is a theory of organizational action which relates specifically to the study of international relations, a rarity in a field often preoccupied with a unitary view of state actors.⁴⁸ The model also relates well to sovereignty issues in the Canadian Arctic. This is due to the fact that the model deals specifically with how states act to counter perceived threats from external actors at an organizational level, a particularly relevant feature given Canadian governments' recurrent framing of the sovereignty issue as a response to perceived external threats. As most organizational theories in political science deal with the study of interactions among government organizations as an end unto itself, it is rare for them to maintain an outward facing logic. Thus, the model is parsimonious, applying only to outward facing interactions among state organizations rather than involving the whole range of organizational theory, and achieves its stated goal, and that of this paper, of exploding the view of the state as a unitary rational actor.

There are several aspects of Allison's model that relate specifically to the issue of Canadian Arctic sovereignty. The model explains how government actors exhibit some degree of independence and shape their actions according to the logic of appropriateness, even in the face of strong central control. This is a useful concept in the context of examining how the organizations of the federal government have divergent views and procedures regarding Arctic sovereignty, while at the same time dealing with strong

⁴⁸ See, for example: S. Brooks, "Dueling Realisms." *International Organization* 51, no. 3 (1997): 445-477, p.446; Burchill, *Liberalism*; J. Donnelly, "Realism" In *Theories of International Relations*, edited by Burchill, S., Linklater, A., Devetak, R., Donnelly, J., Nardin, T., Paterson, M., Reus-Smit, C., and J. True, 31-56. (New York: Palgrave Macmillan, 2009.)

central direction from the ruling Conservative Party of Canada on the matter. The model also explains how the logic of appropriateness both allows for certain specific capabilities and places constraints on how government organizations respond to the challenges of Arctic sovereignty. As will be examined, while departments may overlap in areas of responsibility in the Arctic and share a belief in the importance of maintaining sovereignty, they have divergent approaches to achieving this goal.

For the purposes of parsimony and the necessarily limited scope of this investigation, Allison's model will be used primarily to understand how Canadian federal organizations have acted diversely in the past on matters of Arctic sovereignty, and how distinct approaches to sovereignty have thus developed, rather than examining the process of organizational decision making in detail. Examining the manner in which organizations interact to develop government policy is essential, and yet it is too broad a topic, requiring a greater scope of study and a more intimate knowledge of organizational activities than this paper will allow. While understanding forward looking organizational decision making procedures and policy development regarding Arctic sovereignty is a vital part of the overall discussion, its study must by necessity be left for future works.

Competing Conceptions of Arctic Sovereignty

In addition to outlining and fixing meanings regarding the nature of the Arctic and the environmental changes it is undergoing, as well as the manner in which organizational effects are to be understood, it is vital to examine the different and often conflicting theories regarding the nature of the Arctic sovereignty issue. While the term "Arctic sovereignty" is often used monolithically and inconsistently within popular

parlance, it is hotly contested. The main fault lines regarding Arctic sovereignty lie in differences of understanding over the nature of the problem being faced and thus the solutions which should be pursued. Given the limited nature of this inquiry, only the most relevant approaches to Arctic sovereignty, rooted in fundamentally different theoretical assumptions, will be examined. These consist of realist, liberal, constructivist and postmodern conceptions of sovereignty.

These theoretical approaches to international relations will be outlined below, specifically as they relate to the issues in Canadian Arctic sovereignty. The reason that these theoretical approaches, and their assumptions, will be outlined here is that Canadian foreign policy cannot be studied without an understanding of its fundamental underpinnings and assumptions. The theoretical approaches examined below demonstrate disparate fundamental logics and assumptions, advancing different understandings of the primary challenges of Arctic sovereignty. They also propose different strategies to remediate the challenges Canada confronts in the Arctic. The key differences among the approaches examined here are rooted in their different assumptions relating to the nature of the international system, the role of the state, the relative importance of security, and the role of regional institutions and identities in Arctic governance. In order to ensure a thorough understanding of the theoretical approaches to questions of Arctic sovereignty, and thus enable a more analytically sound and consistent understanding of Canadian foreign policy, realist, liberal, constructivist and post-modern approaches will be examined.

While each viewpoint will be examined in some detail, special attention will be given to the liberal understanding of Arctic sovereignty, and more specifically liberal

institutionalism. It is the position of this paper that the government of Canada has consistently pursued a liberal institutionalist approach to sovereignty. Liberal institutionalism offers a set of assumptions and fundamental logics that largely concur with the manner in which Canada's Arctic sovereignty policy has been conducted for decades. That being said, this paper rejects some liberal assumptions, particularly relating to the view of the state as a unitary or rational actor. This is essential due to this paper's understanding of the role of organizations in shaping government outcomes. Instead, to apply the "black box" analogy used earlier, liberal institutional tendencies in the Canadian government inform the political demands, which pass through the "black box" of federal organizations which modify those demands and produce the outcomes that are being studied in chapter five.

Allison's *Organizational Behaviour* model will be used to study the organizational effects occurring within the "black box" in chapter five, while the fundamental principles of liberal institutionalism assist in understanding the political demands and desired outcomes that drive the process. Examining the liberal institutionalist underpinnings of Canada's Arctic foreign policy is not the primary aim of this paper; however the importance placed on international law and institutions in the Canadian government's approach to Arctic sovereignty, and the subsequent manner in which this approach has been modified and applied by organizational actors, make doing so an important aspect of the paper's examination.

On Sovereignty

There are numerous and highly varied understandings of the term “sovereignty”, and its implications within international relations. For the purposes of this paper a concise definition of the term will be employed. The definition of sovereignty will be a formulation employed elsewhere within Arctic affairs and one that sets very basic meanings, with three main elements: “a defined territory; an existing governance system and a people within the defined territory.”⁴⁹ These elements clearly apply to the Canadian Arctic, which has a long history of Canadian governance, a population that accepts Canadian governance, and established international boundaries.

The essence of the debate in the Canadian Arctic is related to the “defined territory” formulation. While Canada does indeed have internationally recognized borders, the crux of the debate, as examined in this paper, is over the nature of the Arctic waters. While they fall within Canada’s defined territory, there is a debate over the status of the Canadian Arctic waters in international law. Maritime sovereignty is somewhat unique in that it is variable, which is to say that even though waters fall within Canada’s defined territory, they may allow disparate levels of domestic authority. The variability in maritime sovereignty is often related to how far from the coast the waters are and whether they constitute an international straight. The legal nature of Canada’s Arctic waters will be examined at length in chapter four.

Liberal Institutionalism and Arctic Sovereignty

Liberalism is a major theory of international relations, and one that has been influential in Canada’s foreign policy throughout history. Canada’s traditionally liberal

⁴⁹ J. Bartelson, *A Genealogy of Sovereignty*. (Cambridge: Cambridge University Press, 1995.); Cited in: R. Huebert, *Canadian Arctic Sovereignty and Security in a Transforming Circumpolar World*. (Toronto: Canadian International Council, 2009.)

foreign policy has carried over into the government's handling of the Arctic sovereignty issue, placing an emphasis on international institutions. This is especially true of Canada's historical approach to maritime issues in the Arctic, as outlined in greater detail in chapter three. While it has been argued by some academics that the Harper government is increasingly pursuing a realist approach to Arctic sovereignty,⁵⁰ it is argued in this paper that the Arctic sovereignty policies undertaken by past and current Canadian governments demonstrate a long and ongoing interest in liberal institutionalism.

Liberal international relations theory focuses on interdependence and cooperation among states, with an emphasis on absolute rather than relative gains.⁵¹ The sub-field of liberal institutionalism holds that by broadening conceptions of self-interest, state membership in international institutions can widen the scope for international cooperation.⁵² This cooperation often begins in technical areas but can spill over into ever greater areas of mutual advantage. Further, participation in international institutions discourages a narrow and competitive pursuit of state interests and weakens the meaning of state sovereignty.⁵³

A liberal institutionalist viewpoint does not necessarily preclude an understanding of the state as of central importance or of the anarchical nature of the international arena. Rather, it simply argues that the prospects for cooperation are greater than those proposed by realist theories.⁵⁴ Liberal institutionalists claim that cooperation between states can be organized and formalized in international institutions, "institutions" in this case

⁵⁰ L. Broadhead, "Canadian Sovereignty Versus Northern Security: The Case for Updating our Mental Map of the Arctic." *International Journal* 65, no. 4 (2010): 913-930, p.914

⁵¹ Burchill, "Liberalism", p.66

⁵² *Ibid.*, p.66

⁵³ *Ibid.*, p.66

⁵⁴ *Ibid.*, p.66

representing a set of rules which govern state behaviour in specific policy areas, such as those contained in the law of the sea.⁵⁵ International anarchy is mitigated by institutions, which enable cooperation, predictability and regularity to prevail in international relations within the policy areas they cover.⁵⁶ Some of the roles institutions can fill are in encouraging cooperation, monitoring compliance, undertaking enforcement, and sanctioning cheaters.⁵⁷ Liberal institutionalists acknowledge that there are limitations to cooperation, however, with institutions mitigating the effects of international anarchy, not vanquishing them.

The role of liberal institutionalism in Canada's Arctic foreign policy is historically well founded and extensive. It is the position of this paper that it has been, and continues to be, the primary approach of the Canadian government in pursuing Arctic sovereignty. While Canada is involved with countless international institutions, conventions and treaties that affect the Arctic and issues of sovereignty, those that relate specifically to the Arctic waters are most relevant to this examination. These institutions include the Arctic Council, the UNCLOS treaty, the International Maritime Organization, the International Court of Justice, the 2011 Search and Rescue treaty, and countless other treaties and conventions that deal peripherally with Arctic maritime issues. Canada has not simply been a passive signatory to these institutions, but has driven their development. The instinctual Canadian commitment to international institutionalism is clearly seen in the development of the 1996 Ottawa declaration which established the Arctic Council,⁵⁸ negotiations for the inclusion of special environmental protection for ice covered waters

⁵⁵ Burchill, "Liberalism", p.66

⁵⁶ Ibid., p.66

⁵⁷ Ibid., p.66

⁵⁸ Arctic Council. *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic*. (Tromsø: Arctic Council, 2011.), p.1

in the UNCLOS treaty,⁵⁹ and initiating the development of the polar code at the IMO⁶⁰ to name just a few prominent cases. Examples of Canada's pursuit of a liberal institutionalist Arctic foreign policy will be examined at greater length in the following chapters.

The argument that Canada has successfully pursued a liberal approach to Arctic sovereignty and international relations in the Arctic region in the past has been aggressively advanced by historian Whitney Lackenbauer, perhaps most holistically in the 2011 book "Canada and the Changing Arctic: Sovereignty, security and stewardship".⁶¹ Lackenbauer claims that the recent use of crisis language by members of the government, media and academia belies a history of effective diplomacy and cooperation in the Canadian Arctic. He further argues that crisis rhetoric has encouraged a focus on national defence at the expense of broader social, economic and diplomatic goals in the Arctic region.⁶² Lackenbauer's argument is based on the understanding that bilateral solutions and the entrenchment of Canadian claims in international law suggest a strong case for Canada's internal waters claims and its Arctic sovereignty more generally.

The relevance of liberal institutionalism to this paper's study of organizational approaches to Canadian Arctic sovereignty is substantial, underpinning all of the foreign policy that is examined in the following chapters. For example, many of the sovereignty issues being examined in this paper are based on international legal issues. Without establishing that the Canadian government and its foreign policy consider the institution

⁵⁹ S. Lalonde and M. Byers. "Who controls the Northwest Passage?" *Vanderbilt Journal of Transnational Law* 42, no. 4 (2009): 1133-1210, p.1182

⁶⁰ Victor Santos-Pedro, Conversation with the author, March 8, 2012.

⁶¹ See F. Griffiths et al. *Canada and the Changing Arctic*. (Waterloo: Wilfrid Laurier University Press, 2011)

⁶² Griffiths et al., *Canada and the Changing Arctic*, p.73

of international law, in this case the law of the sea, to be paramount, any analysis of the legal issues in the Canadian Arctic is of diminished relevance. If the Canadian government were pursuing a realist strategy, for instance, then security and control would become the dominant factors, rather than international law. It should be remembered, however, that according to the “black box” analogy, liberal institutionalism is most relevant in the political demands of the government, which are modified by organizational actors. While the outcomes can be expected to retain a focus on international institutions, it is not a given, and depends as much on the organizational actors involved as the government’s political demands.

Realist Conception of Arctic Sovereignty

Realism is a theory of international relations that focuses on the constraints that international anarchy, human nature, and the primacy of power and security place on state action in the international arena.⁶³ A realist approach to international relations generally espouses a unitary, state centered, rational actor model of international relations in which conflict and competition are the norm and states pursue self-help.⁶⁴

The increased access to the Arctic that the melting sea ice has allowed and the geopolitical concerns it has prompted have given rise to a renewed interest in realist thought in the Arctic. A leading voice for a realist understanding of Arctic sovereignty, within the Canadian perspective, has been political scientist Rob Huebert. Perhaps the most comprehensive position delineated by Huebert proposing a realist Arctic foreign policy is advanced in the 2011 book “Canada and the Changing Arctic: Sovereignty,

⁶³ Donnelly, “Realism”

⁶⁴ Ibid.

security and stewardship”.⁶⁵ Huebert begins by stating that Canada’s Arctic sovereignty is strengthened by the existence of an accepted governance system and the presence of a Canadian population in the region, with major issues arising primarily over the delineation of borders.⁶⁶ Maritime boundaries are singled out in particular, with only the dispute over tiny Hans Island occurring on land. Huebert argues that “the ultimate question facing Canada is its level of control of its Arctic borders.”⁶⁷

Huebert distils his concept of sovereignty as “controlling the actions of others within the boundaries claimed by the Canadian government”⁶⁸ Huebert adds that sovereignty is not pursued for its own sake, but for the purposes of security and control, which ultimately allow Canada to implement its values in the Arctic, unfettered by foreign powers and bodies. He claims that “states defend their sovereignty for the principle reason of securing their core interests and values in a specific region.”⁶⁹ Huebert’s focus on security accommodates the more modern notions of human and environmental security within a traditional realist viewpoint.⁷⁰ Fundamentally, Huebert argues that Arctic security and sovereignty are synonymous and that viewing the issues as distinct is a distortion of the reality in the Arctic.⁷¹ His approach to sovereignty is fundamentally outward looking, with external threats posing the most substantial risks to Canadian control and security in the Arctic.⁷²

⁶⁵ See Griffiths et al., *Canada and the Changing Arctic*

⁶⁶ Ibid., p.14

⁶⁷ Ibid., p.15

⁶⁸ Ibid., p.18

⁶⁹ Ibid., p.19

⁷⁰ Ibid., p.21

⁷¹ Ibid., p.19

⁷² Ibid., p.24

A major distinction between Huebert's realist view of sovereignty and the liberal institutionalist approach is over the perceived threats and challenges of sovereignty. For Huebert, the challenge of sovereignty is well formulated as a question of Canada's level of control over its Arctic borders. This places the onus on defence and security, with all other concerns as secondary. The liberal institutionalist concern, conversely, is not with what level of control Canada has over its borders, but rather with what sovereign rights Canada is entitled to exert within them under international law. While the enforcement of Canadian standards and regulations necessitates a capacity to act in the Arctic, this is secondary to having a well-established right to act under international maritime law.

Another distinction between Huebert's realist approach and liberal institutionalist perspectives on Arctic sovereignty is evident in the disparate role of the Canadian state to provide for sovereignty and security. The realist approach places a premium on self-help, arguing that Canada is ultimately solely responsible for ensuring its security and sovereignty in the Arctic. A liberal institutionalist approach, conversely, places an emphasis on cooperative international institutions such as the law of the sea to assist in delimiting sovereignty and providing security.

Constructivist and Postmodern Approaches to Arctic Sovereignty

While liberal and realist approaches to Arctic sovereignty have dominated the current debate, the novel and emergent nature of the Arctic region has led some to argue for constructivist and postmodern conceptions of sovereignty to be applied to the region. One such argument has been for the application of constructivist theory to resolve geopolitical issues in the Arctic.

Constructivism as a theory of international relations challenges the rationalist and positivist assumptions of liberal and realist theories. Constructivist theory is defined by “an emphasis on the importance of normative as well as material structures, on the role of identity in shaping political action and on the mutually constitutive relationship between agents and structures.”⁷³ Thus, constructivism moves beyond issues of power, control and law and examines how normative issues and the structure of the Arctic region should instruct the political regime that emerges.

There have been a number of scholars arguing for a more constructivist approach to the Canadian Arctic, and the Arctic as a region, in recent years. Perhaps the most vocal proponent of such a shift has been Franklyn Griffiths, a noted scholar on the Canadian Arctic, as delineated in the 2011 book “Canada and the Changing Arctic: Sovereignty, Security and Stewardship”.⁷⁴ Griffiths discusses the “evolution of the Arctic as a political region” in which Canada should seek cooperation and collaboration over conflict.⁷⁵ He places a special emphasis on stewardship and sovereignty in the Arctic, with stewardship representing local governance with a special focus on the protection of the human occupants and environment in the Arctic. That being said, Griffiths does not state that Canada’s traditional sovereignty should be diminished, but rather that cooperative stewardship should be its ultimate aim.⁷⁶

Griffiths’ constructivist approach to Arctic sovereignty and collaborative stewardship is based on five fundamental issues relating to both the capacity and need for

⁷³ C. Reus-Smit, “Constructivism.” In *Theories of International Relations*, edited by Burchill, S., Linklater, A., Devetak, R., Donnelly, J., Nardin, T., Paterson, M., Reus-Smit, C., and J. True, 212. (New York: Palgrave Macmillan, 2009.), p.212

⁷⁴ See Griffiths et al., *Canada and the Changing Arctic*

⁷⁵ Griffiths et al., *Canada and the Changing Arctic*, p.181

⁷⁶ *Ibid.*, p.183

regional Arctic collaboration:⁷⁷ The fact that the Arctic region is peripheral to the southern populations of Arctic states, the fact that the Arctic region is pacific, relative to the ideological and religious tensions that characterize other geopolitical regions, the fact that the region is heavily affected by events and processes in the south that affect its environment, the fact that the Arctic is physically and politically fragmented, and finally the fact that the Arctic as a region is under-institutionalized, with only a recent and limited development of forums for regional collaboration.⁷⁸

These factors, for Griffiths, explain why a constructivist approach to Arctic sovereignty is necessary and could be of substantial benefit to Canada. Under Griffith's approach, there would be an expanded capacity for collaboration and effective stewardship across the Arctic region. Implicit in Griffith's approach to the Arctic region is that it has unique geographical, human and environmental characteristics that should be complemented with a unique governance structure. While liberals may call for international norms to be applied to the Arctic and realists focus on state sovereignty and control in the region, Griffith's constructivist approach calls for new institutional structures and understandings of sovereignty in the region.

Constructivist thought places a focus on the Arctic milieu that dovetails well with post-modern conceptions of Arctic sovereignty. There have been numerous postmodern approaches to Arctic sovereignty, calling for the development of an internationalized, post-national region.⁷⁹ Within the context of postmodern conceptions of sovereignty, it is

⁷⁷ Griffiths et al., *Canada and the Changing Arctic*, p.187

⁷⁸ *Ibid.*, p.187-194

⁷⁹ See, for example: L. Williams, "Canada, the Arctic, and Post-National Identity in the Circumpolar World." *The Northern Review* 33, (Spring 2011): 113-131; O. Young, "Governing the Arctic: From Cold War theater to mosaic of cooperation." *Global Governance* 11, no. 1 (2005):9-15

the transnational Inuit occupancy of the region that has represented perhaps the most coherent and effective argument for a postmodern conceptualization of sovereignty in the Arctic. According to the Inuit Circumpolar Council (ICC), the Inuit have resided in the Canadian Arctic, Greenland, Alaska and Chukotka (Russia) from time immemorial.⁸⁰ Further, the Inuit constitute a single people, with an identity rooted a shared language and unique knowledge of and experience in the Arctic.⁸¹ While the Inuit are not the sole aboriginal inhabitants of the Arctic region, their numbers⁸² and relative cultural, ethnic and political unity across the Arctic region make them unique.

As the principal residents of the Arctic, and its sole occupants for numerous millennia, the Inuit people have a claim to the Arctic region that predates that of any modern state. For this reason, as well as the fact that in many Arctic regions the Inuit make up the bulk of the Arctic population, they have been granted a central place in the Arctic sovereignty debate. Realist approaches will often refer to the Inuit occupants of the north as a principal reason that the government must secure and protect the Arctic, so as to grant human and environmental security to the local Inuit population.⁸³ Similarly, liberal and constructivist approaches to sovereignty stress cooperation and collaboration, at the national and regional level, to improve the situation of the Inuit population.⁸⁴

While the more traditional approaches to Arctic sovereignty give prime place to the Inuit in their arguments, there is also a transnational organization and collaboration

⁸⁰ Inuit Circumpolar Council. "A Circumpolar Inuit Declaration on Sovereignty in the Arctic." Accessed on June 13, 2012. <http://inuitcircumpolar.com/files/uploads/icc-files/declaration12x18vicechairsigned.pdf>

⁸¹ Inuit Circumpolar Council, *A Circumpolar Inuit Declaration on Sovereignty in the Arctic*

⁸² The ICC represents an estimated 150 000 Inuit throughout the Arctic region. See Inuit Circumpolar Council. "Inuit Circumpolar Council (ICC)." Accessed on April 2, 2012, from: <http://inuitcircumpolar.com/index.php?ID=16&Lang=En>

⁸³ See Griffiths et al., *Canada and the Changing Arctic*

⁸⁴ Griffiths et al., *Canada and the Changing Arctic*

among the Inuit themselves that is suggesting a postmodern and post-national conception of sovereignty in the region. The Inuit have organized themselves as a community via the Inuit Circumpolar Council, which represents 150 000 Inuit across Canada, the United States, Russia and Greenland.⁸⁵ The ICC holds general assemblies every four years in which councils are elected, policies are developed and resolutions adapted, dealing with common concerns and seeking to unite the Inuit people.⁸⁶ The primary goals of the ICC are to strengthen and unite the circumpolar Inuit, to promote Inuit interests internationally, to encourage the protection of the Arctic environment and to seek “full and active partnership in the political, economic, and social development of circumpolar regions”⁸⁷ The ICC also holds permanent participant status at the Arctic Council, a consultative role which nonetheless grants the Inuit community a level of access and influence in international decision making that is unique to the Arctic region.⁸⁸

While the goals and activities of the ICC are far from rejecting traditional notions of sovereignty, with the respective Inuit groups remaining loyal citizens of their states and not advocating separatism, they are nonetheless advancing a conceptualization of sovereignty that challenges many of the state centric assumptions of the traditional theories of international relations. In fact in the 2009 ICC document *A Circumpolar Inuit Declaration on Sovereignty in the Arctic* states that:

The conduct of international relations in the Arctic and the resolution of international disputes in the Arctic are not the sole preserve of Arctic states or other states; they are also within the purview of the Arctic’s indigenous peoples. The development of international institutions in the Arctic, such as multi-level governance systems and indigenous peoples’ organizations, must transcend

⁸⁵ Inuit Circumpolar Council, “Inuit Circumpolar Council (ICC)”

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Arctic Council. “Permanent Participants”, Accessed on April 4, 2012, from: <http://www.arctic-council.org/index.php/en/about-us/permanentparticipants>

arctic states' agendas on sovereignty and sovereign rights and the traditional monopoly claimed by states in the area of foreign affairs.⁸⁹

This non-traditional approach to regional and identity based governance is echoed by former president of the Canadian Inuit group Inuit Tapiriit Kanatami, Mary Simon. While she accepts that the Inuit are citizens of Canada, Ms. Simon argues that “the Inuit of Canada take pride in being both Inuit and Canadian” and that the Inuit people desire to develop “innovative and creative jurisdictional arrangements that balance our rights and responsibilities with those we share with others living with us and those of states.”⁹⁰ Thus, while Simon and the ICC are not proposing a separate state for the Inuit, they clearly advance a conceptualization of sovereignty that differs from the traditional state-centric international relations theories, instead placing an emphasis on ethnicity and identity.

Conclusion

The *Organizational Behaviour* model and theoretical approaches examined in this chapter are vital to achieving the goals of this thesis and setting the stage for the coming chapters. Outlining Allison's model, and its suitability to be applied to Canadian Arctic sovereignty issues, is essential in that it allows a manner in which organizational effects can be understood and analyzed in chapter five. It provides a fundamental understanding of the nature and role of government organizations that allows the Canadian organizations examined in chapter five to be analyzed in a theoretically consistent manner. In essence, Allison's theory provides bedrock upon which this paper's later analysis can be built.

⁸⁹ Inuit Circumpolar Council, “A Circumpolar Inuit Declaration on Sovereignty in the Arctic”

⁹⁰ M. Simon, “Canadian Inuit: Where we have been and where we are going.” *International Journal* 66, no. 4 (2011): 879-891, p.886

The theoretical approaches to understanding Arctic sovereignty issues presented above serve a similar role to Allison's model in providing a framework within which the complexities of the Arctic sovereignty issue can be properly analyzed and understood. While this paper argues that the Canadian government has pursued policies that tend to conform to the liberal institutional approach, the actions of states rarely coincide purely with any one theoretical model. As such, it is vital to this paper's analysis to have an understanding of the critiques and alternatives to the liberal institutional model. The outlines of realist, constructivist and post-modern approaches to Arctic sovereignty within this chapter provide this context, allowing a more thorough understanding of the salient issues in the sovereignty debate and the varying manners which they can be understood.

The following chapters will delve into issues raised in the problematization and employ the theoretical models and understanding of sovereignty developed in this chapter to inform their analysis. Chapter three will focus on the historical development of Canadian sovereignty claims, with the aim of creating an understanding of the nature of Canadian claims, placing them within the context of their development to assist in later analysis. The chapter draws on the theoretical approaches outlined above to enable an understanding Canada's past Arctic foreign policy and the nature of the development of its claims. The fourth chapter will focus on the nature of Canadian claims in international law with the goal of enabling a detailed analysis of how organizations effects impact these claims, from a legal perspective, in chapter five. The fifth and final chapter undertakes a detailed analysis of organizational effects on Canada's sovereignty claims and Arctic foreign policy, making use of Allison's model to understand the nature of

organizations and their effects. The following chapters thus all draw heavily on the theoretical foundations outlined above.

Chapter 3: The Development of Canada's Arctic Sovereignty Claims

Introduction

In order to provide a context in which the effects of the organizations of the federal government on Canada's Arctic sovereignty claims and foreign policy can be properly understood, this chapter will outline the historical foundations of Canada's maritime claims in the Arctic Archipelago and their development throughout the past century. The sovereignty discussion in Canada has occurred in fits and starts, often prompted by external actors. The study of Canada's sovereignty claims in its Arctic waters thus broadly conforms to four eras: the original establishment of the Canadian Arctic via its transfer from Britain and the early consolidation of claims, the *Manhattan* crisis and the development of the functional approach to sovereignty, the *Polar Sea* controversy and resultant enclosure of the Arctic Archipelago, and finally the current era of sovereignty anxiety driven by global warming and the economic emergence of the Arctic region.

While this paper's primary goal is to advance an analysis of organizational impacts on Canada's pursuit of Arctic sovereignty in the current era of sovereignty uncertainty, it is vital to first outline the historical development of Canada's sovereignty claims. This is true for a number of reasons. First, the historical development and foundations of Canada's Arctic sovereignty claims must be examined before any meaningful examination of organizational effects can be undertaken. Without a firm understanding of the nature and history of the sovereignty issues in Canada's Arctic waters, any analysis would be, at best, incomplete. Second, outlining the history of Canadian sovereignty policies reinforces the historical trends in Canadian Arctic foreign

policy that play an important part in this paper's analysis. These trends demonstrate a long and strategic interest in liberal institutionalism in Canada's Arctic foreign policy, with a strong emphasis on international and multilateral institutions, such as the law of the sea.

In order to have an understanding of how organizational effects are influencing Canada's Arctic foreign policy, this paper must first have an understanding of the nature and foundation of that foreign policy. This chapter will therefore focus on providing a historical record of the development of Canada's Arctic sovereignty claims, while leaving the analysis of the claims' legal merits and organizational implications for following chapters. Whereas the Arctic sovereignty question is a broad and multifaceted one, this chapter's content has been limited to the development of Canada's sovereignty claims over the waters of its Arctic Archipelago, in accordance with the parameters of this paper's investigation.

The Establishment of the Canadian Arctic

Canada's role as an Arctic power began in earnest in 1870, when Britain transferred to it the territories of the Hudson's Bay Company, which became Manitoba and the Northwest Territories.⁹¹ All of Britain's remaining Arctic territories in North America were transferred to Canada in 1880.⁹² While these transfers marked the beginning of a Canadian Arctic, they certainly did not mark the beginning of the human history of the region. The Inuit have inhabited the Arctic region since pre-history,

⁹¹ G. Smith, "The Transfer of Arctic Territories from Great Britain to Canada in 1880, and some Related Matters, as seen in Official Correspondence." *Arctic* 14, no. 1 (1961): 53-73, p.53

⁹² Smith, "The Transfer of Arctic Territories from Great Britain to Canada in 1880, and some Related Matters, as seen in Official Correspondence", p.53

engaging in subsistence hunting and gathering and living a nomadic lifestyle.⁹³ After an initial period of neglect, the 20th century saw increasing Canadian interest in the Arctic, with outposts of the Royal Canadian Mounted Police (RCMP) being established across the Arctic region and a number of maritime, sovereignty enhancing measures being undertaken.⁹⁴

Canadian governments increasingly turned to maritime expeditions in the 20th century to enforce Canada's laws and enhance the nation's sovereignty claims in the Arctic region. Alongside an increased RCMP presence in Canada's Arctic waters, the Canadian government sponsored an expedition by Captain J.E. Bernier to assert its claims to sovereignty over the Arctic Archipelago.⁹⁵ The expedition reached its zenith in 1909 when Bernier placed a plaque on Melville Island claiming the entire Arctic Archipelago, between 60°W and 141°W up to 90°N, for Canada.⁹⁶ The efforts of the Bernier expedition were bolstered by the Canadian government's subsequent negotiations with Denmark and Norway, which settled any remaining doubt as to Canadian sovereignty over the lands of the Arctic Archipelago, if not the waters.⁹⁷

While early Arctic sovereignty enhancing initiatives by the Canadian government largely focused on the status of the Arctic lands, the 20th century saw a growing importance placed on the status of the Arctic waters. An early incarnation of the trend towards maritime sovereignty was evident in a motion advanced by Canadian senator

⁹³ M. Simon, "Canadian Inuit: Where we have been and where we are going." *International Journal* 66, no. 4 (2011): 879-891, p.880

⁹⁴ W. Lackenbauer, *From Polar Race to Polar Saga: An Integrated Strategy for Canada and the Circumpolar World*. (Toronto: Canadian International Council, 2009.), p.4

⁹⁵ S. Lalonde and M. Byers. "Who controls the Northwest Passage?" *Vanderbilt Journal of Transnational Law* 42, no. 4 (2009): 1133-1210, p.1147

⁹⁶ Lalonde and Byers, "Who controls the Northwest Passage", p.1147

⁹⁷ Lackenbauer, *From Polar Race to Polar Saga*, p.5

Pascal Poirier in 1907 which suggested that Canada had claim to both the Arctic lands and waters, by right of the sector theory.⁹⁸ This claim re-emerged in 1946 with a statement by then Canadian ambassador to the United States Lester B. Pearson, claiming the frozen sea as well as lands in the Arctic on the principle of the sector theory.⁹⁹ These early claims to Arctic maritime sovereignty, seemingly based on the sector theory, were replaced by historic internal waters claims, which began to be coherently advanced by the Canadian government in the 1970's.¹⁰⁰ These claims were complemented by the development of the functional approach to sovereignty by the Trudeau government in the 1970's.

The *Manhattan* Crisis and the Functional Approach to Arctic Sovereignty

The voyage of the ice-strengthened oil tanker *Manhattan* through Canada's Arctic waters created a nationalist panic and led the Canadian government to pursue sovereignty over its Arctic waters in a coherent and determined manner, employing a functional approach to do so.¹⁰¹ The functional approach to sovereignty adopted by the Trudeau government cast the Arctic as a sensitive and unique ecosystem which needed to be protected. Ultimately, the functional approach entailed expanding Canadian sovereignty over its Arctic waters to ensure that foreign vessels did not pollute the Canadian Arctic.¹⁰² Under the functional approach, the Canadian government claimed certain rights outside

⁹⁸ Lalonde and Byers, "Who controls the Northwest Passage", p.1146

⁹⁹ *Ibid.*, p.1147

¹⁰⁰ D. Pharand, "The Arctic Waters and the Northwest Passage: A final revisit." *Ocean Development and International Law* 38, no. 1 (2007): 3-69, p.11

¹⁰¹ Lackenbauer, *From Polar Race to Polar Saga*, p.7

¹⁰² *Ibid.*, p.7

of the existing international legal regime, while at the same time aggressively, and successfully, pursuing the recognition of its claims as a new precedent in the law of the sea.

The *Manhattan* Crisis

The *Manhattan* crisis was rooted in Humble Oil's decision to send the ice-strengthened tanker *Manhattan* through the Northwest Passage in 1969 without seeking Canadian permission. The intent of the voyage was to test the feasibility of the route for shipping oil from Prudhoe Bay and the Beaufort Sea to eastern markets.¹⁰³ The Canadian media reported the incident as a challenge to Canadian sovereignty over its Arctic waters, despite initial government objections that the voyage posed no real challenge. Prime Minister Trudeau went so far as to welcome the *Manhattan's* voyage, stating "the Canadian government has welcomed the *Manhattan* exercise, has concurred in it and will participate in it."¹⁰⁴ This participation was in the form of the Canadian icebreaker CCGS *John A. Macdonald*, which accompanied the *Manhattan* on its voyage through the passage.¹⁰⁵ The welcoming gestures of the Canadian government were more a matter of diplomacy than policy, however, as they were quickly followed by government action on Canada's Arctic sovereignty.

The Trudeau government's outward acceptance of the *Manhattan's* voyage is in stark contrast to the concerns subsequently raised regarding Canada's sovereignty over its Arctic waters. A report of the House of Commons Standing Committee on Indian Affairs

¹⁰³ Lackenbauer, *From Polar Race to Polar Saga*, p.7

¹⁰⁴ House of Commons, *Debates*, 1st Session, 28th Parliament, 15 May 1969, p. 8720-1.

¹⁰⁵ Parliament of Canada. "The Arctic: A Canadian Parliamentary chronology." Last modified on October 24, 2008. <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0811-e.htm>

and Northern Development, released a mere two weeks after Trudeau welcomed the *Manhattan's* voyage, stated:

Canadian sovereignty over islands of the Arctic Archipelago and to the continental shelf in the Canadian Arctic is well established. However, the extent of sovereignty over waters within the archipelago is less certainly defined. Prompt and positive action by the Government is required to define the extent of Canadian Sovereignty.¹⁰⁶

The committee went even further in its recommendations in December, 1969, three months after the *Manhattan's* voyage, recommending that:

The Government of Canada indicate to the world, without delay, that vessels, surface and submarine, passing through Canada's Arctic Archipelago are and shall be subject to the sovereign control and regulation of Canada.¹⁰⁷

Thus, while the Canadian government sought to minimize the impact of the *Manhattan's* voyage, some looming deficiencies in Canada's maritime sovereignty claims in the Arctic Archipelago were brought to light. In response to these deficiencies, a functional approach was employed to bolster sovereignty.

The Functional Approach to Arctic Sovereignty

The logic of Canada's functional approach to sovereignty was fundamentally that Canadian sovereignty in its Arctic waters was necessary in order to mitigate the exceptional risk factors for shipping in the Arctic. The assertion of sovereignty under the functional approach therefore related primarily to the development of environmental regulations. As the Arctic region is hazardous for shipping, and exceptionally fragile to external ecological shocks such as oil spills¹⁰⁸, a rigorous and legally unique approach was argued to be necessary to provide environmental security, regardless of existing international norms. The functional approach was designed not only to protect the Arctic

¹⁰⁶ House of Commons, *Journals*, 1st Session, 28th Parliament, 30 May 1969, p. 1090.

¹⁰⁷ House of Commons, *Journals*, 2nd Session, 28th Parliament, 16 December 1969, p. 209.

¹⁰⁸ For a current examination of the acute environmental risks posed by shipping in the Arctic region, see: Arctic Climate Impact Assessment. *Impacts of a Warming Climate*. (Cambridge: Cambridge University Press, 2004.)

environment, but also to safeguard the Inuit populations who rely upon it for sustenance. The essence of the functional approach to sovereignty is outlined in the preamble to the Arctic Waters Pollution Prevention Act (AWPPA), the most notable incarnation of the Canadian functional approach to Arctic sovereignty, which states:

Parliament at the same time recognizes and is determined to fulfill its obligation to see that ... the arctic waters adjacent to the mainland and islands of the Canadian arctic are navigated only in a manner that takes cognizance of Canada's responsibility for the welfare of the Inuit and other inhabitants of the Canadian arctic and the preservation of the peculiar ecological balance that now exists in the water, ice and land areas of the Canadian arctic¹⁰⁹

The AWPPA was introduced by the Trudeau government in April 1970, the same month that the *Manhattan* undertook its return voyage through the Northwest Passage.¹¹⁰

The act enabled the Canadian government to assert its jurisdiction for the purposes of pollution control and prevention within 100 miles of its Arctic coastline.¹¹¹ The debate over the AWPPA was concerned largely with the extent of Canada's rights in the waters of the Arctic Archipelago, prompting the Secretary of State for External Affairs Mitchell Sharp to declare: "we regard the waters between the islands [of the Arctic Archipelago] as our waters, and we always have."¹¹²

The passage of the AWPPA was accompanied by the *Act to Amend the Territorial Sea and Fishing Zones Act*, which established a 12 nautical mile territorial sea.¹¹³ This act ensured that any vessel navigating the Northwest Passage would be forced to pass through Canada's territorial waters, thus expanding the regulatory options available to the Canadian government.¹¹⁴ The establishment of a 12 nautical mile territorial sea was

¹⁰⁹ Department of Justice. *Consolidation: Arctic Waters Pollution Prevention Act R.S.C., 1985, c.A-12*. (Ottawa: Department of Justice, 2011.), p.5

¹¹⁰ House of Commons, *Debates*, 2nd Session, 28th Parliament, 2 March 1970, p. 4219.

¹¹¹ Parliament of Canada, "The Arctic"

¹¹² House of Commons, *Debates*, 2nd Session, 28th Parliament, 17 April 1970, p. 6015.

¹¹³ House of Commons, *Debates*, 2nd Session, 28th Parliament, 8 April 1970, p. 5626.

¹¹⁴ Lalonde and Byers, "Who controls the Northwest Passage", p.1152

substantially less controversial than the AWPPA in international law. A 12 nautical mile territorial sea had already been adopted by 60 other countries, thus having a great deal of international legitimacy even before it was entrenched in the 1982 UNCLOS treaty.¹¹⁵

While the Government of Canada forcefully asserted its rights over the waters of the Arctic Archipelago, it did so in a way that was in line with a functional approach to sovereignty. The AWPPA was and remains a highly technical and apolitical document. Under the AWPPA, ships traversing the Arctic are expected to maintain higher standards of construction and navigation and are required to have ice-breaker assistance in certain zones.¹¹⁶ The act also includes measures regulating the deposit of waste in Arctic waters and delineating shipping safety control zones. The enforcement mechanisms related to the act are outlined, as well as the fines and punishments that shippers can be subjected to for non-compliance.¹¹⁷ The act ultimately regulates the design, construction, navigational and manning standards of ships traversing the Canadian Arctic waters in order to enact the functional approach to sovereignty, characterized primarily by a defence of the Arctic environment.¹¹⁸

The AWPPA as Legal Precedent and the Development of Article 234

The implementation of the AWPPA was controversial but ultimately in accordance with Canada's focus on international institutions such as the law of the sea. The AWPPA was initially exempted from the compulsory jurisdiction of the International

¹¹⁵ Lalonde and Byers, "Who controls the Northwest Passage", p.1152

¹¹⁶ Department of Justice. *Consolidation: Arctic Waters Pollution Prevention Act R.S.C., 1985, c.A-12.*

¹¹⁷ *Ibid.*, p.3-4

¹¹⁸ D. M. McRae and D. J. Goundrey. "Environmental Jurisdiction in Arctic Waters: The extent of Article 234." *University of British Columbia Law Review* 16, no. 2 (1982): 197-227, p.209

Court of Justice by the Canadian government.¹¹⁹ This was done due to the pioneering nature of the legislation, through which the federal government sought to create a precedent in international law. This is evident in statements made by Prime Minister Trudeau, who claimed that there was a “very grave risk that the World Court would find itself obliged to find that coastal states cannot take steps to prevent pollution. Such a legalistic decision would set back immeasurably the development of law in this critical area.”¹²⁰ From this statement, and the Canadian government’s subsequent push to have the principles of the AWPPA recognized in conventional international law, it is evident that the application of the AWPPA to Canadian Arctic waters was not a rogue or unilateralist act, but fits well within a liberal institutionalist approach to international relations.

While the AWPPA was outside of international norms when it was enacted, the Canadian government worked diligently to make the case for the regulations in the international arena and have them treated as a new precedent in the law of the sea. The Canadian government submitted draft proposals to the United Nations in the lead up to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) Treaty which sought to allow coastal states the right to enforce special shipping standards in areas with geographical and ecological characteristics that warranted them.¹²¹ While this attempt was defeated by concerned maritime powers, a compromise emerged known as the “Arctic exception”.¹²² Over the course of numerous negotiations and conventions, the provisions of the exception eventually solidified and were narrowed to their current form

¹¹⁹ Pharand, “The Arctic Waters and the Northwest Passage”, p.11

¹²⁰ R. Bilder, “The Canadian Arctic Waters Pollution Prevention Act: New Stresses on the Law of the Sea.” *Michigan Law Review* 69, no.1 (1970): 1-54, p.29

¹²¹ McRae and Goundry, “Environmental Jurisdiction in Arctic Waters”, p.211

¹²² *Ibid.*, p.215

as article 234 of the UNCLOS treaty. The inclusion of article 234 in the UNCLOS treaty altered the law of the sea in such a way that the AWPPA no longer exceeded what was allowable in international law, effectively validating the Canadian regulations.

Article 234 is perhaps the most important clause within the UNCLOS treaty relating to Canada's Arctic waters, validating the Canadian precedent comprised by the AWPPA. The article provides for special environmental protection measures in ice-covered waters. More specifically, it states:

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 climactic 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.¹²³

The effect of article 234 is somewhat dampened by article 236 of the convention, however, which states:

The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.¹²⁴

Essentially, article 236 exempts foreign state owned and operated vessels from the provisions of article 234, while leaving some residual responsibility for environmental protection with the state operating the vessels. The interaction of these two articles has led to some doubt over the extent of rights afforded to Canada under article 234, as will

¹²³ United Nations. "United Nations Convention on the Law of the Sea." Accessed on March 27, 2011. http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf, p.116

¹²⁴ United Nations, "United Nations Convention on the Law of the Sea", p.116

be examined in the following chapters, while nonetheless maintaining the principle of coastal state regulatory rights in Arctic waters.

NORDREG

Another aspect of Canada's functional approach to Arctic sovereignty in the wake of the *Manhattan* crisis was the 1977 implementation of the Northern Canada Vessel Traffic Services Zone Regulations (NORDREG).¹²⁵ NORDREG was created in 1977 as a voluntary program designed to ensure the safe and expeditious conduct of shipping in Canada's Arctic waters and to protect the environment of the Arctic region.¹²⁶ The program was made mandatory as of July 1, 2010. Under NORDREG, the masters of vessels of 300 tonnes or more must report when entering Canada's Arctic waters and make a daily position report.¹²⁷ The regulations also require ships masters to submit reports on issues of human and environmental security in the Arctic waters.¹²⁸ Further, ships masters are required to disclose a great detail of information regarding the ship's intended voyage, the sea conditions encountered, the seaworthiness of the vessel, and the nature of its cargo.¹²⁹ NORDREG also provides some services to Arctic mariners, releasing ice reports and coordinating ice-breaker assistance to vessels navigating the Arctic waters.¹³⁰

The creation of NORDREG complemented the AWPPA with new measures to protect the Arctic environment from shipping, making it an important facet of the

¹²⁵ Government of Canada. "Northern Canada Vessel Traffic Services Zone Regulations." *Canada Gazette* 144, no. 13 (2010): 145-157

¹²⁶ Pharand, "The Arctic Waters and the Northwest Passage", p.49

¹²⁷ Department of Justice. *Consolidation: Northern Canada Vessel Traffic Services Zone Regulations*. (Ottawa: Department of Justice), 2011, p.2

¹²⁸ Department of Justice, *Consolidation: Northern Canada Vessel Traffic Services Zone Regulations*, p.5

¹²⁹ *Ibid.*, p.8

¹³⁰ Pharand, "The Arctic Waters and the Northwest Passage", p.49

functional approach to Arctic sovereignty. By both enforcing Canadian sovereignty, via the management of shipping, and protecting the Arctic environment, via technical and regulatory measures, NORDREG constitutes an important plank of the functional approach to sovereignty.

The *Polar Sea* Controversy and the Enclosure of the Arctic Archipelago

The 1985 voyage of the United States Coast Guard icebreaker *Polar Sea* through the Northwest Passage created a nationalist uproar in Canada similar to that provoked by the *Manhattan's* voyage, raising the specter of waning sovereignty once more in the Canadian imagination. The *Polar Sea* controversy prompted the notion in Canada that the functional approach of the Trudeau government was not sufficient to protect Canada's Arctic sovereignty, but that additional measures were needed. The era of sovereignty concern ushered in by the voyage of the *Polar Sea* was one focused on expanded Canadian sovereignty in the Arctic Archipelago. This expansion of sovereignty was primarily rooted in the government's claim that the Arctic Archipelago consists of historic internal waters, and the subsequent delineation of the archipelago with straight baselines. The new sovereign rights claimed by the Canadian government, however, remained well within the scope of a liberal institutionalist foreign policy.

The *Polar Sea* Controversy

The *Polar Sea* controversy was rooted in the American decision to send the USCGS *Polar Sea* through the Northwest Passage in 1985, while refusing to seek official permission from the Canadian government to do so.¹³¹ The *Polar Sea* was on a resupply

¹³¹ Lackenbauer, *From Polar Race to Polar Saga*, p.7

mission to Thule, Greenland, and, for operational reasons, decided to navigate the Northwest Passage. The American government refused to ask permission due to the fear of setting negative precedents that would jeopardize their position that the passage constitutes an international strait.¹³²

The Canadian response to the voyage was initially subdued, with Secretary of State for External Affairs Joe Clark stating to the House of Parliament that:

The action that is being taken by the Government of the United States does not compromise in any way the sovereignty of Canada over our northern waters, or affect the quite legitimate differences of views that exist between Canada and the United States on that question.¹³³

The media and some academics created a public outcry around the *Polar Sea's* August 1985 voyage, however, prompting the Mulroney government to announce a number of sovereignty enhancing initiatives. While the government's ensuing promises of increased platforms and capabilities in the Arctic largely failed to materialize, its September 1985 decision to enclose the waters of the Arctic Archipelago with straight baselines has had a profound and lasting impact on Canada's sovereignty claims.¹³⁴

The Application of Straight Baselines to the Arctic Archipelago

The decision undertaken by the Mulroney government to enclose the waters of the Arctic Archipelago with straight baselines marked a fundamental shift in Canada's Arctic sovereignty claims. The baselines came into effect on January 1st 1986 and had the effect of enclosing the waters of the Arctic Archipelago as internal.¹³⁵ The text of the proclamation makes reference to the longstanding nature of Canada's sovereignty claims, stating:

Whereas Canada has long maintained and exercised sovereignty over the waters of the Canadian Arctic archipelago; Therefore, Her Excellency the Governor General in Council, on the recommendation of the

¹³² Lackenbauer, *From Polar Race to Polar Saga*, p.7

¹³³ House of Commons, *Debates*, 1st Session, 33rd Parliament, 20 June 1985, p. 6043.

¹³⁴ House of Commons, *Debates*, 1st Session, 33rd Parliament, 10 September 1985, pp. 6462–4.

¹³⁵ Department of Defence. "Order-in-Council P.C. 1985-2739 in January 1986." Reprinted in: *Maritime Claims Reference Manual* 1-M, (2005): 96-116., p.105

Secretary of State for External Affairs, pursuant to subsection 5(1) [R.S.C. 1970, c.45 (1st Supp.), §.3] of the Territorial Sea and Fishing Zones Act, is pleased hereby to make the annexed order respecting geographical coordinates of points from which baselines may be determined, effective January 1, 1986.¹³⁶

The new legal status of the waters as internal marked a substantial departure from their past status as territorial waters and exclusive economic zone. Under the UNCLOS treaty and customary international law, internal waters have the same legal status as lakes or rivers, and are thus of a similar legal nature to land. The decision to enclose the Arctic Archipelago with straight baselines was well within accepted international norms, with ample precedents in customary and conventional international law. There is, however, a legal debate over the merits of Canada's specific use of straight baselines and thus the legal nature of the archipelagic waters, one which will be examined in greater detail in the next chapter.

An important factor in the enclosure of the Canadian Arctic Archipelago was Secretary of State Clark's statement that the straight baselines in the Arctic Archipelago indicate the "outer limits of Canada's historic internal waters"¹³⁷, which has remained the position of the Canadian government. It is important to note that rather than modify the use of straight baselines to match the historic waters in the Canadian Arctic, a conscious decision was made by the federal government to draw the straight baselines in a way that conformed to the allowable international norms. Thus, while the Canadian claim that its straight baselines delimit historic internal waters is controversial, the baselines themselves are less so, as will be explored in the next chapter.

1988 Canada – United States Arctic Cooperation Agreement

¹³⁶ Department of Defence, "Order-in-Council P.C. 1985-2739 in January 1986", p.105

¹³⁷ Pharand, "The Arctic Waters and the Northwest Passage", p.7

One more notable result of the *Polar Sea* controversy was the signing of the 1988 Canada-United States Arctic Cooperation Agreement. This bilateral agreement was a departure from the Canadian governments past Arctic sovereignty initiatives, which demonstrated a strong commitment to the role of international institutions and multilateralism in the Arctic region. The key difference between bilateralism and multilateralism here is that the latter approach seeks regional, rather than patchwork, solutions to issues in the Arctic. The Arctic cooperation agreement requires American icebreakers to ask Canadian consent before transiting the Northwest Passage, which Canada has agreed to grant.¹³⁸ The agreement clearly states that neither country's Arctic sovereignty claims are to be affected by it, however, and that it only applies to icebreakers.¹³⁹ Thus, in the context of Canada's Arctic foreign policy, the Arctic cooperation agreement is of limited significance and is largely an outlier. Further, as shipping in the Arctic increases, the greatest challenges will likely come from commercial shipping and foreign icebreakers not covered by the agreement, rather than from American coast guard vessels.

Climate Change and the Opening of the Arctic

The current era of sovereignty uncertainty is rooted not in a sharp external shock, but rather a series of convergent factors which have raised the issue of Arctic sovereignty to prominence in Canada once more. The most prominent of the factors driving current uncertainties in the Arctic are: The increased access to the region enabled by global warming, the increased interest in Arctic shipping spurred on by globalization, the

¹³⁸ Pharand, "The Arctic Waters and the Northwest Passage", p.50

¹³⁹ Ibid., p.50

increased focus on security in a post-9/11 world, and an increased interest in resource extraction in the Arctic region.¹⁴⁰ While the driving issues have shifted from previous sovereignty crises, the uncertainties remain largely the same, with fears that disputed sovereignty claims and a lack of effective platforms in the Arctic will lead to the loss or reduction of Canada's Arctic sovereignty. A major differentiation from past crises of Arctic sovereignty is that in the current case, Canadian sovereignty has not yet been challenged, but rather it is argued that it is more likely that it will be in coming years, and in a more concerted and sustained manner than in the past.¹⁴¹

The current era of uncertainty regarding the Canadian Arctic began in earnest at the turn of the millennium, with new Arctic foreign policy initiatives being brought forward by the federal government. In 2000 the Department of Foreign Affairs and International Trade (DFAIT) outlined an arctic foreign policy that focused heavily on the human and social challenges of the Arctic, entitled *The Northern Dimension of Canada's Foreign Policy (NDFP)*.¹⁴² The document focuses on trans-boundary issues and the challenges of globalization in the Arctic region as a whole, stressing the opportunities for multilateralism and cooperation in the Arctic. The four key objectives of the foreign policy espoused in the document are:

1. to enhance the security and prosperity of Canadians, especially northerners and Aboriginal peoples;
2. to assert and ensure the preservation of Canada's sovereignty in the North;
3. to establish the Circumpolar region as a vibrant geopolitical entity integrated into a rules-based international system; and

¹⁴⁰ Lackenbauer, *From Polar Race to Polar Saga*, p.8

¹⁴¹ *Ibid.*, p.8

¹⁴² Department of Foreign Affairs and International Trade. *The Northern Dimension of Canada's foreign Policy*. (Ottawa: Department of Foreign Affairs and International Trade, 2008.)

4. to promote the human security of northerners and the sustainable development of the Arctic.¹⁴³

While the traditional concerns over strengthening sovereignty in the Canadian Arctic are evident in these goals, there is also a strong commitment to international institutions within the document, thus maintaining Canada's long term commitment to a liberal institutionalist foreign policy.

Canada's Arctic foreign policy was bolstered by the announcement of a comprehensive northern strategy in 2004. The strategy was designed to "foster sustainable economic and human development; protect the northern environment and Canada's sovereignty and security; and promote cooperation with the international circumpolar community."¹⁴⁴ Its primary aims were to strengthen northern governance, encourage economic development, protect the northern environment, improve social conditions, reinforce sovereignty and national security, preserve Inuit culture, and enhance northern research and science.¹⁴⁵ The application of the northern strategy was interrupted by the regime change in Ottawa following the 2006 election of the Conservative government of Stephen Harper. Regardless, the northern strategy's goals and those of the NDFP that preceded it have remained relevant and greatly influenced the current government's Arctic policies.

The Harper government's approach to sovereignty has been argued to favour the enactment of sovereignty, via military assertion and increased platforms for Arctic security, as opposed to previous governments that principally sought the recognition of

¹⁴³ Department of Foreign Affairs and International Trade, *The Northern Dimension of Canada's foreign Policy*

¹⁴⁴ Senate, *Debates*, 1st Session, 38th Parliament, 5 October 2004, p. 5.

¹⁴⁵ Lackenbauer, *From Polar Race to Polar Saga*, p.12

Canada's sovereignty claims.¹⁴⁶ This perception has been strengthened by Harper's use of terminology, which stresses a "Use it or lose it" approach to Arctic sovereignty, favouring the deployment of the Canadian Forces in the Arctic.¹⁴⁷ This perception is further bolstered by the increasing size of military exercises in the Canadian Arctic, a recent example being the 2010 *Operation Nanook 10*, in which 900 Canadian military personnel participated in Arctic operations alongside 600 personnel of the Danish and American armed forces.¹⁴⁸

Despite the increased focus on enacting sovereignty, the Harper government has maintained the historical focus on liberal institutionalism in Canada's Arctic foreign policy. Under the Harper government there has been no substantial modification of Canada's legal claims to Arctic sovereignty. What's more, the 2007 Speech from the Throne reiterated the fundamentals priorities outlined in the NDFP and the 2004 northern strategy, stating:

New opportunities are emerging across the Arctic, and new challenges from other shores. Our government will bring forward an integrated northern strategy focused on strengthening Canada's sovereignty, protecting our environmental heritage, promoting economic and social development, and improving and devolving governance, so that northerners have greater control over their destinies.¹⁴⁹

While increased militarization in the Arctic and the acquisition of new capabilities and platforms may be a departure from previous governments strategies, they are not in-and-of themselves a new direction in Canada's Arctic sovereignty claims.

¹⁴⁶ Lackenbauer, *From Polar Race to Polar Saga*, p.12

¹⁴⁷ *Ibid.*, p.12

¹⁴⁸ National Defence and the Canadian Forces. "Op Nanook 10 Pushes the Boundaries." *The Maple Leaf* 13, no. 26 (2010): 4

¹⁴⁹ Speech from the Throne, October 16, 2007. Accessed on April 18, 2012, from: http://www.ctv.ca/CTVNews/QPeriod/20071016/thronespeech_SIDEBARS_071016/

The increased deployment of Canadian Forces assets in the Canadian Arctic does not signify a shift in Canada's Arctic sovereignty claims. The shift simply reflects a new domestic security policy. Militarizing the Arctic no more shifts the nature of Canadian claims in the region than the militarization of the Canadian west coast would alter the nature of Canada's sovereignty over that region. The branches of the Canadian forces involved in Arctic expeditions, and particularly the navy, have confirmed as much. In fact the actions of the Royal Canadian Navy in the Arctic are understood, by the Navy, to be undertaken for the maintenance of existing Canadian claims and the UNCLOS regime more generally.¹⁵⁰ Therefore increased military activity in the Canadian Arctic is not a sign of a departure in Canada's Arctic sovereignty claims, but simply marks a shift in how said claims are defended and enforced by the Canadian government.

The focus on cooperation and internationalism on the part of the Canadian government in the Arctic is only substantially limited by the race to delineate the nation's continental shelf. While there is a great deal of international competition and disagreement in this endeavor, the process for making claims is clearly regulated by the UNCLOS treaty. Furthermore, the littoral Arctic states agreed to abide by the law of the sea and pursue an orderly resolution of conflicts in the Arctic region in the 2008 Ilulissat Declaration, which states:

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

¹⁵⁰ For an overview of the Royal Canadian Navy's focus on the maintenance of the UNCLOS regime, see: National Defence and the Canadian Forces. "What the Admiral Said: making the case for international cooperation at sea." Last modified November 29th, 2011. http://www.navy.forces.gc.ca/cms/10/10-a_eng.asp?id=883

remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.¹⁵¹

The Ilulissat Declaration dispels the notion that the Arctic region is degenerating into a conflictual region where unilateralism and militarism reign supreme. In fact, Canada has not expanded its Arctic sovereignty claims in any significant way since the enclosure of the Arctic Archipelago over 25 years ago. This should cast doubt on any analysis of the Harper government's Arctic strategy that cites it as a militarist or unilateralist departure from Canada's past reliance on international institutions.

Conclusion

There has been substantial variation in the manner in which successive Canadian governments have pursued sovereignty over Canada's Arctic waters, with the foundations underpinning Canadian claims remaining remarkably stable regardless of said variation. The functional approach to sovereignty under the Trudeau government represents the first comprehensive pursuit of expanded Canadian jurisdiction in the waters of the Canadian Arctic. The approach was rooted in the necessity for enhanced environmental protection in the hazardous and ecologically fragile Arctic waters. When the voyage of the *Polar Sea* raised the concern that the functional approach to sovereignty may not be sufficient, the Arctic Archipelago was enclosed with straight baselines, the government claiming landward waters as historic internal waters. Currently, the Harper government has focused on the enactment of sovereignty in the Canadian Arctic via military exercises and increased investments in northern capabilities. While the current approach demonstrates a focus that is somewhat different than that of previous governments, the fact that Canadian claims are rooted in international law and institutions has remained remarkably stable.

¹⁵¹Arctic Ocean Conference. "The Ilulissat declaration", Accessed on April 26, 2012, from: http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf

Although there have been varied approaches and initiatives carried out over the past decades, successive Canadian governments have consistently framed Arctic sovereignty issues and advanced claims within a liberal institutionalist framework, placing an emphasis on the international law of the sea, examined in more detail in the next chapter.

This chapter's content is relevant to this paper in that it provides a context for the argumentation and analysis in later chapters. By outlining the manner in which Canada's sovereignty claims have been developed over the past decades, it becomes possible to better analyze the manner in which current organizational effects are impacting those claims. The historical developments outlined above not only provide a historical context on the nature of Canada's claims; they allow an understanding of the manner in which Canada has crafted its Arctic foreign policy over successive governments, and the philosophical and strategic underpinnings of those developments. This level of understanding is essential to the examination of organizational impacts on Canada's Arctic claims and foreign policy undertaken in chapter five. Without an understanding of Canadian claims and policy in the context of the manner in which they were developed, it is not possible to understand the potential impacts and importance of organizational effects going forward. The historical context that this chapter provides will be augmented in the next chapter, which places Canada's claims in their international legal context.

Chapter 4: Canada's Arctic Sovereignty Claims in International Law

Introduction

This chapter will outline the international legal precedents and conventions on which Canada's sovereignty claims over the waters of the Arctic Archipelago are founded. This is necessary, within the scope of this paper, in order to allow an informed analysis of the manner in which organizational effects can impact Canada's Arctic sovereignty claims. An overview of relevant international maritime law is therefore provided, along with the debate in the literature over its application to the Canadian Arctic. This allows for a much more detailed analysis of the organizational effects examined in chapter five and allows the implications of said effects to be more fully understood within the legal context. As Canada's Arctic sovereignty claims are rooted in international law, the ability to analyze organizational effects on Canadian Arctic policy within the context of maritime law is vital to this paper's argumentation. The debate over the legitimacy of Canadian legal claims in the Arctic will be examined below primarily by outlining the positions of leading legal scholars on the matter. As Canadian claims have not been formally challenged at international courts, the opinions of legal scholars are best able to provide an insight into the legal legitimacy of said claims.

The following examination of international maritime law as it applies to issues of Canada's Arctic sovereignty will be organized thematically. The foundations of international maritime law will be briefly outlined, with legal issues relating more specifically to the Canadian Arctic, such as environmental protection measures and the legal status of the waters of the Arctic Archipelago, examined in more depth. This will be

done by examining relevant precedents in customary and conventional international law, particularly the 1951 Fisheries Case and 1949 Corfu Channel Case decisions of the International Court of Justice (ICJ), and the United Nations Convention on the Law of the Sea (UNCLOS) treaty of 1982.¹⁵² Legal issues relating to the characteristics of international straits, the validity of straight baselines and the nature of Canada's historic internal waters claims will also be examined. The ultimate aim of examining these international legal issues is to allow for a more informed and detailed analysis of the implications of organizational effects on Canada's Arctic sovereignty claims and foreign policy to be undertaken in the next chapter.

Customary International Law

Customary international law plays an important role in determining the extent and legitimacy of Canada's claims to sovereignty over its Arctic waters. While there is a great mass of legal precedent which constitutes customary international law, there are two cases tried at the International Court of Justice which are particularly relevant to maritime issues in the Canadian Arctic. These are the Corfu Channel Case of 1949 and the Fisheries Case (United Kingdom vs. Norway) of 1951.

The Corfu Channel Case (United Kingdom vs. Albania)

The Corfu Channel Case of 1949 is particularly relevant to sovereignty issues in the Canadian Arctic as it sets the legal precedent for the characteristics necessary for an international strait. These characteristics have in turn been applied to the Northwest

¹⁵² See International Court of Justice. *Fisheries Case (United Kingdom v. Norway): Judgment of December 18th, 1951*. (Hague: International Court of Justice, 1952.); and International Court of Justice. *Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 4 (Apr. 9)*. (Hague: International Court of Justice, 1949.); United Nations. "United Nations Convention on the Law of the Sea." Accessed on March 27, 2011. http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

Passage in order to determine whether it constitutes an international strait. The court's decision established two primary requirements for the presence of an international strait, since characterized as geographical and functional requirements.¹⁵³

The geographical requirements for an international strait, as entered into customary international law by the Corfu Channel Case, are relatively straightforward and technical. The decision essentially established the geographic criterion for an international strait as an overlap of territorial waters within a passage linking two parts of the high sea.¹⁵⁴ This geographical criterion was codified within the UNCLOS treaty, outlined below.

The functional requirement for an international strait established by the Corfu Channel Case is the more complicated and controversial of the two requirements. The decision of the court placed the fulfillment of a functional requirement alongside the geographical one in determining whether a waterway constitutes an international strait. In addition to linking two parts of the high seas, a sea route must also have been useful for international maritime traffic to qualify as an international strait.¹⁵⁵ The court placed particular emphasis on the number of ships which use the route and the number of flag states they represent in outlining the functional requirement.¹⁵⁶

The criteria of the functional requirement have been distilled by the preeminent Canadian scholar of Arctic maritime law, Donat Pharand, as: The importance of the strait as evidenced by "the *number of ships* using the strait, their *total tonnage*, and the number

¹⁵³ D. Pharand, "The Arctic Waters and the Northwest Passage: A final revisit." *Ocean Development and International Law* 38, no. 1 (2007): 3-69, p.28

¹⁵⁴ Pharand, "The Arctic Waters and the Northwest Passage", p.28

¹⁵⁵ *Ibid.*, p.33

¹⁵⁶ *Ibid.*, p.33

and diversity of the *flags represented*.”¹⁵⁷ While this is a widely held formulation of the functional criteria, the United States has maintained that simply the potential for future use is enough to satisfy the criteria.¹⁵⁸ Pharand adds, however, that the American position is “completely unsupported by customary international law, which is the only law applicable to this question.”¹⁵⁹

It has instead been argued that the control exercised by Canada over the bulk of the transits of the Northwest Passage which have thus far occurred and the incredibly limited use of the passage by commercial vessels leave the functional criteria unfulfilled. What is most controversial about the functional criteria, however, is the fact that the UNCLOS treaty did not include it as a requirement in its characterization of international straits. As such, there is substantial debate, examined below, as to the relevance of the functional criteria now that the convention is in force.

The Fisheries Case (United Kingdom vs. Norway)

The precedent set by the Fisheries Case (United Kingdom vs. Norway) decision of 1951 is also highly relevant to issues of Canadian Arctic sovereignty. This is due to the fact that it enshrines in customary international law the appropriate means of delimiting internal waters by way of straight baselines. Straight baselines differ from coastal baselines in that they do not conform to the low water mark, but rather enclose waters by jutting straight into the sea to connect two points, enclosing the landward waters as internal. As Canada employs straight baselines in delimiting its historic internal waters in the Arctic Archipelago, the precedent set out in the decision is vital to the legal debate over maritime sovereignty in the Canadian Arctic.

¹⁵⁷ Pharand, “The Arctic Waters and the Northwest Passage”, p.38

¹⁵⁸ Ibid., p.38

¹⁵⁹ Ibid., p.38

The International Court of Justice's 1951 Fisheries case involved a dispute between the United Kingdom and Norway over fishing off the Norwegian coast. Specifically, the government of the United Kingdom claimed that Norway had delimited its territorial sea using unjustifiable baselines to enclose zones as internal that were not considered bays in international law.¹⁶⁰ In its decision, the court set out a number of criteria for the proper use of straight baselines in international law. The court ruled that there must be a close link between land and sea and the baselines should not depart to any appreciable extent from the direction of the coast.¹⁶¹ Perhaps the most fundamentally important facet of the court's ruling was that it validated the general use of straight baselines within customary international law in its acceptance of the Norwegian case.¹⁶² Thus, when Canada enacted straight baselines in 1986 to delimit the historic internal waters of the Arctic Archipelago, it was engaging in a practice that had legitimacy within customary international law, even if the specific manner in which Canada applied the baselines is open to debate.

The Canadian government took care to draw the straight baselines around the Arctic Archipelago within the specifications of the court's decision and in accordance with international norms. However, it was made clear that the waters the baselines surrounded were already considered to be Canadian. The text of the proclamation enclosing Canada's Arctic Archipelago makes careful reference to the longstanding nature of Canada's sovereignty claims, stating:

Whereas Canada has long maintained and exercised sovereignty over the waters of the Canadian Arctic archipelago; Therefore, Her Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, pursuant to subsection 5(1) [R.S.C. 1970, c.45 (1st Supp.), §.3] of the Territorial Sea and Fishing Zones Act, is pleased hereby to make the annexed order respecting

¹⁶⁰ International Court of Justice, *Fisheries Case (United Kingdom v. Norway)*, p.2

¹⁶¹ Pharand, "The Arctic Waters and the Northwest Passage", p.17

¹⁶² *Ibid.*, p.13

geographical coordinates of points from which baselines may be determined, effective January 1, 1986.¹⁶³

Therefore, it is important to view the enclosure of the Arctic Archipelago as simply one event within a broader program of Arctic sovereignty, delimiting waters Canada previously viewed, and continues to view, as historic internal waters.

The Canadian government has long claimed that the waters of the Arctic Archipelago are historic internal waters, a claim which precedes the application of straight baselines to the Arctic Archipelago. It was first officially made in 1973 when the Legal Department stated in a letter: “Canada also claims that the waters of the Canadian Arctic Archipelago are *internal waters of Canada, on historical basis*, although they have not been declared as such in any treaty or by any legislation.”¹⁶⁴ In fact, when straight baselines were applied to the Arctic Archipelago, Secretary of State for External Affairs Joe Clark stated that they indicated the “outer limits of Canada’s historic internal waters.”¹⁶⁵ There has also been a focus on the occupancy of the Inuit in the Arctic as a justification for Canada’s historic title over its Arctic waters. In a 1985 declaration to the House of Commons, Clark stated:

Canada’s Sovereignty in the Arctic 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. They are bridged for most of the year by ice. From time immemorial Canada’s Inuit people have used and occupied the ice as they have used and occupied the land.¹⁶⁶

Many legal scholars have rejected the legitimacy of using straight baselines to delineate historic internal waters, while nonetheless maintaining that the enclosed waters are

¹⁶³ Department of Defence. “Order-in-Council P.C. 1985-2739 in January 1986.” Reprinted in: *Maritime Claims Reference Manual* 1-M, (2005): 96-116., p.105

¹⁶⁴ Pharand, “The Arctic Waters and the Northwest Passage”, p.11

¹⁶⁵ *Ibid.*, p.7

¹⁶⁶ R. Huebert, “Climate Change and Canadian Sovereignty in the Northwest Passage.” *Isuma* 2, (Winter 2001-2002): 86-94, p.88

legitimately considered internal due to precedents in customary law rather than Canada's claim to historic title.¹⁶⁷

The move to enclose the waters of the Arctic Archipelago with straight baselines was controversial, a fact that has affected its international legitimacy. The United States and the European Union have objected to Canada's position that the archipelagic waters are internal, arguing instead that they have no special status and therefore the Northwest Passage constitutes a strait used for international navigation.¹⁶⁸ The European Commission rejected both the geographic and historic justifications for Canada's application of straight baselines, declaring: "[the Member States] are not satisfied that the present baselines are justified in general. Moreover, the Member States cannot recognize the validity of a historic title as justification for the baselines."¹⁶⁹ Therefore, not only did the European Commission reject Canada's use of straight baselines, it rejected that the waters the baselines are delimiting have the status of historic internal waters.

Conventional International Law

The primary embodiment of conventional international maritime law is the 1982 United Nations Convention on the Law of the Sea Treaty (UNCLOS).¹⁷⁰ The treaty represents a codification and consolidation of previous customary and conventional international law regarding the freedom of the seas, navigation, and coastal state rights. An important prior source of conventional maritime law was the 1958 Convention on the

¹⁶⁷ See D. Pharand, *Canada's Arctic Waters in International Law*. (Cambridge: Cambridge University Press, 1988.); T. McDorman, "In the Wake of the "Polar Sea": Canadian Jurisdiction and the Northwest Passage." *Les Cahiers de Droit* 27, no. 3 (1986): 623-645

¹⁶⁸ A. Lajeunesse, "The Northwest Passage in Canadian Policy: An Approach for the 21st Century." *International Journal* 63, no. 4 (2008): 1037-1052, p.1040

¹⁶⁹ J. Kraska, "International Security and International Law in the Northwest Passage." *Vanderbilt Journal of Transnational Law* 42, no. 4 (2009): 1109-1132, p.1119

¹⁷⁰ See United Nations, "United Nations Convention on the Law of the Sea"

Territorial Sea and the Contiguous Zone, to which Canada was not a party.¹⁷¹ The following examination will not be a review of the UNCLOS treaty in general, but will examine it more specifically as it applies to the waters of the Canadian Arctic and to Canadian Arctic sovereignty claims.

The United Nations Convention on the Law of the Sea Treaty

The most basic function of the UNCLOS treaty is to delineate between the legal rights of coastal states and those of the maritime powers which depend upon the freedom of the seas for military and commercial purposes. The treaty codified many existing customs within international maritime law and practise, as well as creating some new rights. Notably, the treaty provides for an expanded twelve nautical mile territorial sea and a two hundred nautical mile exclusive economic zone (EEZ).¹⁷² These zones extend seaward from the coastal low water mark, or baseline.¹⁷³

The ships of all states have the right to innocent passage within territorial seas. Innocent passage is defined as the right to continuous and expeditious passage, as well as the right to weigh anchor and visit ports, as incidental to the normal modes of transportation.¹⁷⁴ Passage is considered innocent so long as it “is not prejudicial to the peace, good order or security of the coastal state.”¹⁷⁵ Further, submarines must transit on the surface and display their flag while undertaking innocent passage.¹⁷⁶ Coastal states

¹⁷¹ Pharand, “The Arctic Waters and the Northwest Passage”, p.15

¹⁷²United Nations, “United Nations Convention on the Law of the Sea”, p.27

¹⁷³ Ibid., p.27

¹⁷⁴ Ibid., p.31

¹⁷⁵ Ibid., p.31

¹⁷⁶ Ibid., p.31

have the right to enforce provisions limiting or regulating innocent passage for certain pre-limited purposes, including environmental protection and pollution reduction.¹⁷⁷

The UNCLOS treaty is based on the concept of diminishing sovereignty, in which the coastal state's sovereign rights decrease based on the distance from the coastline. As such, coastal states have less sovereign authority within the waters of the EEZ than in the territorial sea. There is diminished sovereignty within the EEZ in that states have authority over the resources of the sea floor and water column, but the waters are otherwise considered high seas and thus subject to freedom of navigation.¹⁷⁸ That being said, there is a special exception for ice-covered waters. The important exception to the rule of freedom of navigation in the EEZ, within the context of the Canadian Arctic, is Article 234.

Article 234

Article 234 is perhaps the most important clause within the UNCLOS treaty relating to Canada's Arctic waters. The article enables coastal states to enact additional environmental protection measures in ice-covered waters. Canadian negotiators played an important role in the negotiation of Article 234, which was based on Canada's Arctic Waters Pollution Prevention Act, as outlined in chapter three.¹⁷⁹ The article grants coastal states the right to take measures to protect the marine environment in ice-covered waters. More specifically, it states:

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 climactic conditions and the

¹⁷⁷ United Nations, "United Nations Convention on the Law of the Sea", p.32

¹⁷⁸ Ibid., p.44

¹⁷⁹ S. Lalonde and M. Byers. "Who controls the Northwest Passage?" *Vanderbilt Journal of Transnational Law* 42, no. 4 (2009): 1133-1210, p.1182

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.¹⁸⁰

While this formulation appears fairly straightforward, there is substantial legal debate as to whether the Canadian government has a right to enforce domestic regulations pursuant to Article 234, to what waters said regulations would apply, and whether they could be applied against state vessels.

While Article 234 has been widely presumed to give the Canadian government a domestic right to enact and enforce environmental protection in ice covered waters, certain scholars have argued that no such right exists. Rather, they posit that the wording of Article 234 only allows Canada to enforce guidelines in conjunction with the International Maritime Organization (IMO) and that there is no domestic right to enforce regulations that exceed IMO guidelines.¹⁸¹ Continuing with this logic, NORDREG and other vessel control schemes in the Canadian Arctic must be in line with, and not exceed, international standards for vessel management.¹⁸²

Another point of contention has been whether Canadian regulations would apply to the vessels of foreign governments. This is due to Article 236 of UNCLOS, the sovereign immunity clause, which states:

The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service.

¹⁸⁰ United Nations, “United Nations Convention on the Law of the Sea”, p.116

¹⁸¹ See D. McRae, “Arctic sovereignty? what is at stake?” *Behind the Headlines* 64, no.1 (2007): 1-23; J. Kraska, “The Law of the Sea Convention and the Northwest Passage.” *The International Journal of Marine and Coastal Law* 22, no. 2 (2007): 257-28; E. J. Molenaar, “Arctic Marine Shipping: Overview of the international legal framework, gaps, and options.” *Journal of Transnational Law & Policy* 18, no. 2 (2009): 289-325

¹⁸² Kraska, “The Law of the Sea Convention and the Northwest Passage.”

However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.¹⁸³

While the article clearly requires state vessels to meet international standards, it has been used by legal scholars to argue that Canada has no right to enact or enforce domestic environmental standards against foreign state vessels.¹⁸⁴ The argument that Articles 234 and 236 have the effect of limiting Canada's domestic regulatory rights is important primarily in that such a case would limit Canada's right to create environmental controls that are particular to its northern geography or that exceed international norms.

International Straits under UNCLOS and the Northwest Passage

A central feature of the UNCLOS treaty is its delineation of the right of transit passage in international straits. Transit passage is a concept developed within the treaty to give some form to the traditional legal concept of freedom of the seas. The right of transit passage, outlined in Article 38 of the UNCLOS treaty, grants "the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait."¹⁸⁵ Ships and aircraft are allowed to transit international straits in their "normal modes of continuous and expeditious transit."¹⁸⁶ Coastal states retain limited rights within international straits where transit passage applies, relating primarily to the creation of traffic management regimes and regulations in line with international standards and conventions.¹⁸⁷ The right of transit passage cannot be suspended by the coastal state, even if the strait falls within territorial waters and cuts between island chains and the mainland.

¹⁸³ United Nations, "United Nations Convention on the Law of the Sea", p.110

¹⁸⁴ See McRae, "Arctic sovereignty? what is at stake?" ; Kraska, "The Law of the Sea Convention and the Northwest Passage."

¹⁸⁵ United Nations, "United Nations Convention on the Law of the Sea", p.37

¹⁸⁶ Ibid., p.37

¹⁸⁷ Ibid., p.37

The right of transit passage applies both to government and commercial vessels. Similarly the right of overflight applies to government and commercial aircraft.¹⁸⁸ Since vessels are able to transit the strait in their normal mode of transportation, submarines can travel submerged without identifying their flag, a right not present under innocent passage.

Due to UNCLOS's liberal provisions relating to shipping in straits used for international navigation, it is important to clarify where they occur. Under UNCLOS, any body of water that connects two sections of the high seas or EEZ constitutes an international strait in which the right of transit passage applies.¹⁸⁹ Further, any passage which joins a nation's territorial sea with the high seas or which joins two EEZ's is considered an international strait.¹⁹⁰ While these are well-defined criterion for what constitutes a strait, they are controversial due to the lack of a functional requirement. One of the key fault lines in the legal debate over Canadian sovereignty in the Arctic Archipelago is therefore whether both functional and geographical criteria must be met for an international strait to exist.

A key argument made against a functional requirement rooted in customary international law is the concept that the UNCLOS treaty was a compromise between coastal and maritime states and that its adoption extinguished previous rights under customary international law.¹⁹¹ This argument has been advanced by James Kraska, Oceans Policy Advisor to the American Joint Chiefs of Staff, who stated:

¹⁸⁸ United Nations, "United Nations Convention on the Law of the Sea", p.37

¹⁸⁹ Ibid., p.36

¹⁹⁰ Pharand, "The Arctic Waters and the Northwest Passage", p.28

¹⁹¹ Kraska, "The Law of the Sea Convention and the Northwest Passage.", p.269

The test is geographic, not functional- if the water connects one part of the high seas or EEZ to another part of the high seas or EEZ, it is a strait... there is no authority for the idea that a strait is only a strait if it meets a certain minimum threshold of shipping traffic.¹⁹²

This argument has also been advanced by Richard Grunawalt of the U.S. Naval War College, who states:

Some nations take the view that an actual and substantial use over an appreciable period of time is the test. Others, including the United States, place less emphasis on historical use and look instead to the susceptibility of the strait to international navigation. The latter view has the greater merit¹⁹³

Other scholars have argued that there is a functional requirement, however, and that it is well established in customary international law.¹⁹⁴ In fact, the notion that customary law still applies in regards to a functional requirement seems to be supported by the preamble to the UNCLOS treaty, which states: “matters not regulated by this convention continue to be governed by the rules and principles of general international law”.¹⁹⁵ While it could be argued that this clause does not apply, as the matter of straits has been regulated, the clause affirms that customary international law remains an important force and lends legitimacy to arguments based upon it.

The technical parameters for the functional requirement having been laid out previously, the bulk of the legal debate on the matter relates to whether the use of the Northwest Passage to date has fulfilled the requirement. Between 1905 and 2005, only 69 transits of the Northwest Passage occurred, of which a small number were commercial, with all but the *Polar Sea* having implicitly or explicitly sought Canadian permission to

¹⁹² Kraska, “The Law of the Sea Convention and the Northwest Passage.”, p.275

¹⁹³ R. Grunawalt “United States Policy on International Straits.” *Ocean Development and International Law* 18, no.4 (1987): 445-458, p.456

¹⁹⁴ See McDorman, “In the Wake of the “Polar Sea””; B. McKinnon, “Arctic Baselines: A litore usque ad litus.” *The Canadian Bar Review* 66, (1987): 790-817; McRae, “Arctic sovereignty? what is at stake?”; Lalonde and Byers, “Who controls the Northwest Passage?”

¹⁹⁵ United Nations, “United Nations Convention on the Law of the Sea”, p.25

transit the passage.¹⁹⁶ On these bases, that the Northwest Passage has not historically been useful as a route for international shipping and that the vast majority of transits have been carried out after seeking Canadian permission, it is widely argued that the Northwest Passage does not fulfill the functional criterion for an international strait.¹⁹⁷

Straight Baselines under UNCLOS

Within the context of the Canadian Arctic, it is useful to outline the UNCLOS policy on the application of straight baselines. The criteria for the application of straight baselines established within the treaty have important implications for the perceived legitimacy of the Canadian claim that its archipelagic waters are internal. Straight baselines differ from coastal baselines in that they do not conform to the low water mark.¹⁹⁸ In accordance with Article 7 of the UNCLOS treaty, “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”.¹⁹⁹ Article 8 of the treaty further states that “waters on the landward side of the baseline of the territorial sea form part of the internal waters of the state”.²⁰⁰ While the UNCLOS treaty does not define internal waters, for the purposes of this paper it suffices that they are not subject to any international rights of navigation. Whether or not the Canadian Arctic Archipelago satisfies the criteria necessary for the application of baselines has been a matter of legal debate.

¹⁹⁶ Pharand, “The Arctic Waters and the Northwest Passage”, p.42

¹⁹⁷ See Pharand, “The Arctic Waters and the Northwest Passage”; McDorman, “In the Wake of the “Polar Sea””; T. McDorman, *Salt Water Neighbors*. (New York: Oxford University Press, 2009.); McKinnon, “Arctic Baselines”; McRae, “Arctic sovereignty? what is at stake?”; Lalonde and Byers, “Who controls the Northwest Passage?”

¹⁹⁸ United Nations, “United Nations Convention on the Law of the Sea”, p.27

¹⁹⁹ *Ibid.*, p.28

²⁰⁰ *Ibid.*, p.28

The legal debate over the application of straight baselines to the Arctic Archipelago, which relates directly to the question of the status of the Northwest Passage, revolves around the relative importance and interaction of conventional and customary international law. Donat Pharand claims that the precedent for the application of straight baselines in the Canadian case rests in the *1951 Fisheries Case (United Kingdom v. Norway)*²⁰¹ decision by the ICJ. The UNCLOS treaty offers few new guidelines as to the application of straight baselines, largely deferring to the ICJ precedent. The precedent allows for the application of straight baselines along a deeply indented coastline or where the coast is bordered by an archipelago.²⁰² Pharand and other legal scholars argue that the Canadian Arctic Archipelago meets the geographical requirements established by the precedent.²⁰³ While the UNCLOS treaty issues a more specific geographical requirement that islands constitute a “fringe” rather than a coastal archipelago, it is not clear that this alters the geographical requirements so as to exclude the Arctic Archipelago.²⁰⁴

Having established that the Arctic Archipelago meets the geographical requirements for the application of straight baselines, Pharand examines the manner in which the Canadian baselines were drawn. The mandatory criteria outlined by the ICJ for drawing straight baselines require that the general direction of the coast be followed and there be a close link between land and sea.²⁰⁵ Pharand argues that the Arctic baselines do not substantially depart from the coastline, deviating less than twenty degrees and thus

²⁰¹ United Nations, “United Nations Convention on the Law of the Sea”

²⁰² Pharand, “The Arctic Waters and the Northwest Passage”, p.16

²⁰³ See W. Reinhard, “International Law: Implications of the opening of the Northwest Passage.” *Dickinson Law Review* 74, (1970): 678-690; M. Killas, “The Legality of Canada’s Claims to the Waters of its Arctic Archipelago.” *Ottawa Law Review* 19, no. 1 (1987): 95-136; McDorman, “In the Wake of the “Polar Sea””; McKinnon, “Arctic Baselines”

²⁰⁴ Pharand, “The Arctic Waters and the Northwest Passage”, p.19

²⁰⁵ *Ibid.*, p.19

meeting even rigorous American standards.²⁰⁶ The ratio between sea and land in the Arctic Archipelago is .822 to 1, a more favorable ratio than that in the ICJ precedent.²⁰⁷ Further, Canada has kept the length of its Arctic straight baselines restricted to the needs imposed by the relevant criteria leading to their imposition, with long baselines justified by historic interests such as the presence of local Inuit populations.²⁰⁸ Pharand and other legal scholars have thus concluded that Canada's straight baselines around the Arctic Archipelago are legitimate under customary and conventional international law, granting the enclosed waters the status of internal waters.²⁰⁹

Conclusion

This chapter provides a context for Canada's claims in international law that is vital to understanding and analyzing the impacts of organizational effects on Canada's Arctic sovereignty claims and foreign policy. It is impossible to comment on and analyze the effects of different organizational perspectives on and approaches to Arctic sovereignty without a solid foundation on the nature of international maritime law. For example, the opposition of the major maritime powers to Canada's Arctic straight baselines, and the contested nature of Canada's historic internal waters claim, is highly relevant when discussing the limitations on Canadian rights in the Arctic Archipelago and the manner in which organizational effects interact with these limitations. More broadly, the fact that the legal foundations of many of Canada's Arctic sovereignty claims are

²⁰⁶ Pharand, "The Arctic Waters and the Northwest Passage", p.21

²⁰⁷ Ibid., p.19

²⁰⁸ Ibid., p.30 ; For more support of the idea of Inuit occupancy bolstering Canada's use of baselines, see also McDorman, "In the Wake of the "Polar Sea""; McKinnon, "Arctic Baselines"; Lalonde & Byers 2009

²⁰⁹ Pharand, "The Arctic Waters and the Northwest Passage", p.30; For more opinions on Canada's use of straight baselines to delimit internal waters as legitimate, see McDorman, "In the Wake of the "Polar Sea""; McKinnon, "Arctic Baselines"; Killas, "The Legality of Canada's Claims to the Waters of its Arctic Archipelago."; Lalonde and Byers, "Who controls the Northwest Passage?"

contested means that the outcomes derived from organizational effects on Canada's Arctic foreign policy can have wide ramifications for the nation's foreign relations.

The extent to which Canada's sovereignty claims are contested varies, along with the nature of foreign challenges. While Pharand advances a compelling justification of the Canadian use of straight baselines, they have been formally protested by foreign states and denounced by some legal scholars, making them relatively controversial. Canadian rights under Article 234 are also controversial, due to the potential limitations posed by international shipping norms and Article 236. It is impossible to achieve a resolution of the legal issues examined above short of Canada's claims being challenged at an international tribunal, meaning that they will remain controversial for the foreseeable future.

This reality has substantial organizational implications in that matters which are usually considered internal or domestic affairs, such as the passage and enforcement of regulations, are controversial in the Canadian Arctic. The actions or policies of federal organizations can quickly become matters of international contention, affecting Canada's Arctic foreign policy and having broad implications for Canadian claims. This creates a dynamic whereby organizationally driven regulatory and enforcement matters in the Canadian Arctic obtain an increased significance due to the contested nature of Canada's Arctic sovereignty claims, creating the potential for organizational effects to impact Canada's claims and foreign policy in the Arctic region. This dynamic will be examined in the next chapter, where organizational effects and their impact on Canada's Arctic claims and foreign policy are analyzed.

Chapter 5: Organizational Effects on Canada's Arctic Sovereignty Claims and Foreign Policy

Introduction

This chapter seeks to answer the question: how have Canada's federal organizations influenced the manner in which Arctic sovereignty is pursued and understood, and further how may these organizational effects impact Canada's Arctic sovereignty claims and foreign policy. Organizational approaches to sovereignty issues within the Canadian government will be compared and contrasted, with divergences and fundamental differences in logic focused in on where they appear. The sovereignty implications that these divergences may engender will also be examined. Most fundamentally, the analysis below seeks both to challenge the assumption that there is a uniform understanding of and approach to Arctic sovereignty issues within the Canadian federal government and posit on the implications of organizational effects on the pursuit of sovereignty.

Where this chapter will depart from the previous four, and what makes it of particular importance, is in its novel focus on organizational effects, drawn chiefly from primary sources. This chapters analysis is carried out through the use of interviews conducted with high ranking members of the federal organizations being examined, notably the Department of Foreign Affairs and International Trade, the Royal Canadian Navy, Transport Canada, and the Canadian Coast Guard. Secondary sources, such as official policy documents and government resources, will be used to supplement the interviews where necessary, presenting a more complete view of the organizations being examined. Whereas the past four chapters have created a theoretical, historical, and legal

context in which Canadian Arctic sovereignty issues can be understood, this chapter will employ that context to enable an analysis of the implications of organizational effects on Canada's sovereignty claims and foreign policy in the Arctic. While the last four chapters draw heavily on the existing academic literature, the content of the current chapter constitutes a genuine addition to the academic literature. This is due both to the use of interviews conducted personally by the author and the pursuit of an understanding of the effects of federal organizations on Arctic sovereignty issues.

This chapter's methodology relies heavily on interviews for a number of reasons. First, none of the existing academic literature has approached the Arctic sovereignty question from an organizational perspective, with most works only peripherally touching on the role of federal organizations, when they are considered at all. This means that previous academic research cannot be heavily relied upon in crafting this chapter's argumentation, making interviews a good alternative. Interviews also have the benefit of offering novel, current, and highly relevant information, allowing for a more vivid picture of organizational cultures and effects within the federal government to emerge.

Organizational Approaches to Arctic Sovereignty

The analysis in this chapter, rooted in interviews and relevant government documents, will be undertaken within the framework of Allison's *Organizational Behaviour* model, as outlined in the first chapter. Allison's theoretical framework will be applied to federal government organizations involved in Arctic sovereignty, namely: The Department of Foreign Affairs and International Trade, Transport Canada, The Royal Canadian Navy and the Canadian Coast Guard. These federal organizations were selected

due to their unparalleled importance in the application of Canadian sovereignty to the waters of the Arctic Archipelago. Only by understanding the organizational effects of these crucial federal bodies can a more meaningful understanding of Arctic sovereignty issues can be achieved.

This chapter's analysis will not be directly couched in Allison's terminology, instead relying on Allison's model to provide a context in which organizational effects can be understood. While the *Organizational Behaviour* model provides a manner in which organizations and their impact can be understood within the Arctic sovereignty debate, the goal of this chapter is to examine those impacts, not prove the accuracy of Allison's model. What the model adds to the chapter is a fundamental understanding of the role and nature of organizations, providing a theoretical underpinning to the analysis below.

The interviews employed in this chapter were conducted with both currently serving and recently retired policy makers and practitioners in the key federal organizations outlined above. The officials were selected for interviews due to their importance in their organizations and the relevance of their previous or current position to Arctic sovereignty issues. The interviewees were either directly approached by the author for their input or were introduced to the author by third parties, in academia and government. The questions posed to interview subjects were crafted specifically to each participant due to the wide variation in the organizations represented and their roles. Interviewees were asked general questions relating directly to organizational dynamics as well as more specific questions relating to the sovereignty issues that their organizations were involved in or that they had some expertise in. The interview subjects were posed

similar or identical questions as often as was practical in order to receive input on similar topics from a variety of organizations and actors, thus facilitating the analysis of organizational perspectives on and approaches to sovereignty issues undertaken in this chapter.

Department of Foreign Affairs and International Trade

The Department of Foreign Affairs and International Trade (DFAIT) is the lead federal department in regards to Canadian maritime claims in the Arctic Archipelago. This makes the department central in establishing the nature and extent of Canada's claims, acting as a sort of baseline against which the actions of other federal organizations can be measured. Due to its role as a lead department, the policy statements released by DFAIT can be considered to be the official position of the federal government, inasmuch as international legal matters are at issue. In short, when DFAIT changes its position on legal claims, the claims themselves change.

The nature of the Department of Foreign Affairs and International Trade, as the lead department in legal claims and foreign policy formulation at the federal level, has the unfortunate effect of making it exceedingly difficult to obtain a glimpse into the department's organizational culture. This is due in large part to the onerous non-disclosure agreements and general atmosphere of secrecy imposed upon policy makers and practitioners within the department. As such, no one from DFAIT was willing to go on the record for an interview, a fact which limits the capacity for an organizational analysis. An anonymous interview was obtained from a member of DFAIT dealing with Arctic legal issues, however, which will be relied upon to supplement official

government sources where possible.²¹⁰ The interview is unfortunately of very limited scope and offers few insights into DFAIT's organizational effects. While the organizational effects that can be posited in DFAIT's case are thus very limited, the department's official position on sovereignty issues will be presented to allow a more informed and meaningful analysis of the organizational effects at play in the other federal bodies examined below.

DFAIT's Mandate

The mandate of DFAIT, laid out in the *Department of Foreign Affairs and International Trade Act*, grants the Minister of Foreign Affairs, and his department, the responsibility for the conduct and development of Canada's foreign policy. In terms of its relevance to Arctic affairs, the document grants the minister and DFAIT the authority to:

- (a) Conduct all diplomatic and consular relations on behalf of Canada;
- (b) conduct all official communication between the Government of Canada and the government of any other country... and any international organization;
- (c) conduct and manage international negotiations as they relate to Canada;...
- (j) foster the development of international law and its application in Canada's external relations.²¹¹

Thus, DFAIT is mandated not only to develop and negotiate Canada's claims in the Arctic, it is mandated to foster the development of international law and apply said laws to the Arctic waters. While DFAIT's mandate gives the department broad authority to pursue an Arctic foreign policy, it is more explicit in its aim to do so within its list of priorities. A key priority of the department is to "implement Canada's foreign policy to exercise sovereignty in the Arctic." This general proposition is supplemented by the more

²¹⁰ Hereafter the interviewee will be referred to as the DFAIT source and will be cited as: Anonymous Interviewee, Conversation with the author, July 9, 2012.

²¹¹ Department of Justice. *Department of Foreign Affairs and International Trade Act R.S.C., 1985, c.E-22*. (Ottawa: Department of Justice, 2005.)

developed foreign policy espoused in the *Statement on Canada's Arctic Foreign Policy*²¹² and *Canada's Northern Strategy*²¹³ documents put forward by the department.

The northern strategy and foreign policy advanced by DFAIT within the *Statement on Canada's Arctic Foreign Policy* and *Canada's Northern Strategy* documents places a strong emphasis on sovereignty and its enactment through regulations. The importance of Arctic sovereignty is evident in DFAIT's Northern Strategy, where one of the four priorities of the strategy deals directly with the issue, calling for the exercise of Canadian Arctic sovereignty.²¹⁴ The sovereignty section of the Northern Strategy refers to Canada's sovereignty over the lands and waters of the Arctic as "long-standing, well established and based on historic title, international law and the presence of Inuit and other aboriginal peoples for thousands of years."²¹⁵ The document further recognizes the growing challenges in the Arctic region, linked to climate change and globalization, and stresses DFAIT's commitment to a "stable, rules-based Arctic region where the rights of sovereign states are respected in accordance with international law and diplomacy."²¹⁶

The *Statement on Canada's Arctic Foreign Policy* released by DFAIT mirrors many of the Northern Strategy's priorities, specifically the strategy's focus on sovereignty enhancing measures. The document states that DFAIT will attempt to resolve Arctic boundary issues within the framework of international law, with a special

²¹² Department of Foreign Affairs and International Trade. *Statement on Canada's Arctic Foreign Policy*. (Ottawa: Department of Foreign Affairs and International Trade, 2010.)

²¹³ Government of Canada. "Canada's Northern Strategy". Last modified February 7, 2012. <http://www.northernstrategy.gc.ca/index-eng.asp>

²¹⁴ Government of Canada. "Canada's Northern Strategy"

²¹⁵ Ibid.

²¹⁶ Ibid.

emphasis placed on the international legal framework outlined in the UNCLOS treaty.²¹⁷ At the same time, the document states that “with regards to Arctic waters, Canada controls all maritime navigation in its waters”.²¹⁸ The previous statement is coupled with an examination of Canada’s maritime border disputes with America in the Beaufort Sea and Denmark in the Lincoln Sea, with the contentious issue of the status of the Northwest Passage markedly absent from the discussion. While neglecting to engage with the issue of the Northwest Passage, the document nonetheless stresses the importance of the AWPPA and a mandatory NORDREG in enhancing Canadian sovereignty in the Arctic.²¹⁹

The anonymous DFAIT source had some interesting insights to offer, largely related to issues already raised in the documents outlined above. The source specifically refers to the documents, stating that:

all of [these documents are] part of the government of the day’s vision of issues with respect to the north ... [DFAIT] works within the policy framework that is created. That’s no different than at any time in history. The legal realities don’t change depending on which government is in power. So the legal reality in respect to Canadian sovereignty hasn’t changed dependent on if Liberals or Conservatives are in power.²²⁰

This raises the interesting dichotomy that, while DFAIT is the lead department in the development of Arctic foreign policy, and thus eminently subject to political interference and the imposition of changing government priorities, the legal foundations of Canada’s sovereignty claims remain stable and immune from political shifts, suggesting organizational effects at work.

²¹⁷ Department of Foreign Affairs and International Trade, *Statement on Canada’s Arctic Foreign Policy*, p.8

²¹⁸ *Ibid.*, p.7

²¹⁹ *Ibid.*, p.8

²²⁰ Anonymous Interviewee, Conversation with the author, July 9, 2012.

DFAIT's mandate and focus on Arctic sovereignty allow some interesting, if limited, insights into the department's organizational culture. Specifically, the department demonstrates a strong focus on the continuity of Canadian sovereignty claims, rooted in historic internal waters and the functional approach to sovereignty. This suggests that the foundations of Canadian sovereignty have not changed with the rise of the Harper government. This is confirmed by the anonymous source, who clearly states that despite changing political demands in the north, the legal foundations of Canada's sovereignty claims remains constant. While this may be due to an organizational aversion to change at DFAIT or simply to a lack of pressure from the Harper government, the foundations of Canadian claims in international institutions such as the law of the sea remain remarkably stable.

Transport Canada

Transport Canada is the most important federal organization with regards to the creation and management of regulations. The department's mandate and responsibilities will be outlined below, followed by the results of an interview conducted for this paper and related analysis. The interview was conducted with Victor M. Santos-Pedro, the former director of design, equipment and boating safety at Transport Canada (Retired 2011). Mr. Santos-Pedro's insights are doubly useful as not only was he a high ranking practitioner at Transport Canada, he was responsible for the development of new international regulations for Arctic shipping in the form of the Polar Code at the International Maritime Organization. The interview conducted with Mr. Santos-Pedro is exclusive to this paper, having been cleared through the University of Calgary Conjoint Faculties Research Ethics Board.

Transport Canada's Arctic Mandate

The mandate of Transport Canada goes well beyond Arctic and indeed maritime issues, administering Acts related to transportation by rail, sea, air and road.²²¹ The most important Act that the department manages, from the perspective of this paper's investigation, is the *Arctic Waters Pollution Prevention Act* (AWPPA).²²² The AWPPA is described by Transport Canada as "an Act to prevent pollution of areas of the arctic waters adjacent to the mainland and islands of the Canadian arctic". The Act is composed mainly of the *Arctic Water Pollution Prevention Regulations* and the *Shipping Safety Control Zones Order*, alongside other navigation enhancing and pollution reduction measures.²²³ The fact that Transport Canada manages the AWPPA gives it an unparalleled role in influencing the manner in which Canada exercises its sovereignty in the Arctic, to the extent that the organizations perspectives on sovereignty have ramifications for Canada's Arctic foreign policy. The nature of Transport Canada's organizational effects, and the manner in which these effects impact Canada's Arctic sovereignty claims, will be examined by way of the interview granted by Mr. Santos-Pedro.

On Transport Canada's Sovereignty Role

When prompted on the nature of organizational differences in approaches to Arctic sovereignty, Mr. Santos-Pedro suggests that each department simply has a different mandate, and therefore "the departments look at [sovereignty] from prisms and

²²¹ Transport Canada. "List of Marine Transportation Acts." Last modified July 30, 2012. <http://www.tc.gc.ca/eng/acts-regulations/acts-marine.htm>

²²² Transport Canada, "List of Marine Transportation Acts."

²²³ Transport Canada. "Arctic Waters Pollution Prevention Act (R.S., 1985, c. A-12)." Last modified May 3, 2012. <http://www.tc.gc.ca/eng/acts-regulations/acts-1985ca-12.htm>

different perspectives.”²²⁴ Mr. Santos-Pedro states that despite being involved in Arctic shipping issues, he did not professionally engage with the sovereignty debate. He states that Transport Canada does not have sovereignty anywhere in its mandate, but if the sovereignty question at issue is whether there is a sovereign right to regulate ships in the Arctic, his answer is “yes actually we do [have the right], and that is the responsibility of the department of transport, and there we stop.”²²⁵ He claims that “whenever the word sovereignty [came] up, I [was] looking towards the Department of Foreign Affairs and International Trade for them to deal with the issue, even though at times it is not... black and white.”²²⁶

When prompted on the dynamic between the federal departments in dealing with Arctic issues, Mr. Santos-Pedro offered some interesting insights into the interaction between the Prime Minister’s Office (PMO) and the federal organizations working in the Arctic. According to Mr. Santos-Pedro:

over the last few years... with this government more than any other government, ministers got letters from the ... Prime Minister... as to what [were] their priorities for the mandate of a particular department... because this government ... they put an emphasis on Arctic issues ... that there were many departments that got that word [sovereignty] in [the letter], that they were emphasizing the Arctic... by the way, these letters, I never actually saw. They’re a secret, and so secret that nobody ever sees them. We all hear about [our] particular area, and you’re told all is in the letter... [the letter] puts the priority on the Arctic... It means that there is an emphasis based on [different departments] specific mandate.²²⁷

For Santos-Pedro, the PMO focus on Arctic sovereignty as a priority means an emphasis on the regulations and Acts administered by Transport Canada that impact the region. He states that although Transport Canada puts out more regulations and Acts than any other department, the one that is most important to the Arctic is the *Arctic Waters*

²²⁴ Victor Santos-Pedro. Conversation with the author, March 8, 2012.

²²⁵ Santos-Pedro, Conversation with the author, March 8, 2012.

²²⁶ Ibid.

²²⁷ Ibid.

Pollution Prevention Act.²²⁸ Despite PMO guidance to promote Arctic sovereignty,

Santos-Pedro states that:

the spirit and sentiment of [the AWPPA] is very well described in its preamble... the word sovereignty does not appear in that ... and everything in the act is very straightforward and is actually dealing strictly with pollution prevention... if you go and read through the Act and you go and look at the shipping authority that the Act gives for regulations, there is nothing, nothing about sovereignty... The AWPPA has a very specific mandate and that's what I spent 20 odd years exercising on behalf of the minister, applying the Arctic Act requirement.²²⁹

Santos-Pedro's statements on sovereignty assertion and the role of the PMO in directing it are indicative of the organizational effects on Canada's Arctic foreign policy being examined here. He reveals that within the organizational culture of Transport Canada, Arctic regulations such as the AWPPA are not considered to be related to sovereignty. This affects Canadian foreign policy in that when directed by the PMO to focus on enhancing Arctic sovereignty, Santos-Pedro did not consider that enhancing the AWPPA would do so. This is in contrast to the fact that the AWPPA is, in fact, the centerpiece of the functional approach to sovereignty and is seen by DFAIT as being a sovereignty enhancing measure. While DFAIT clearly places an emphasis on environmental stewardship as a facet of Canadian sovereignty, that does not appear to be the case for the department responsible for administering the Act, Transport Canada. This disparity means that the practitioners within the two organizations are effectively speaking different languages and have fundamentally divergent views on the roots and nature of Canadian Arctic sovereignty.

On Transport Canada's Administration of NORDREG

²²⁸ Santos-Pedro, Conversation with the author, March 8, 2012.

²²⁹ Ibid.

When prompted on Transport Canada's administration of NORDREG, Mr. Santos-Pedro has a good deal of insight into the topic, especially regarding the 2010 decision to make registration mandatory. He confirms that the administration of NORDREG is Transport Canada's jurisdiction and that "when I was making the policy for whether NORDREG ought to be mandatory or not, the position of the department of transport was always a neutral position."²³⁰ Santos-Pedro says that this was the case because "NORDREG was not mandatory and 99.9 percent of the vessels, and I would say 100 percent of the foreign vessels ... complied with the non-mandatory [NORDREG]."²³¹

Santos-Pedro claims that this level of compliance was good enough for Transport Canada, which considered additional regulations and reporting requirements unnecessary and burdensome. He states that the organization's neutrality on the matter was bolstered by the fact that "for a long time I know, whether it was written down or not, that the department of foreign affairs did not want to make NORDREG mandatory, and they have a say because it becomes a jurisdictional issue."²³² Santos-Pedro adds that DFAIT later changed its position, and that ultimately the Canadian Coast Guard led the push to make NORDREG registration mandatory. According to Santos-Pedro:

The coast guard, who ... as far as NORDREG are concerned are a conduit ... they don't make the policy ... they are the ones a ship, a foreign ship, has to contact ... they have the hardware, the facilities ... [the coast guard] said it should be mandatory so that we know for sure that we are doing this because it's a regulated requirement, not because it's a guideline. So they often were pushing for this.²³³

When asked about whether NORDREG is substantially different than other reporting requirements, and therefore vulnerable to international criticism, Santos-Pedro

²³⁰ Santos-Pedro, Conversation with the author, March 8, 2012.

²³¹ Ibid.

²³² Ibid.

²³³ Ibid.

offered some valuable insights into the matter. He claims that NORDREG registration is a unique requirement imposed on shipping, particularly in that it requires ships to report before entering Canadian territorial waters.²³⁴ He states that the perspective of the International Maritime Organization (IMO), which he claims is a highly political forum despite its mandate to deal only with technical issues, is that if the Canadian government wants to impose regulations on foreign shipping, it should do so through them.²³⁵ He states quite candidly, however, that:

the consensus [at Transport Canada] is that if [NORDREG] went to the IMO, it would never have passed, because of the objections of certain countries, not least the United States, which is at the forefront... they don't want to report to anybody about anything... Why they want to stop it is because if you make an argument that the Northwest Passage is not inland waters, that they are international waters, then you want to go into those international waters. If you're not stopping anywhere, you don't report to anybody... that's the strong view of the American navy, [they] are the ones in the United States who feed that policy for the United States, and that's why we continue to have this so-called dispute over the Northwest Passage, and they ignore the fact that Canada put the baselines around the Arctic Archipelago in 1986 ... why they have not formally [objected to the baselines] is that they don't like the international courts either.²³⁶

Santos-Pedro reveals some interesting organizational effects at play in his description of the process to make NORDREG mandatory. For Transport Canada, which he describes as a purely technical and regulatory agency, mandatory registration was a non-issue, and in fact considered burdensome. This organizational perspective shows strong signs of the effects of standard operating procedures on decision making. Applying a logic of appropriateness, Transport Canada regulators such as Mr. Santos-Pedro looked at what regulations already applied similar to NORDREG in other Canadian waters and used them as a template for what ought to be done with NORDREG. As Santos-Pedro stated, he saw mandatory NORDREG reporting as unique, burdensome and unnecessary due to the fact that there was already nearly uniform compliance with the existing regime.

²³⁴ Santos-Pedro, Conversation with the author, March 8, 2012.

²³⁵ Ibid.

²³⁶ Ibid.

This was bolstered by the fact that the organizational culture that Mr. Santos-Pedro describes at Transport Canada considered the level of compliance with a non-mandatory NORDREG to be sufficient. Therefore the organization remained neutral on the matter, despite enthusiasm for the measure in other federal organizations. This discord between the organizations of the federal government on the role and nature of mandatory NORDREG registration, considered by some a keystone sovereignty enhancing initiative within the functional approach to sovereignty, reveals the role of organizational effects on shaping how different organizations view initiatives that are important in enhancing Canadian sovereignty and shaping Canada's Arctic foreign policy.

On the Imposition of Standards on Foreign State Vessels in the Canadian Arctic

Mr. Santos-Pedro offers some insights into the applicability of the AWPPA and NORDREG to foreign state shipping, given the limitations imposed by Article 236 of UNCLOS, the sovereign immunity clause. He reveals that this matter is not one that Transport Canada is keen to deal with, but that Article 12 of the AWPPA dictates that state ships are to be given special consideration, but are not to be exempted from the Act.²³⁷ State vessels entering Canadian waters must substantially comply with equivalent standards, which take into account the different design specifications of warships. Santos-Pedro states that the AWPPA is in conflict with international conventions and laws, as the wording of the Act is that state vessels must comply with environmental regulations. The wording of international conventions, conversely, is "the other way around. The state vessel is exempted; however, they are to comply with equivalent standards."²³⁸ While in

²³⁷ Santos-Pedro, Conversation with the author, March 8, 2012.

²³⁸ Ibid.

Santos-Pedro's view the end result of both wordings is the same, he concedes that "somebody could look at the AWPPA and say: "well that's in conflict with international principles of law applying to state vessels". It is."²³⁹

Mr. Santos-Pedro's comments on the application of domestic regulations to state vessels reveal some interesting organizational effects. Very telling, from the perspective of organizational effects on Canadian sovereignty claims, is the fact that Transport Canada appears unconcerned that the language of the AWPPA is clearly contrary to international law. As with the issue of NORDREG registration, Santos-Pedro reveals the organizational culture at Transport Canada to be more interested in outcomes than sovereignty issues, or even respecting precedents in international law. As Santos-Pedro states, even though he knows the AWPPA is contrary to international law, it doesn't matter so long as the end result is the same. This is in stark contrast to organizations such as DFAIT that are concerned with international law and the ramifications of domestic policy on Canada's Arctic foreign policy. It is also instructive on how organizational autonomy can lead to distortions in regulations, with a clear disconnect between DFAIT's focus on operating within the boundaries of international institutions and conventions and Transport Canada being preoccupied primarily with the technical effectiveness of regulations.

On the Development of the Polar Code

One of the area's where Santos-Pedro is able to offer the most valuable insights is in relation to the development of the Polar Code at the IMO, which became the 2002

²³⁹ Santos-Pedro, Conversation with the author, March 8, 2012.

*Guidelines for Ships Operating in Arctic Ice-Covered Waters*²⁴⁰ and 2009 *Guidelines for Ships Operating in Polar Waters*²⁴¹. Santos-Pedro was involved in the development of the Polar Code from its very inception. When prompted on the nature of the code, he claims that it was intended as a purely technical step in the evolution of international shipping norms rather than an enhancement of Arctic coastal state rights.²⁴² According to Santos-Pedro:

I can categorically state that because I started it. So I know. Nobody from foreign affairs called Transport Canada or called me and said you should do this... NORDREG only happened because foreign affairs changed their policy and decided that the timing was good to make NORDREG mandatory... on the other hand the Polar Code started for a number of reasons... by the early 90's we were fully aware that from a technical perspective the Arctic Shipping Pollution Prevention Regulations, which are the provisions under the AWPPA that provide technical construction requirements for ships operating in ice, that they were out of date, that they needed updating.²⁴³

Santos-Pedro claims that updating the AWPPA, and specifically the equivalent standards for the construction of ships operating in ice, was enormously expensive.²⁴⁴ He realized that the Russians, Germans and Finns were developing their own Arctic shipping construction standards, with their various classification societies “who were borrowing and stealing from the research that we did, and some that were doing their own research.”²⁴⁵ Therefore, numerous regulations for polar shipping were emerging. The potential ramifications became evident to Santos-Pedro in 1990 when:

the Germans brought a resolution to the [IMO] design and equipment subcommittee ... they said all vessels going into polar regions ought to comply with the classification society requirements for vessels operating in those regions. This was a big problem for Canada. There were two aspects. The one very significant one is that it didn't say anything about the Canadian Arctic regulations. That means that if that passed and was agreed internationally, even though it may be a guideline, it meant that a vessel could come into Canadian waters with a Lloyds or a Norske Veritas

²⁴⁰ See International Maritime Organization. *Guidelines for Ships Operating in Ice-Covered Waters*. (London: International Maritime Organization, 2002)

²⁴¹ See International Maritime Organization. *Guidelines for Ships Operating in Polar Waters*. (London: International Maritime Organization, 2009.)

²⁴² Santos-Pedro, Conversation with the author, March 8, 2012.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

construction and not take into account the Canadian [construction standards]. And, there was a second problem. From a technical perspective, we knew that the Lloyds rules were completely different from the DNV rules or the Bureau Veritas rules...²⁴⁶

Those two issues led Santos-Pedro and the Canadian government to oppose the German motion. He suggested that the two nations cooperate on developing international standards, however, and the widespread interest that resulted among nations and classification societies led to what is now known as the Polar Code.²⁴⁷

Santos-Pedro reveals that the development of the Polar Code has been controversial, leading to suspicion from the United States. The original negotiations on the Polar Code envisioned mandatory standards rather than guidelines. However, Santos-Pedro states that the American's vetoed the concept because the State Department didn't trust the motives behind Canada's backing of the initiative, despite the US Coast Guard's vigorous participation.²⁴⁸ He claims:

they suspected that there was something wrong because the Canadians were leading it. They didn't know what it was, because it was nothing but purely technical ... if anything it was for Canada to save money ... and so that when a ship came to Canada and said we are classification such and such, we would know what the heck that is ... the [new] seven Polar classes, everybody knows what that is ... that was the intention of participating, an update to the very antiquated Arctic classes that are now in the Arctic Shipping Pollution Prevention Regulations.²⁴⁹

When pressed, Santos-Pedro conceded that there were some pressing sovereignty concerns related to the negotiation of international shipping standards, namely the possibility of international standards trumping domestic ones. He argues that from Transport Canada's perspective "if everything is fine and the polar code is as stringent as Canada believes it ought to be ... then whether there is a 200 mile line or a 12 mile line, it doesn't matter. The lines disappear, because everyone agrees this is a requirement for a

²⁴⁶ Santos-Pedro, Conversation with the author, March 8, 2012.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

vessel to operate in these waters.”²⁵⁰ However, he concedes that there are some potentially worrisome interactions between an international Polar Code and the rights that Canada claims under Article 234 of the UNCLOS treaty.

When prompted on whether the Polar Code could constitute a restriction on allowable environmental measures under Article 234 of UNCLOS, Santos-Pedro offered some interesting insights. The issue at hand is whether the wording of Article 234, which requires that environmental regulations created under the article “shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence”²⁵¹, restricts the domestic right to enforce requirements in excess of international standards. Asked if this clause means the Polar Code could limit Canadian regulations, Santos-Pedro stated that:

This is the crux of the question. If everybody agrees that [the provisions of the Polar Code] are the best based on the evidence, that these are the best requirements, then there is no problem ... the minute that there is a dispute ... if we believe that we have to ask for additional requirements, including out to 200 miles, how does that get resolved? And that is not a technical issue but it is the application of the technical requirements that is crucial to the resolution of the issue.²⁵²

While the negotiation of the Polar Code was initiated by Santos-Pedro, DFAIT became involved in negotiations once it became apparent that the code could have sovereignty ramifications. Santos-Pedro states that:

When development of the mandatory polar code started ... because Transport Canada is the representative at IMO for the government of Canada, foreign affairs [was] not attending the meetings as a matter of course... The minute that there was [a proposal] to make the Polar Code mandatory, Transport Canada ... sought a mandate from Cabinet, from the government of Canada, to negotiate the Polar Code. And in seeking that mandate it brought in other departments that have an interest, but mainly foreign affairs. So we in Transport Canada went to foreign affairs and we presented to them: ... [that] these technical developments [have] ramifications that implicate other jurisdictional issues such as the law of the sea application and etcetera, clause 234 and etcetera, and therefore foreign affairs needs to be directly involved, not just informed. Ever since the

²⁵⁰ Santos-Pedro, Conversation with the author, March 8, 2012.

²⁵¹ United Nations. “United Nations Convention on the Law of the Sea.” Accessed on March 27, 2011. http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf, p.116

²⁵² Santos-Pedro, Conversation with the author, March 8, 2012.

mandatory Polar Code has been discussed at IMO, foreign affairs, along with Transport Canada, has participated in the discussion.²⁵³

Mr. Santos-Pedro's comments on the creation of the Polar Code offer a window onto the effects of Transport Canada's organizational culture on Canada's Arctic sovereignty claims and Arctic foreign policy. In outlining the initial development of the Polar Code, Santos-Pedro again suggests an organizational culture at Transport Canada that is above all concerned with technical proficiency rather than sovereignty issues. The fact that Transport Canada, with its focus on technical matters, is the representative for Canada at the IMO has substantial sovereignty ramifications. While the IMO appears to be a technical and apolitical body, Santos-Pedro claims that it is not. Furthermore, the case of the Polar Code demonstrates that even technical matters can have serious ramifications for Canada's Arctic sovereignty claims, and Canada's Arctic foreign policy more generally. A less astute Transport Canada observer of the German regulations at the IMO may not have recognized their sovereignty ramifications, thereby threatening Canadian Arctic sovereignty. As Transport Canada does not have a mandate to defend Canadian sovereignty, it is eminently possible that equally problematic developments at the IMO could go unnoticed in coming years.

While for Santos-Pedro the interactions between domestic regulations based on Article 234 of UNCLOS and the Polar Code are irrelevant so long as the international standards are sufficient, this is not necessarily the case for DFAIT. In seeking technically proficient standards, in accordance with Transport Canada's standard operating procedures, Santos-Pedro initiated an international process that has substantial Arctic sovereignty ramifications, a matter that Transport Canada's official mandate did little to

²⁵³ Santos-Pedro, Conversation with the author, March 8, 2012.

avert. The Polar Code is therefore a prime example of how regulators acting within their mandate and seeking purely technical outcomes can affect Canada's Arctic sovereignty and alter its Arctic foreign policy.

The Polar Code negotiations also demonstrate how semi-autonomous organizations with distinct and separate mandates and organizational cultures can nonetheless affect the strategies and mandates of other organizations. By pursuing the Polar Code at the IMO, Transport Canada affected Canada's Arctic foreign policy and its relationship with the United States. This is regardless of the fact that the conduct of foreign policy falls under the mandate of DFAIT. Thus, DFAIT was forced to respond to a foreign relations problem with a major ally that was created by Transport Canada's failure to foresee the sovereignty ramifications of its pursuit of technical standards to which the Americans objected. The fact that Transport Canada did not foresee sovereignty ramifications is evidenced by Santos-Pedro's comments that if the IMO regulations were proficient, then state boundaries would disappear and become unimportant. While this may be the case for an organization such as Transport Canada that focuses purely on technical regulatory issues, it is unlikely that DFAIT would take a similar view, regardless of the technical adequacy of international regulations. This difference is strongly rooted in organizational cultures. Whereas DFAIT views matters from the perspective of maintaining and defending Canadian sovereignty, Transport Canada is concerned primarily with the technical proficiency of regulations.

The Canadian Coast Guard

The Canadian Coast Guard (CCG) is the primary government agency operating physical assets in the Arctic waters, with the capacity and mandate to perform a variety of tasks in the region. The mandate of the CCG will be outlined below, along with its primary activities in the Canadian Arctic. This will be followed by the presentation of two interviews conducted with current and past members of the CCG and an examination of the agency's organizational perspectives on Arctic sovereignty. The first interview was conducted with John Adams, Associate Deputy Minister and Commissioner of the Canadian Coast Guard (Retired) 2003-2005. Mr. Adams offers many insights into the CCG's organizational culture and perspectives, especially since he is retired from the agency and therefore more at liberty to speak on Arctic sovereignty issues. Further, the fact that he was at the pinnacle of the CCG, as Commissioner, means that he is highly capable of offering informed opinions on the subject matter. The second interview was conducted with Assistant Commissioner of the CCG, Wade Spurrell. As a current high ranking member of the CCG, Mr. Spurrell is able to offer some perspectives on the CCG's organizational culture that are invaluable when viewed in tandem with Mr. Adams comments. The interviews conducted with Mr. Adams and Mr. Spurrell are unique and exclusive to this paper. They have been cleared through the University of Calgary Conjoint Faculties Research Ethics Board.

The CCG's Arctic Mandate

The mandate of the Canadian Coast Guard, as contained in the *Oceans Act* and *Canada Shipping Act*, renders the agency responsible for providing a number of maritime services. The services the CCG is mandated to provide include: Aids to navigation, maritime communication and traffic management, icebreaking, marine search and rescue,

pollution response, and supporting other government organizations with the ships, aircraft and other services available through the agency.²⁵⁴ The CCG states as its mission to “support government priorities and economic prosperity and contribute to the safety, accessibility and security of Canadian waters.”²⁵⁵ The official designation of the CCG is as a special operating agency of Fisheries and Oceans Canada.²⁵⁶ For the purposes of this paper, however, the CCG will be examined in its own right, not within the aegis of the Department of Fisheries and Oceans (DFO). This is possible due to the fact that the CCG has a high degree of operational independence from the DFO and that its mandate is directly relevant to the issue of maritime sovereignty in the Arctic waters, whereas DFO’s involvement is more peripheral.

On the Canadian Coast Guard’s Enforcement Role

The interview with Mr. Adams began with an examination of the CCG’s enforcement role. Mr. Adams argues that the CCG does not really have an enforcement role, and instead that they conduct search and rescue, provisioning and navigational roles in the Arctic.²⁵⁷ While Adams generally argues that the CCG acts only to support the enforcement role of other departments, he allows that there is a responsibility within the agency for environmental protection, response and clean up in Canadian Arctic waters.²⁵⁸ He goes even further, stating that:

We do look after the waters environmentally, clean them up as necessary, and [the CCG] do have an enforcement responsibility that if they see people abusing the environment they can stop them

²⁵⁴ Canadian Coast Guard. “Mission, Vision and Mandate”. Last modified February 1st, 2012. <http://www.ccg-gcc.gc.ca/eng/CCG/Mission>

²⁵⁵ Canadian Coast Guard. “Mission, Vision and Mandate”

²⁵⁶ Ibid.

²⁵⁷ John Adams, Conversation with the author, March 29, 2012.

²⁵⁸ Adams, Conversation with the author, March 29, 2012.

from that point of view ... but if people refuse to stop, [the CCG] don't have any real enforcement capacity or responsibility in that sense. They'd have to bring in either police, Canadian forces or some other enforcement authority.²⁵⁹

When asked whether Article 236 of the UNCLOS treaty, the sovereign immunity clause, was a complicating factor for the CCG's environmental enforcement mandate, Mr. Adams was able to provide some insights. He states that:

There has always been a concern, you know, because of course there is some debate as to: Are those waters Canadian waters or international waters? And so you've got some countries that simply say we don't think you should be imposing those [regulations], and Canada has been pretty emphatic, well we're going to be there and were going to impose ... because of the limitations of the capacity to exert physical sovereignty, the best we can do is monitor the vessels that are there using other means, you know basically satellite imagery. So the challenge is: Do we have the capacity to enforce? And the answer is not really. And so all we can do is monitor and report...²⁶⁰

Adams states that the inability to enforce regulations against vessels, and particularly state vessels, in the Arctic has some practical ramifications for the CCG:

We honestly, sometimes, don't know what vessels are doing [in the Arctic waters], as they say they're there to do eco-tourism or something but they seem to spend a lot of time in the same places every year. And you ask yourself well does that really make sense? There's no way of knowing. They're not about to cooperate and we have not got the physical capacity to check with every vessel, and in fact we don't have the authority to inspect those vessels to know what's on them and what isn't on them.²⁶¹

Related to the constraints the CCG faces in enforcing regulations against non-compliant shipping, Adams had some interesting views as to why the coast guard has not been given a constabulary role in the Arctic waters. He claims that cost has been a major factor, with the arming of ships and coast guard personnel requiring substantial new funds.²⁶² He also questions the need for armed vessels, given the fact that Canada already has a navy, asking:

Does Canada really need two navies? Because the coast guard vessels are not weapons platforms ... and it would take weapons to enforce [regulations]. If you start making coast guard vessels weapons platforms, they're not going to have the capacity to do what they really should be doing,

²⁵⁹ Adams, Conversation with the author, March 29, 2012.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Ibid.

which is ... search and rescue and maritime environment etc... and it changes the whole nature and tone of the coast guard. If you want enforcement go to enforcement agencies. If you want safe waters, safe and clean waters, go to the coast guard ... it's been a question of mandate and money.²⁶³

An interesting feature of Adams comments related to the CCG's aversion to an enforcement role is that even though he states that there are ships the CCG should be investigating, and has not been able to, he places the onus on the Royal Canadian Navy (RCN) to provide this service. In arguing that it is the RCN that should handle hostile and non-compliant shipping in the Arctic, Adams suggests that the CCG is employing a logic of appropriateness, matching the situation in the Arctic to general rules and standard operating procedures developed in other Canadian waters, where the RCN does in fact play an active role. In the Arctic, however, the activities of the RCN are severely limited by weather and ice conditions, and they often lack physical assets in the region. Adams admits as much at a different point in the interview, stating "the cooperation with the Canadian Forces is more in the Grand Banks, in the Atlantic ... and there they do come out and work with the coast guard ... they do very little in the Arctic."²⁶⁴ Therefore, the CCG is employing a logic of appropriateness, wherein the RCN's enforcement support is assumed, despite the fact that the Arctic is a unique operating environment for both agencies.

The fact that there may not be a capacity to enforce Canadian laws and regulations against non-compliant shipping in the Arctic waters at any given time constitutes an important challenge for Canada's Arctic sovereignty claims. While Spurrell and Adams both place a premium on the importance of the CCG's physical presence in the Arctic, the reality is that the legal foundations of Canadian sovereignty require more.

²⁶³ Adams, Conversation with the author, March 29, 2012.

²⁶⁴ Ibid.

If the CCG is monitoring non-compliant shipping in the Arctic, especially transiting the Northwest Passage, but its captains in the region are unable or unwilling to interdict or investigate shipping as necessary, a negative legal precedent could be set. As outlined in the last chapter, if vessels transit the Northwest Passage without Canadian permission, the functional requirement for an international strait could be met. There are also risks to the functional approach to sovereignty, which relies on regulatory compliance, from non-compliant shipping. If Canada does not have the capacity to enforce the AWPPA, then the logic of domestic regulations could be undermined. The potential for negative precedents being set demonstrates how organizational effects, rooted in a lack of capacity and entrenched organizational cultures, are affecting Canada's Arctic sovereignty claims in international law.

On Mandatory NORDREG Registration

Mr. Adams states that the enactment of mandatory NORDREG registration was uncomplicated for the CCG. He argues that the NORDREG requirement is similar to the reporting requirements in other Canadian waters. Adams states the impetus for mandatory reporting as wanting to know who was operating in the Arctic, whether they were doing what they were supposed to be doing in the region, and to understand the number and type of vessels that are in the region so as to facilitate a safe environment.²⁶⁵ For Adams, the necessity of understanding the aforementioned factors was rooted in the fact that “the only vessels that can work in [the Arctic] environment with a relative safety are the

²⁶⁵ Adams, Conversation with the author, March 29, 2012.

Canadian Coast Guard breakers. So they really did want to have some control over who was in the water and in what numbers.”²⁶⁶

Mr. Spurrell also offered some organizational insights on the matter of mandatory NORDREG registration. He claims that it is a purely operational requirement from the CCG’s perspective, and that a mandatory NORDREG simply assists the agency in carrying out its duties. He states that while Transport Canada and other regulatory agencies may not see the need for mandatory registration, “from an operational standpoint we see [NORDREG’s] value. We have a role in it from the collection and reception of information given our MCTS centres. That may be one reason it’s got a little more legs in the coast guard.”²⁶⁷ Spurrell states that NORDREG is not a unique reporting requirement, but that it is similar to requirements in other Canadian waters such as ECOREG on the east coast.

One area where Adams and Spurrell’s comments seem to demonstrate a strong divergence of opinion between the CCG and other federal organizations is in its treatment of mandatory NORDREG registration. They claim that mandatory NORDREG registration is similar to reporting requirements in other Canadian waters, thus making it a relatively run-of-the-mill proposition. This is in stark contrast to Santos-Pedro and Transport Canada, who consider the requirement onerous and ultimately unnecessary, or even DFAIT, where NORDREG is considered a sovereignty enhancing measure. These differences suggest that organizational cultures are at play. Transport Canada, the regulatory body, seems to be concerned primarily with regulatory effectiveness, whereas

²⁶⁶ Adams, Conversation with the author, March 29, 2012.

²⁶⁷ Wade Spurrell, Conversation with the author, May 15, 2012.

the CCG is interested in mandatory registration from a practitioner's perspective, to assist the agency in carrying out its operational duties.

The broader implications of this disconnect, from a sovereignty perspective, is that the divergence of views on the nature and appropriateness of mandatory NORDREG registration throws cold water on claims that it enhances Canadian sovereignty. The fact that the agency that administers NORDREG registration sees it as a standard technical requirement, similar to ones in other waters, and the organization that administers the regulation considers it an unnecessary nuisance to shipping, does not speak well of its role in cementing Canadian sovereignty claims. This is due to the foundations of NORDREG's role as a sovereignty enhancing measure, namely the functional approach to sovereignty.

The functional approach to sovereignty essentially justifies extended sovereign rights for Canada in the Arctic Ocean due to the risks and difficulties presented by the Arctic environment. The difficulty becomes that if the Canadian organizations responsible for managing and enforcing the act claim that it is unnecessary, as in Transport Canada's case, or a standard technical requirement similar to that in other waters, as in the CCG's case, the central features of the functional approach are invalidated. These features include: that the regimes created under the functional approach to sovereignty are crucial for environmental protection and safety, which in this case Transport Canada seems to contest, and that they require exceptional measures to be taken, which in this case the CCG seems to deny based on the regime's similarity to those in other Canadian waters. The cumulative effect of the fact that neither of the two primary organizations involved with NORDREG consider it to be a sovereignty

enhancing measure in line with the functional approach to sovereignty throws some cold water on DFAIT's assertion that the regime enhances Canadian sovereignty.

The Royal Canadian Navy

The final organization examined in this chapter is the Royal Canadian Navy (RCN). The RCN operates the only weapons platforms in Canada's Arctic waters and therefore has an important role in enforcement and interdiction. Further, the forthcoming Arctic/Offshore Patrol Ships (AOPS) will enable the RCN to operate in the Arctic waters for a longer season and play a more active role in enforcing Canadian sovereignty in the region. The mandate of the RCN will be examined, along with its organizational perspectives on Arctic sovereignty and how said perspectives might affect Canadian sovereignty claims and foreign policy.

The RCN's organizational perspectives on Arctic sovereignty will be examined by way of an interview conducted with Captain Serge Bertrand, the current Director of Maritime Strategic Communications. Mr. Bertrand offered many invaluable insights into the RCN's organizational culture and the manner in which it conceives of and pursues Arctic sovereignty. The fact that Mr. Bertrand is responsible for crafting and disseminating the RCN's long term strategic goals and vision means that he is uniquely placed to comment on the RCN's organizational culture as well as the organizational effects at play in creating policy relating to Arctic sovereignty. The interview conducted with Mr. Bertrand is unique and exclusive to this paper. It was conducted in accordance with the University of Calgary Conjoint Faculties Research Ethics Board.

The RCN's Mandate

The mandate of the Royal Canadian Navy gives the organization a number of domestic and international responsibilities. Domestically, the RCN describes maritime defence and security as its first priority, “ensuring that Canada’s maritime approaches are effectively monitored and protected.”²⁶⁸ The RCN’s domestic role has increasingly meant an emphasis on the Arctic, as recent policy documents and organizational planning surrounding the Arctic/Offshore Patrol Ship (AOPS) program show. The forthcoming AOPS program will allow the RCN to apply its mandate in the Arctic waters, including:

conducting armed sea-borne surveillance of Canada’s waters, including the Arctic; providing government situational awareness of activities and events in these regions; and cooperating with other elements of the Canadian Forces and other federal government departments to assert and enforce Canadian sovereignty, when and where necessary.²⁶⁹

The RCN has been described as an “operational tactical institution”²⁷⁰ and operates within the larger structure of the Canadian Forces. Despite the fact that the RCN is officially a part of the Canadian Forces, for the purposes of this investigation it will be viewed independently. The most important reason for this is that the RCN is a semi-autonomous organization with its own policy agenda and organizational activities in the Canadian Arctic. It is also the most important division of the Canadian Forces with regards to maritime issues in Arctic sovereignty, having substantial physical assets that operate in the Arctic waters at certain times, a presence that will grow with the introduction of the AOPS capability.

On the RCN’s Strategic Goals in the Arctic

²⁶⁸ National Defence and the Canadian Forces “Canada’s Navy at a Glance.” Last modified July 16, 2011. http://www.navy.forces.gc.ca/cms/12/12_eng.asp

²⁶⁹ National Defence and the Canadian Forces. “Arctic/offshore Patrol Ship (PMO AOPS).” Last modified April 3, 2012. <http://www.materiel.forces.gc.ca/en/aops.page?>

²⁷⁰ Serge Bertrand, Conversation with the Author, March 29, 2012

When questioned on the role of the RCN in Canada's Arctic, Mr. Bertrand explains that its current mandate in the region is being augmented by the incoming AOPS platforms. For Bertrand, "this is an unprecedented new capability ... that is going to require from us ... a whole new range of practical seamanship skills."²⁷¹ The increase in Arctic operations will mean more cooperation, according to Bertrand, due to the operational difficulties posed by the Arctic waters. He cites the recent search and rescue treaty and initiatives through the multilateral Arctic Council as evidence of this focus, claiming that:

Those [initiatives] are well understood by naval officers, and it was in fact the Canadian Forces ... that suggested: lets extend invitations to the U.S. Coast Guard and the U.S. Navy and the Danes to operate with us during Operation Nanook. Let's have an international component to working up here. This is the traditional application of naval diplomacy to the national diplomacy. Why? Because it is generally easy to do and is relatively low risk and helps to create bridges of understanding and trust that are essential as nations resolve their diplomatic or legal differences.

While the RCN may not have a mandated role in negotiating or delineating Canada's legal rights in the Arctic waters, Bertrand makes it clear that the organization is nonetheless vigorously pursuing its own interpretation of the law of the sea and Canada's role within the international framework it creates. Bertrand places a great emphasis on the *Horizon 2050* strategic document being developed by the navy, suggesting that it embodies a set of principles that outline the vision of the RCN for the coming decades.²⁷² The organizing principle of the document is described as "a regulated ocean commons for good order at sea both at home and abroad, understood as the international framework of law called UNCLOS."²⁷³

²⁷¹ Bertrand, Conversation with the Author, March 29, 2012

²⁷² Ibid.

²⁷³ Ibid.

Mr. Bertrand explains that there is a strong focus on the international maritime regime established by the UNCLOS treaty inherent in the RCN's long term strategic planning. He states that this focus is rooted in the organizations desire to:

use an argument around the Arctic, an argument around international law, in order to tell Canadians why it is they need a navy ... we decided to declare Canada a maritime nation, not simply because of its history or its geography, but because of these two more pertinent factors: Because it trades in a globalized system ... and the fact that navies are vital in defending that global system.²⁷⁴

Bertrand states that the Arctic plays a central role in the RCN's general emphasis on UNCLOS and Canada's maritime nature, describing the region as:

a parable for all the changes that we see at work today, those drivers and trends at work in the international system... we see [changes] happening in the Arctic more clearly than anywhere else, because we have the avatar of the fading ice-cap. And what is it about the Arctic, in terms of massive change along many trajectories at the same time: Legal, social, cultural, technological, economic, you name it. What is it about the Arctic that teaches us about things in other parts of the world that we will also need to contend with?²⁷⁵

Bertrand states that RCN has been a proponent of international cooperation in the Arctic at the strategic level, differing from other federal organizations, particularly DFAIT, which is mandated to craft Canada's foreign policy aims. He explains that the firm application of the UNCLOS treaty to the Arctic will result in vast wealth creation, ensuring a strong strategic imperative for cooperation in the Arctic.²⁷⁶ Bertrand explains the RCN's ultimate strategy and policy aims, stating:

Now no one, no one in this town has ever said that [there is a strong strategic imperative for Arctic cooperation] except the navy. That's not the way the government talks, that's not the way DFAIT thinks ... but there are a few strategic thinkers in the navy, myself and two admirals that I've worked for in shaping these issues, who think along these lines. We think in grand strategic terms, and so we look for the ... grand strategy in the Arctic. And the grand strategy for the Arctic is cooperation. That's what makes the Arctic unique. Not simply because it is a magnificent place, but because it is so different from, say, the South China Sea, where you have a completely different geography that will not permit cooperation to succeed. Now, you haven't heard that

²⁷⁴ Bertrand, Conversation with the Author, March 29, 2012

²⁷⁵ Ibid.

²⁷⁶ Ibid.

argument anywhere else ... no one in government has ever expressed that. But here's what we have been doing ... we're reshaping the dialogue that is going to change Canadian Policy itself.²⁷⁷

Bertrand's comments reveal some interesting organizational effects at work within the RCN, effects that have broad implications for Canada's Arctic foreign policy. Essentially, Bertrand outlines that the RCN has its own organizational culture which prizes cooperation and a focus on the UNCLOS treaty, and that it has been aggressively advancing this approach with the aim of influencing Canada's Arctic foreign policy. The activities that Bertrand discusses, such as the RCN's engagement in naval diplomacy in the Arctic and its advocacy of a foreign policy that stresses the role of Canada as a maritime nation, are clearly meant to influence the direction of Canada's Arctic foreign policy. This presents an interesting case study in organizational theory in that it is not simply that organizational effects are altering foreign policy outcomes, but that the RCN appears to be engaging in a concerted effort, at the organizational level, to shape the development of policy that is specifically mandated to another federal department. This raises the fact that organizational effects are not necessarily inadvertent or implicit, but can be deliberately fostered.

Another interesting implication of Bertrand's statements is that the RCN is altering the foundation upon which many of Canada's claims to Arctic sovereignty rest. By declaring Canada a maritime nation and placing an emphasis on the UNCLOS treaty as the keystone of the international maritime regime, the RCN is advocating a departure from Canada's traditional pursuit of coastal state rights such as Article 234 or its use of straight baselines. While Canada's Arctic sovereignty claims are arguably legitimate under the UNCLOS treaty, as examined in chapter four, they were nonetheless originally

²⁷⁷ Bertrand, Conversation with the Author, March 29, 2012

pursued outside of that treaty's aegis. The initial development of Canada's sovereignty claims under the functional approach to sovereignty was originally outside of both conventional and customary international law. Further, the application of straight baselines to delimit the historic internal waters of the Arctic Archipelago was done according to customary law, twenty years before Canada ratified the UNCLOS treaty. While these initiatives have come to be accepted within conventional international law, they were initially considered an expansion of coastal state rights. While the RCN's decision to place an emphasis on Canada's maritime nature and the role of conventional international law will not retroactively affect the validity of the aforementioned claims, they are effectively changing the nature of Canadian Arctic foreign policy in such a way that could seriously affect the future development and evolution of Canadian claims.

On Interactions between the RCN and the Harper Government

While Mr. Bertrand outlined the manner in which the RCN is attempting to drive the Canadian federal government's Arctic dialogue and strategy, he also explained how the organization has been prodded in the Arctic's direction by the Harper government. Bertrand states that the Harper government was invested in the issue of Arctic sovereignty when it came to power, and that the government had "a very real and genuine sensitivity to how special [the Arctic] was and how important it was ... as part of the national fabric."²⁷⁸ He cites an early discomfort within the RCN towards the government's plan to give them ice-breaking capabilities, due to both the traditional

²⁷⁸ Bertrand, Conversation with the Author, March 29, 2012

mandating of ice-breaking to the CCG and concerns that Arctic capabilities would strain the navy's funding.²⁷⁹ Bertrand explains that:

[Practitioners in the RCN] looked at the issue in a zero-sum way. And that view was still fairly widely held even after we had put the government's desire to be able to operate in the north in the proper framework of: tell us the effect you want to achieve, and we'll come back and tell you how we'll do it, which led to the Arctic/Offshore Patrol Ship ... So there were a lot of folks that looked at it and said: Well you know, seven billion dollars on those things means seven billion dollars less for replacing the destroyers and the frigates and the tankers.²⁸⁰

Bertrand says despite initial resistance, members of the RCN began to see the importance of the Arctic to the organization. He observes that:

[The Arctic is] an inherently maritime theatre by reasons of geography, and international law, and economics. [The RCN] own this, this is our backyard, and that argument took a long time to take hold ... The way we changed the thinking inside the navy around the Arctic/Offshore Patrol Ship was basically to build that argument up. The Arctic ... is our future. The Arctic is a parable for 21st century change. We will go up there because it is a maritime theatre of operations. We will be a major, if not the major, player in the Arctic for decades to come. Oh, and by the way here's the tool that we're building around that.²⁸¹

Bertrand states that attitudinal changes within the RCN did not occur rapidly, however, rather that:

In order for that context to be fully understood and inculcated within the navy itself, within the institution, was a process of two to three years. There were many people who were not at all comfortable with where the government wanted us to go in terms of Canada first. There was significant institutional resistance to that because they didn't understand how important it was geopolitically... so there was a process of realigning the rank and file around how crucial getting the Arctic/Offshore Patrol Ship was to the navy, how fundamental it would be in redefining the navy's relationship with the country and how it was moving us to new constituencies because of the work we'd be doing there in coming years and decades.²⁸²

Bertrand claims that while there were challenges in adjusting the organizational culture of the RCN to the reality of increased Arctic engagement, there was also a process of shaping the Harper government's requests. Bertrand states that the Harper government was initially looking to purchase existing ice-breaking technology from other states, but

²⁷⁹ Bertrand, Conversation with the Author, March 29, 2012

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Ibid.

that existing technologies did not satisfy the RCN's operational needs in the Arctic.²⁸³

These operational requirements, rooted in the vast distances and harsh conditions of the Canadian Arctic waters, led the RCN to ensure that its own guidelines were used.

According to Bertrand:

So [the delineation of Canadian operational requirements] was a process that thank goodness the minister understood, that there's a way this is done, how requirements are formalized, defined, evaluated and then how design emerges from that through engineering work ... and out pops the design that we now know as the Arctic/Offshore Patrol Ships ... so that the whole process was [an] interesting exploration of the military/civil relationship, and not one that is uncommon to any newly installed government who's policy makers do not understand the complexities of the defence business and who have to be, quite literally, schooled in how we do things in order to provide us with the appropriate leadership that we need. So that was a lengthy process as well.²⁸⁴

Bertrand's statements offer some crucial insights into how organizational cultures can adapt, and on the limitations of central direction. The manner in which the RCN shaped the government's demands is a textbook example of Allison's statement that government leaders can disturb an organization's behavior, but are unable to precisely control it.²⁸⁵ Bertrand demonstrates how the RCN's organizational culture adapted over time to the new demands being placed on it, albeit within Allison's formulation. Indeed, the Harper government was not able to impose its demands upon the RCN, but rather those demands were modified by the organization to meet its own needs and operate within its own organizational tendencies. The RCN modified the government's demands by applying its standard operating procedures regarding procurement to the process, thereby modifying the outcome of the government's push for an increased role for the RCN in sovereignty assertion. Regardless of the merits of the changes made by the RCN relative to the initial demands of the government, it suffices that the outcomes were

²⁸³ Bertrand, Conversation with the Author, March 29, 2012

²⁸⁴ Ibid.

²⁸⁵ P. Zelikow and G. T. Allison. *Essence of Decision: Explaining the Cuban Missile Crisis*. (New York: Longman, 1999.), p.143

substantially shaped by organizational effects within the RCN. These organizational effects, resulting in the AOPS capability, will undoubtedly have an impact on Canada's Arctic foreign policy and perhaps even the strength of Canadian sovereignty claims in the Arctic. This is due to the fact that the specific capabilities and limitations of the AOPS vessels will dictate the enforcement and interdiction options available to the Canadian government and the RCN in the Arctic region for decades to come.

Conclusion

The Arctic is an emergent region, politically, socially, economically and geographically, where major issues are being grappled with after decades in which southerners neglected the region. This newfound southern interest in Arctic issues, driven largely by globalization, global warming and the region's economic potential, has led to an explosion of academic works grappling with all nature of issues in the Arctic. As outlined in chapter two, there are numerous ways in which academics and stakeholders in the Arctic have cast the dominant risks and opportunities in the region, with the Canadian government largely maintaining a liberal institutionalist approach to issues in the region.

While the current sovereignty debate is heavily influenced by the different lenses through which it can be viewed, an understanding of the historical and legal context of the debate remains invaluable, as provided in chapters three and four. The historical context of the evolution of Canadian claims to sovereignty over its Arctic waters demonstrates the importance of liberal institutions and the exceptional nature of the Arctic environment in the evolution of those claims. Understanding the legal context of Canadian claims, and the manner in which they are contested, is also invaluable, not only to better understand the claims themselves, but also the dynamic by which they evolved

and were legitimated through international law. The historical and legal contexts provided in this paper allow for a more thorough understanding of the relevance of current debates and therefore of the impact of organizational effects on Canada's approach to Arctic issues. While understanding these issues in isolation is laudable, given the Arctic's increasing importance in the international arena, where this paper truly contributes to the academic literature on the modern Arctic is in examining the role of federal organizations in shaping Canada's Arctic foreign policy and their impact on Canada's Arctic sovereignty claims. While the analysis and insights gleaned from the interviews conducted for this paper, and understood within the context of Allison's organizational model, are of limited scope, they nonetheless address a matter of substantial importance and relevance which has not been dealt with in the existing literature.

The organizational effects drawn from the interviews presented in chapter five reveal the manner in which the semi-autonomous organizations of the federal government have influenced Canada's approach to Arctic sovereignty, both in its legal claims and foreign policy. DFAIT, while remaining a tightly managed department whose organizational culture is not readily apparent, clearly places a strong emphasis on the continuity of the legal foundations of Canada's Arctic sovereignty claims, even while implementing evolving political demands in its construction of Canada's Arctic foreign policy, as confirmed by the DFAIT interviewee. The tightly guarded messaging employed by DFAIT is not apparent in Transport Canada's approach to Arctic issues, however, with Victor Santos-Pedro offering numerous, detailed and candid insights into

the manner in which the regulatory agency conceives of sovereignty issues and influences Canadian claims and foreign policy.

The most important revelations in Santo-Pedro's statements are related to Transport Canada's preference for technical proficiency over the defence or assertion of sovereignty, with the negotiation of the Polar Code demonstrating how technical matters can have sovereignty ramifications and how mandates are not effective in delineating organizational roles. The discussion over the decision to make NORDREG mandatory was a key example of how Transport Canada prefers technical proficiency, which the voluntary NORDREG delivered, over the assertion of sovereignty through mandatory NODREG registration, which was considered burdensome and unnecessary. This focus on technical proficiency at Transport Canada is further reinforced by Santos-Pedro's account of the negotiation of the Polar Code. The development of the Polar Code as a new international shipping norm could affect the foundations of Canada's sovereignty claims in its Arctic waters by limiting the impact of Article 234 of the UNCLOS treaty. The case of the Polar Code also demonstrates the potential risks for Canada's Arctic foreign policy of having an organization without the maintenance of sovereignty or the conduct of foreign policy in its mandate represent Canada at an international body. The fact that Santos-Pedro initiated a process that may weaken Canadian claims and has altered the nation's Arctic foreign policy speaks to the ineffectiveness of mandates in delineating responsibilities among federal organizations.

The interviews with Mr.'s Spurrell and Adams of the Canadian Coast Guard also revealed organizational effects which have ramifications for Canada's Arctic foreign policy and sovereignty claims, notably related to the lack of enforcement capacity in the

Arctic. The lack of an enforcement capacity in the Arctic for the CCG poses serious risks for Canada's Arctic sovereignty claims. The fact that there are suspiciously behaving vessels in the north that the CCG would like to investigate but lacks the capacity to do so, as Adams stated, has the potential to set negative precedents in international law and undermines DFAIT's claim that Canada controls all maritime navigation in the Arctic waters.²⁸⁶ This inability to enforce Canadian laws and regulations in the Arctic not only imperils Canada's claims in international law; it affects Canada's capacity to advance an Arctic foreign policy in which stewardship and control of the Arctic waters are key features.

Finally, the interview conducted with Mr. Bertrand on the Royal Canadian Navy's approach to Arctic sovereignty issues revealed some of the most interesting and explicit organizational effects, where the organization's role in shaping Canada's Arctic foreign policy was rooted in a concerted effort to do so, despite the fact that the conduct of foreign policy is mandated to DFAIT. One of the most evident ways in which the RCN is driving Canada's Arctic foreign policy is in its branding of Canada as a maritime nation and through the use of naval diplomacy. With its organizational culture that strongly supports the international maritime regime established by the UNCLOS treaty and its attempt to drive Canada's Arctic foreign policy in the same direction, the RCN is moving Canada away from its traditionally activist pursuit of coastal rights in international law and may be affecting the manner in which future claims will be advanced. In addition to its attempt to drive foreign policy, the RCN has itself been the subject of political interference that has sovereignty assertion as its primary aim.

²⁸⁶ Department of Foreign Affairs and International Trade 2010, p.7

The AOPS program is an interesting case study of how organizational effects can interact in such a way as to affect Canada's foreign policy. The political desire of the Harper government to engage the RCN in an Arctic enforcement capacity caused the organization's culture to shift over time, while at the same time standard operating procedures and tendencies within the RCN modified the political demands themselves. The AOPS capability that was the result of this interaction will affect Canada's Arctic foreign policy for decades by dictating what options are available to Canadian policy makers in the Arctic and by shaping the Canadian capacity to enforce its Arctic sovereignty claims.

While the abovementioned impacts of Canada's federal organizations on its Arctic sovereignty claims and foreign policy are specific to each organization and based on their activities and mandates, there are some overarching themes that seem to link them. Perhaps the most evident theme that runs through the issues examined above is the limited ability of official mandates to delineate organizational responsibilities and activities. The case of the Polar Code demonstrates how mandates are not effective in restricting the scope of organizational activities; rather, organizations can inadvertently overstep their mandates and impinge on the mandates of other departments. The RCN goes further and demonstrates that organizations can and will knowingly exceed their mandate and even attempt to influence other departments in the interpretation of their mandates. Another important theme is that seemingly technical and operational imperatives can influence Canada's claims in international law. This is the case with the CCG's lack of enforcement capacity in the Arctic and Transport Canada's pursuit of international shipping norms that may limit the scope of Canada's domestic regulatory

rights. Finally, it is a recurring theme that political demands are only imperfectly able to shape organizational action, specifically in sovereignty assertion. This was evident in Santos-Pedro's claim that the AWPPA could not be used to bolster sovereignty, as well as the RCN's resistance to, and later modification of, the Harper government's desire for greater enforcement capabilities in the Arctic.

The distinct organizational impacts on Canadian Arctic sovereignty claims and foreign policy, and the themes that unite them, outlined above satisfy the research question and hypothesis posed at the beginning of this paper. In response to the general research question "How do the organizations of the Canadian federal government influence the manner in which sovereignty is pursued in and applied to the Canadian Arctic waters; how do they affect the Canadian government's foreign policy in the Arctic?", the hypothesis of this paper is that:

The Department of Foreign Affairs and International Trade (DFAIT), as the lead federal department in regards to sovereignty issues and foreign policy, has pursued an approach to Arctic sovereignty that is consistent and well founded in international law. However, there are numerous and varied approaches to Arctic sovereignty undertaken by other organizations of the federal government that deviate from DFAIT's approach and are resistant to government direction. This is due to the fact that, while there is a centrally directed movement towards enhancing Arctic sovereignty by the current government, it results in outcomes that are heavily shaped by the organizational effects of the departments and agencies that administer the sovereignty enhancing initiatives. These organizational effects on Canada's pursuit of Arctic sovereignty are significant in that they diminish the capacity of the federal government to affect a coherent foreign policy and are potentially damaging to Canada's claims in international law.

As to the argument that DFAIT has pursued an approach to Arctic sovereignty that is consistent and well founded in international law, this is borne out by the historical development of Canada's claims examined in chapter three, the fact that Canadian claims are accepted by a plurality of legal scholars and the statement of the DFAIT interviewee as to their continuity. The argument that the organizations of the federal government are resistant to central direction and that organizational effects shape outcomes has been

argued throughout the fifth chapter, perhaps most strikingly in the case of the RCN's shaping of the Harper government's desire for an Arctic enforcement capability. Finally, as to the argument that organizational effects diminish the federal government's capacity to affect a coherent foreign policy and potentially damage Canada's claims in international law, this has been demonstrated extensively in chapter five, with effects of this nature observed in the Royal Canadian Navy, Transport Canada and the Canadian Coast Guard alike.

The analysis contained in this paper does not portend doom or gloom for Canada's Arctic sovereignty claims or the effectiveness of its Arctic foreign policy. Rather, it suggests that more attention should be paid to the role of the agencies and departments of the federal government in any discussions of Arctic sovereignty issues. The Arctic is, in general, an under-studied region, and has been the subject of only sporadic academic interest in the past. As the effects of global warming and globalization increase access to and interest in the Arctic, it is essential that academics and policy makers examine a wide swathe of pressing issues from a number of different theoretical angles and methodological approaches. This paper represents only a small step towards this goal, but one in the right direction.

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