

Sovereignty will solve the Northwest Passage dispute

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August 11, 2007

Prime Minister Stephen Harper has prudently decided to refurbish an old wharf on northern Baffin Island for use by the navy and Coast Guard. More precautionary action such as this is needed to protect Canadian and U.S. interests in the Northwest Passage, an area replete with uncertainty and risk.

Scientists are unsure what effect rising temperatures will have on the ice that has long choked the waters between our northern islands. Some predict that the breakdown of "ice bridges" to the north of the Northwest Passage will temporarily allow more ice to work its way south. Others believe that, as the Arctic Ocean ice pack retreats northward, less ice in the passage will be the result.

In any event, it is only a question of time before the Northwest Passage is open. Six years ago, a report prepared for the U.S. Navy predicted that, "within 5-10 years, the Northwest Passage will be open to non-ice-strengthened vessels for at least one month each summer."

On the legal front, Ottawa says the passage constitutes internal waters subject to the full force of Canadian law. Washington says it's an international strait open to ships from any country.

The disputes centres on the requirement that an international strait be used for international navigation and, more specifically, that the navigation occur without the consent of the coastal state. Ottawa argues that no ships have sailed the Northwest Passage without its permission since it gave unsolicited permission on the two occasions when U.S. vessels challenged its claim.

Nobody knows what an international court would make of the situation. Even if Canada's arguments are better, litigating would be a risky move.

On the diplomatic front, some experts advocate doing nothing. Ottawa and Washington could just muddle through, disagreeing on the law but co-operating on the practicalities of North American defence and economic development.

This view seems highly optimistic. Rising temperatures and increasing prices for resources seem destined to make the Northwest Passage a major shipping route, with all the environmental and security challenges that will bring.

According to the Canadian Coast Guard, 86 ships entered Canada's Arctic waters last year, including research vessels from Denmark, Germany and Russia. There were 11 transits of the Northwest Passage, five of them by cruise ships.

The U.S. should be the least of Canada's concerns. Our neighbours might be willing to co-operate while agreeing to disagree, but what about North Korea or al-Qaeda?

Some experts argue for a multilateral solution, working with the Arctic Council and International Maritime Organization to establish common standards for northern shipping. In short, Canada should abandon its sovereignty in favour of some untested international regime.

But there's no way of knowing whether such a regime would provide the enforcement powers necessary to deal with environmental or security threats. Efforts to regulate internationalized zones have a spotty record. In 1995, Canada arrested a Spanish trawler in international waters despite the existence of the North Atlantic Fisheries Organization, a multinational institution designed to protect high seas fish stocks.

Instead of surrendering our sovereignty, we should be looking for ways to make it work for other countries. Former U.S. ambassador Paul Cellucci argues that his country should recognize our claim because the full force of Canada's laws could then be applied to any terrorists entering northern waters.

Unfortunately, Washington has had little reason to believe that Ottawa would invest in the equipment and personnel needed to enforce the law in such an inhospitable region. From its perspective, Canadian sovereignty combined with a lack of investment might be worse than a waterway open to all.

In an international strait, Washington could at least exert a military presence, and perhaps even interdict vessels posing an imminent threat.

The Canadian government should be telling the Americans that developing a deepwater facility near the Northwest Passage is part of an effort to defend both countries' interests. It's a precautionary move designed to address uncertainty and risk. Then it should pursue the logic of precaution further, taking more steps to address the dangers inherent in the things we cannot know.

One possible model exists already. In 1909, Canada and the U.S. created the International Joint Commission, an independent, binational body that regulates transboundary waterways on behalf of both countries. In 1952, they used the IJC as a mechanism for managing the joint construction of the St. Lawrence Seaway, a series of canals and locks extending from Quebec City to Thunder Bay.

Just think about it: a commercially important waterway passing through sovereign territory, developed on the basis of a bilateral agreement that commits Canada and the U.S. to joint regulatory mechanisms that do not compromise the territorial rights of either state.

Mr. Harper might wish to propose a Northwest Passage Commission. He might even float the idea of a binational not-for-profit corporation, overseen by the new commission and tasked with developing ports, maintaining navigation devices, providing ice pilots and collecting transit fees.

The obstacle to resolving the Northwest Passage dispute isn't Canadian sovereignty. But sovereignty could be the solution, if combined with new and bold ideas.