

Contributors:

Clive Archer
Samantha L. Arnolds
Alyson J.K. Bailes
Alf Håkon Hoel
Sven G. Holtsmark
Karl-Heinz Kamp
Frédéric Lasserre
Kristine Offerdal
Stéphane Roussel
Brooke A. Smith-Windsor
Katarzyna Zysk

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Brooke A. Smith-Windsor

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NATO DEFENSE COLLEGE
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Copies of this NDC Forum Paper may be obtained directly from the
NATO Defense College, Research Division
Via Giorgio Pelosi, 1 - 00143 Rome, Italy
Fax +39-06-50 52 57 97
E-mail: m.dimartino@ndc.nato.int
Web site: <http://www.ndc.nato.int>

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EXPANDING THE CANADA-US SECURITY REGIME TO THE NORTH?

Samantha L. Arnold and Stéphane Roussel*

Since the beginning of the new millennium, Arctic issues have attracted growing attention from officials and scholars, not only in circumpolar nations but also in other “interested nations” such as China, Korea, or European Union members. This interest is no doubt fuelled by the anticipated consequences of global warming in this ecologically sensitive region.

Interest in the region – largely dominated by pessimistic perspectives – has focused on identifying and understanding the likely effects of global warming. Although some observers continue to sound the alarm, forecasting a resurgence of power politics and inter-state conflict in the region, more optimistic images of the circumpolar world as an emerging zone of cooperation and collective management are also in the air. Building on the still-developing web of soft law multilateral arrangements already in place, there is a growing call to improve the conditions for cooperation in the Arctic at the bilateral and multilateral level either by renovating existing governance structures, or by creating new ones to manage common security and non-security challenges in the region.

With reference to the range of proposals for an Arctic Treaty, Timo Koivurova has suggested that the Arctic is a place for imagination and a source of inspiration¹, and it seems that this is equally relevant to the ques-

* Samantha L. Arnold is Assistant Professor, University of Winnipeg and Research Fellow, Centre for Defence and Security Studies, University of Manitoba. E-mail-address: s.arnold@uwinnipeg.ca
Stéphane Roussel is Associate Professor and Canada Research Chair in Canadian Foreign and Defence Policy, Département de Science politique, Université du Québec à Montréal. E-mail-address: roussel.stephane@uqam.ca

¹ Timo Koivurova, “Alternatives for an Arctic Treaty – Evaluation and a New Proposal”, *RECIEL*, Vol. 17, No. 1 (2008), p. 14.

tion of bilateral relationships in the region.

Although bilateral relationships exist between all of the Arctic states, we limit our focus in this paper to the Canada-US relationship, for several reasons. The potential for these two countries to develop a robust bilateral security regime in the North is enhanced by their long experience of working together, both for conflict management and to meet common challenges, and by the institutions they have jointly created to facilitate this close relationship. Particularly noteworthy is the fact that North American defence and security arrangements have evolved in many ways independently of European considerations, and this is likely to continue. Moreover, with reference to the Arctic region, despite some expressed concerns that unresolved conflicts and different attitudes towards the region may “well become severe enough to cause a considerable erosion of the ‘special relationship’”², the historical record of cooperation between the two countries leads us to expect that they will apply their common experience to settle these conflicts in the North and create institutions accordingly. This points to the necessity of creating a new bilateral institution to manage common challenges in the North. As we will outline below, this idea is already “in the air”, and many authors have offered blueprints for this new institution.

However, creating a new bilateral institution could prove to be more difficult than it would seem given the historical record of cooperation between the two countries. First, there *are* unresolved conflicts between the US and Canada that may impact on their ability to extend their bilateral arrangements northward, and for this reason, a focus on Canada-US relations may generate insights applicable to other bilateral relationships in the North on the question of conflict resolution. As discussed below, competing jurisdictional claims in the North over a small but potentially resource-rich area in the Beaufort Sea and the legal status of the increasingly ice-free Northwest Passage (NWP) are generally

² See, for example, Oran R. Young, “Canada and the United States in the Arctic: Testing the ‘Special Relationship’”, *Northern Perspectives*, Vol. 15, No. 2 (1987), online: <http://www.carc.org/pubs/v15no2/2.htm>.

cited as the greatest sources of friction between the two countries in the North. Indeed, the issue seems to be intractable, and Canada and the US have effectively agreed to disagree – for the time being. But, as the strategic and economic significance of these disputed areas increases, some have argued that the matter of sovereignty rights in these Arctic waters will have to be resolved. Conflict, according to this line, is very likely, and would surely put to the test any bilateral relationship in the North.

At the same time, following an argument developed by Franklyn Griffiths³, many observers of the bilateral relationship between Canada and the US are adopting the view that sovereignty can and should be ‘set aside’ so as to allow for cooperative measures to be taken in those areas that do not depend on resolution of the sovereignty question – northern shipping, environmental protection, exploration, and so on. Indeed, it may well be that a consensus is emerging with respect to this issue, as the setting aside of sovereignty is a prominent and creative feature of many recent proposals to enhance Canada-US cooperation in the North. Taken together with the history of cooperation between the two countries, there are grounds for cautious optimism with respect to Northern bilateralism between Canada and the US.

A second difficulty stems from the relationship that a new bilateral institution would have with the rest of the circumpolar world. Such an institution would have to be consistent with other bilateral or multilateral efforts to create a governance structure in the Arctic. Moreover, the project raises the possibility of excluding some important states (notably Russia) or non-state players (indigenous and regional governments). As we will see, these questions are a matter of debate among observers. Here again, though, while the task could prove difficult, there is room for a moderate degree of optimism, since these obstacles can be addressed prop-

³ Franklyn Griffiths, “The Shipping News. Canada Arctic Sovereignty not on Thinning Ice”, *International Journal*, Vol. 58, No. 2 (Spring 2003), pp. 257-282; See also Andrea Charron, “The Northwest Passage Shipping Channel: Sovereignty First and Foremost and Sovereignty to the Side”, *Journal of Military and Strategic Studies* Vol. 7, No. 4 (2005).

erly with a cautious approach.

This paper proceeds as follows. First, we provide a brief overview of the key challenges facing the US and Canada in the region, notably the conflict over the status of the Northwest Passage. Second, in the interest of context-setting, we review the history of the Canada-US bilateral relationship. Third, we consider some of the key proposals for bilateralism in the North, highlighting the trend towards ‘setting sovereignty aside’ in recent efforts to extend the Canada-US cooperative relationship into the Arctic region. Finally, we consider some of the challenges that potentially complicate the effectiveness of these proposals, some stemming from the implications of developing incremental or technical solutions to concrete challenges while leaving the underlying sovereignty issue unresolved, others related to tensions between the bilateral agenda and the broader multilateral frameworks, proposals, and norms. We conclude with the assertion that the development of a successful Canada-US bilateral regime in the North cannot occur without careful attention to the multilateral impulse in the Arctic.

Canada-US conflicts in the North

A key source of concern for many observers relates to the political and economic implications of a reduced Arctic ice cap. As is often suggested, an increasingly ice-free Arctic will certainly spur economic and shipping activity in the region; this development carries the potential for political conflict as states compete for access to the resources many expect will be discovered there. In light of this, some observers forecast a future Arctic in which the political map remains unclear, and conflicting claims divide the states of the region. There is some justification for these concerns, as evidenced by the international response to Russia’s planting of a national flag under the North Pole. In many ways, the perceived necessity to ‘show the flag’ in support of territorial claims threatens to remilitarize the North, since armed forces are generally viewed as the most effective way of projecting a governmental presence in these remote areas. Even perspectives that eschew what we might describe as ‘doom and gloom’ scenarios in light of such developments warn that the emergence of the Arctic as a cooperative zone in the face of such pressures cannot be assumed and must instead

be carefully nurtured⁴. Undoubtedly, the implications that flow from melting ice in the Arctic underscore the importance of establishing multilateral agreements to ensure that economic development in the region is undertaken in safe and sustainable ways, and that competing claims to control over resources are mediated through legal and political mechanisms.

With reference to the prospect of an increasingly ice-free Arctic, there are several issues that have a particular bearing – and put particular pressures – on the Canada-US relationship. One of the most important implications of melting ice is the predicted increase of shipping within the Northwest Passage (NWP)⁵. This development is highly significant for several reasons. Increased shipping implies an increased human presence in area, and thus creates the necessity of developing safety measures, environmental protection standards, and emergency response capabilities in the event of a ship, air, or environmental accident. Also, environmental changes and increasing contacts between local populations and foreigners (which have had major impact on the former) reinforce the need to provide “human security” to sometimes transnational indigenous communities within a framework of sustainable development. Moreover, a growing human presence in the area can also be linked to the growth of organized crime (as in diamond extraction facilities), drug smuggling, the illegal movement of peoples, or even terrorist attacks on remote installations or tourist ships. However, these issues are arguably of secondary importance when considered alongside the fact that the legal status of the NWP is a

⁴ Scott G. Borgerson, “Arctic Meltdown. The Economic and Security Implications of Global Warming”, *Foreign Affairs* (March-April 2008), pp. 63-77; Mark Galeotti, “Cold Calling - Competition heats up for Arctic Resources”, *Jane's Intelligence Review*, on-line (Sept. 18, 2008); Rob Huebert, “Shipping News Part II. How Canada's Arctic Sovereignty is on Thinning Ice”, *International Journal*, Vol. 58, No. 3 (Summer 2003), pp. 295-308. In contrast to these pessimistic scenarios, see the discussion of the ‘Polar Preserve’ and the ‘Arctic Sage’ scenarios developed by the Global Business Network in its report entitled *The Future of Arctic Marine Navigation in Mid-Century: Scenario Narratives Report* (2008), online: <http://www.institutnorth.org/>.

⁵ It should be noted that there is no clear consensus as to the extent to which shipping will take place in the NWP, or if it will occur on meaningful levels at all in the foreseeable future. See Frédéric Lasserre, “High North Shipping: Myths and Realities about Arctic Shipping Routes,” in this volume. See also the well-known exchange between Rob Huebert and Franklyn Griffiths; Franklyn Griffiths, “The Shipping News: Canada's Arctic Sovereignty Not on Thinning Ice”, *International Journal*, Vol. 58, No. 2 (Spring 2003), pp. 257-282; Rob Huebert, “The Shipping News Part II ...”, op.cit.

matter on which Canada and the US do not agree. Clearly, attempts to manage the challenges noted above will be complicated in the absence of jurisdictional clarity. In this way, the prospect of increased shipping in the Passage puts a spotlight on an issue that Canada and the US have preferred to leave in the shadows for a range of reasons.

In popular discourse, the dispute over the NWP is frequently characterized as a sovereignty dispute, but this misrepresents what is at stake in this conflict. Canadian sovereignty over the islands of the Arctic Archipelago is not currently in dispute; rather, the issue turns on whether the waters between the islands constitute ‘internal waters’ (as Canada claims) or an ‘international strait’ (as the US claims). The underlying basis for the dispute relates to the different methods employed by Canada and the US to draw baselines around coastal territories – according to the Law of the Sea Convention, the seaward side of these baselines defines the sea, which is divided into the territorial sea (TS, 12 nautical miles from the baseline), the contiguous zone (CZ, 24 nautical miles from the baseline), and the exclusive economic zone (EEZ, 200 nautical miles from the baseline). The extent to which sovereign rights may be exercised becomes more limited from TS to CZ to EEZ, but in all cases, ships from any state have the right of innocent passage. Internal waters are those waters on the landward side of the baseline, and significantly, they are treated by international law as equivalent to a state’s territory in terms of the sovereign rights of the state to regulate them. The practical implication of this designation is that vessels from other states do not have a right to innocent passage. Everything thus turns on where and how baselines are drawn; the Canadian claim that the NWP is ‘internal water’ is predicated on ‘straight’ baselines that effectively enclose a significant portion of the NWP. The US (and many other states) rejects this method of drawing long, straight baselines, and advances the argument that it is therefore an international strait connecting two bodies of water through which it has the right of passage.

The conflict over the status of the NWP is thus not properly a sovereignty dispute, but rather a dispute over the extent to which

Canada is able to claim sovereign rights in the NWP, and to deny passage to vessels at will. It is because of the unresolved status of the NWP that the prospect of its increased navigability becomes a key challenge to Canada-US relations in the Arctic. According to some Canadian authors, in the long run, the more that ships act as though the NWP is an international strait (and the more that Canada fails to prevent such action), the less compelling Canada's claims to the contrary become.⁶ For this reason, any US transit through the NWP is a cause of tension and concern in Canada, as was the case in 1969-1970, and again in 1985, when American vessels crossed the Passage without Ottawa's formal permission. Moreover, as many observers have noted, since the "North" is central to the Canadian identity any challenge to Canada's claims receives wide attention among the public and puts pressure on the government. And, from the American perspective, the US has no choice but to remain firm on this issue because of the fear of creating a precedent that could be used in other situations where the US has strong strategic interests.⁷

A second, somewhat related but nevertheless distinct issue complicating Canada-US relations in the North is the border dispute between the two countries in the Beaufort Sea. As with the case of the NWP, the Beaufort Sea conflict is frequently framed as a sovereignty dispute, whereas it is more accurately understood as a dispute about sovereign rights over a triangle-shaped area of 6250² nautical miles. The issue stems from a disagreement as to how the border between Alaska and Yukon should be extended from the baseline through to the 200 nautical mile EEZ. The Law of the Sea Convention provides only general guidance on this matter. According to Eric LeGresley, "the result, rather than the means, is the dominant criterion for assessing the suitability of the boundary",⁸ while

⁶ Rob Huebert, *op. cit.* (2003); Michael Byers, "Unfrozen Sea. Sailing the Northwest Passage", *Policy Options*, Vol. 28, No. 5 (May 2007), pp. 30-33.

⁷ Charles F. Doran, "Canadian Relations with the United States", *Current History*, Vol. 87 (March 1988), p. 100.

⁸ Eric LeGresley, "Law of the Sea Convention", Government of Canada: Law and Government Division, (February 1993); online : [http://dsp-psd.communication.gc.ca/Collection-R/LoPBdP/BP/bp322-e.htm#c.%20The%20Beaufort%20Sea%20Dispute\(txt\)](http://dsp-psd.communication.gc.ca/Collection-R/LoPBdP/BP/bp322-e.htm#c.%20The%20Beaufort%20Sea%20Dispute(txt))

the Convention itself requires little more than that equitable principles and relevant circumstances be taken into account.

From the Canadian perspective, the land border between Alaska and Yukon at the 141st meridian should simply be extended outwards to the EEZ limit. The US view is based on a principle of equidistance from the closest land point of each state. This method produces not a straight line extending from the land border, but rather a curved line that crosses over the Canadian side of the 141st meridian. In this instance, it truly is the result that is at issue for both Canada and the US, because the disputed area is believed to be rich in oil and natural gas resources that will become more accessible as ice retreats.

The disputes in the NWP and in the Beaufort Sea have no more than simmered up to this point, and flare-ups have been minimal and short-lived. Indeed, as discussed in the following section, the NWP issue in particular has been managed through an ‘agreement to disagree’ on the matter between the US and Canada, and for the most part, this has served both countries well. That said, it is important to appreciate the way that these historically relatively low-level disputes intersect with one of the key implications of melting Arctic waters - increasing economic opportunities that may well turn up the heat to resolve the question of sovereign rights in the NWP and the Beaufort Sea once and for all. How this pressure might affect prospects for Canada-US relations in the North is important to consider.

Canada-US cooperation

Canada and the United States have a long history of close cooperation.⁹ Building on the legacy of the North American dimension of Anglo-American relations during the 19th century, Americans and Canadians cre-

⁹ See Stéphane Roussel, *The North American Democratic Peace: Absence of War and Security Institution-Building in Canada-US Relations, 1867-1958* (Montréal and Kingston, McGill-Queen's University Press – School of Policy Studies, 2004); John Herd Thompson and Stephen J. Randall, *Canada and the United States: Ambivalent Allies* (Montréal, McGill-Queen's University Press, 2008, 4th ed.); William R. Willoughby, *The Joint Organizations of Canada and the United States* (Toronto, Toronto University Press, 1979).

ated their first bilateral conflict management institutions in 1908 and 1909, when the International Boundary Commission (IBC) and the International Joint Commission (IJC) on boundary waters were formed. In the realm of security and defence, the relationship shifted from conflict management to cooperation in August 1940, when the two governments created the Permanent Joint Board on Defence (PJDB). During the Cold War, many new institutions were created, including the Military Cooperation Committee (MCC) in 1946 and the bi-national air defence command (NORAD) in 1958. The two countries have continued to increase their cooperation since then. In 2006, the final report of the Bi-National Planning Group (BPG) listed a total of 851 defence agreements (most of them being Memorandums of Understanding rather than formal treaties) linking Canada and the US, the vast majority of which are still in force today.¹⁰

Cooperative undertakings in the Arctic began during the Second World War and continued throughout the Cold War. Canada and the US worked together, building numerous defence infrastructures, such as air bases, weather and radar stations, roads or pipelines. Minor tensions emerged in this relationship as concerns grew among Canadian officials that such close cooperation over Canadian sovereignty would create precedents in support of future American claims over Canadian Arctic territories. Overall, though, the two states arrived at mutually acceptable compromises on all issues involving land territories.¹¹

Even in the Arctic, where the two countries face competing claims over sovereign rights, institutions were created. The “unauthorized” passage of the American Coast Guard ice-breaker *Polar Sea* prompted a series of negotiations that produced, in January 1988, the *Arctic Cooperation Agreement*. While the US “pledges that all navigation by US ice-breakers [in the NWP] will be undertaken with the consent of Canada (art. 3),”

¹⁰ Bi-National Planning Group, *The Final Report on Canada and the United States (CANUS) Enhanced Military Cooperation* (Peterson AFB, Co., March 13, 2006).

¹¹ Shelagh D. Grant, *Sovereignty or Security? Government Policy in the Canadian North, 1936-1950* (Vancouver, University of British Columbia Press, 1988).

Canada agrees always to give that consent. Thus, in this way the document was essentially a formalized acknowledgement of the two countries' intention to 'agree to disagree' (art 4) on the matter of the status of the NWP.¹²

While Christopher Kirkey described the 1988 Agreement as providing "mutually satisfactory outcomes",¹³ the underlying issue itself remains unresolved. However, this creates certain difficulties given the possibility of increased traffic through the NWP as the ice-free season is extended, and the common concerns that all Arctic states will have with respect to shipping regulations and safety measures, as well as security concerns regarding illegal activities.¹⁴ Hence, there is a clear need to fulfil the institutional vacuum in the region.

Proposals to facilitate bilateral cooperation in the North

In light of the above, specialists are calling for a re-opening of the dialogue between Ottawa and Washington over Arctic waters management. All these authors take their inspiration from the Canada-US historical record of cooperation. A typical example can be found in Scott Borgerson's article published in *Foreign Affairs*:

The United States should also strike a deal with Canada, leading to a joint management effort along the same lines as the 1817 Rush-Bagot Agreement, which demilitarized the Great Lakes and led to the creation (albeit more than a century later) of the non-profit St. Lawrence Seaway Development Corporation to manage this critical, and sometimes ice-covered, binational waterway. In the same spirit, the United States and Canada could combine their resources to help police thou-

¹² Christopher Kirkey, "Smoothing Troubled Waters: The 1988 Canada-United States Arctic Cooperation Agreement", *International Journal*, Vol. 50, No. 2 (Spring 1995), pp. 401-426; Rob Huebert, "A Northern Foreign Policy: The Politics of Ad Hocery" in Nelson Michaud and Kim Richard Nossal (eds.), *Diplomatic Departures, The Conservative Era in Canadian Foreign Policy, 1984-93* (Vancouver, UBC Press, 2001), pp. 93-94. For a recent presentation of the Canadian legal positions in this conflict, see Lt-Comd Guy Killaby, "Great Game in a Cold Climate: Canada's Arctic Sovereignty in Question", *Canadian Military Journal*, Vol. 6, No. 4 (Winter 2005-2006), pp. 31-40.

¹³ Kirkey, *op. cit.*, pp. 416-422.

¹⁴ Byers, *op. cit.* (2007).

sands of miles of Arctic coastline. Washington and Ottawa now work collaboratively on other sea and land borders and together built the impressive North American Aerospace Defense Command, or NORAD, system. They are perfectly capable of doing the same on the Arctic frontier, and it is in both countries' national interests to do so.¹⁵

Building on the NORAD experience seems, at a first glance, to make sense. The institution is working pretty well – notwithstanding the disastrous failure of September 11th, 2001 and the acrimonious debate in Canada surrounding the role of the Command in the American antimissile defence system – and the two governments have agreed to renew it regularly since 1958.¹⁶ Moreover, in 2002, Canada and the US created the Bi-National Planning Group to further enhance military cooperation between the two countries. This Group was tasked, among other things, to survey existing agreements on maritime defence and develop proposals to reinforce it. In its final report of March 2006, an expansion of the NORAD mission to include maritime warning was recommended.¹⁷ This recommendation seems directed primarily towards the North American East and West coasts, and the Arctic is not mentioned; however, there is nothing to preclude the Arctic's inclusion in this recommendation. On the contrary, implementing a monitoring system in the Arctic may prove technically more feasible, since ships, constrained by the geography of the archipelago and the ice, necessarily follow more predictable routes than in the open seas of the Atlantic or the Pacific Oceans. As will be discussed below, it is clear that this possibility has been considered by several observers.

One of the first academic observers to propose a bilateral Arctic waters agreement was Franklin Griffiths. While his views about the form of the agreement remain vague, his vision is “to extend the 1988 Canada-U.S. icebreakers agreement to commercial vessels, and indeed warships, without prejudice to the position of either country in international law.” He

¹⁵ Borgerson, *op. cit.*, p. 77.

¹⁶ The agreement was renewed in 1968, 1973, 1975, 1980, 1981, 1986, 1996, 2001 and 2006.

¹⁷ Bi-National Planning Group, *op. cit.*, pp. 35, 42, C-8.

also proposes to create a “tripartite transit management authority governed by the United States, Canada and Denmark [to] regulate and support surface ship activities”.¹⁸ Griffiths recommends approaching the issue as a matter of internal security for the US, which is concerned by the possibility of a terrorist attack or other illegal activities in the region, pointing out that it would be in the interest of the US to see Canada keep full control of the strait rather than having to open it to any foreign vessel. The central idea in Griffiths’ proposal is to put the sovereignty issue aside and address the Arctic issue through an indirect approach. Canadian sovereignty, according to Griffiths, is not at risk and will not be for the coming decades. Moreover, he adds, it could be ill-advised to frame the problem in terms of sovereignty, because it simply adds pressure where none need exist.

A second proposal came from a group headed by Michael Byers at the University of British Columbia. This group, which included researchers and former diplomats from Canada and the US, published its report in February 2008. As have many other observers, the members “acknowledg[ed] the long history of U.S.-Canada cooperation, including within NATO, NORAD, the 1988 Arctic Cooperation Agreement, and the Arctic Council [and] that the United States and Canada have previously cooperated to promote shipping through waters under national jurisdiction, namely the St. Lawrence Seaway, Great Lakes and Juan de Fuca Region, and that this has brought great benefits to both countries”.¹⁹ The report offers nine recommendations, reproduced below:

1. That the two countries collaborate in the development of parallel rules and standards and cooperative enforcement mechanisms with respect to notification and interdiction zones in the northern waters of Alaska and Canada;

¹⁸ Franklyn Griffiths, *op. cit.* (2003), pp. 271-272. See also Franklyn Griffiths, “Pathetic Fallacy: That Canada’s Arctic Sovereignty is on Thinning Ice”, *Canadian Foreign Policy*, Vol. 11, No. 3 (Spring 2004), p. 1-15.

¹⁹ “Model negotiation on Northern Waters, February 19, 2008”, online: <http://byers.typepad.com/arctic/model-negotiation-on-northern-waters.html>

2. The implementation of the 2006 expansion of the NORAD agreement, which includes the sharing of all maritime surveillance in the area covered by that agreement, and that the two countries cooperate in the development of further surveillance capabilities;
3. Building from the Arctic Waters Pollution Prevention Act, that the two countries develop common navigation, safety and ship operation and construction standards;
4. That the two countries cooperate on the establishment of shipping lanes, traffic management schemes and oil spill response in the northern waters of Alaska and Canada;
5. That the two countries cooperate with respect to immigration and search and rescue concerns related to cruise ships;
6. That the two countries accelerate the acquisition of new icebreakers. The two countries should maximize burden sharing opportunities, following the models of the U.S.-Canada icebreaker agreement on the Great Lakes and the agreement on the resupply of Thule Air Base;
7. That the two countries step up their efforts to develop safety infrastructure, including search and rescue, in support of increased shipping in the northern waters of Alaska and Canada;
8. That the two countries make maximum use of their existing port state and flag state authority to promote safe, secure and environmentally responsible shipping;
9. That the two countries consider establishing a U.S.-

Canada Arctic Navigation Commission to address their common interests in navigation, environmental protection, security, safety, and sustainable economic development. This Commission should include representation from indigenous groups directly affected by navigation. This Commission would follow the model of the International Joint Commission by acting as a recommendatory body. This Commission should operate within the framework of the already legislated bi-national research body, the Arctic Institute of North America.

An important element of these recommendations is the broad spectrum of issues they address, from regulation to surveillance, search and rescue, immigration, shipping management and environment. But significantly, the group was not able to arrive at a consensus on the sovereignty issue, even while they acknowledged that “both countries have strong arguments”²⁰ Hence, *de facto*, the group operationalized the approach suggested by Griffiths, leaving sovereignty aside while making progress on “softer” issues.

Col. (ret.) Pierre Leblanc, a member of the Canadian team in the group, reinforces the argument with a rational evaluation of the benefits of cooperation. He underlines the fact that the two states have significant mutual interests in the region, including the strategic nature of the Arctic routes, the common need to protect the environment, the importance of energy resources and the shared vulnerability of the remote area in both Alaska and Northern Canada. Moreover, the US and Canada can secure high benefits with closer cooperation, namely lowering the costs, and sharing intelligence and resources. Leaving the sovereignty issue aside, he concluded that cooperation is possible and likely, even if the two governments disagree on this question.²¹

²⁰ Randy Boswell, “Simulated Talks Show Possible Solution for Arctic Dispute”, *National Post* (February 19, 2008).

²¹ Col. (ret.) Pierre Leblanc, “Mutual Security Interests in the Arctic”, Paper presented at the conference *Canada and the United States: What Does it Mean to Be Good Neighbours?* Canadian Defence & Foreign Affairs Institute, Ottawa (October 27, 2008).

Another proposal was developed by consultant Brian Flemming, who advocates the creation, by bilateral treaty, of a new international institution. This Northwest Passage Authority (NWP) project is based on the model of the International Joint Commission, with the difference being “that the IJC is a ‘deliberative’ body, not an ‘executive’ international institution with the power to make and enforce the kind of strict regime that a NWP would have to have to be effective”.²² Other sources of inspiration for the NWP include the St. Lawrence Seaway Authority, which points to the “creation of a public-private Arctic seaway management corporation with a mandate to provide for the safe and secure transit of vessels in North American Arctic waters while protecting the area’s sensitive environment”,²³ as well as the 1988 Arctic Cooperation Agreement.

While Flemming remains flexible about the shape of the new institution, his proposal contains some important elements. On the question of sovereignty, he seems to agree with Griffiths and recommends leaving the issue aside – although not completely, as he argues that “the negotiation of the NWP treaty should also include a negotiation of the disputed dividing line between Canadian and American territory in the Beaufort Sea.” Flemming’s envisioned NWP

would require Canada to set aside, but not give up legally, its claim that most of the Passage lies within Canada’s internal waters. On the American side, there would have to be a suspension, but not a legal surrender, of the U.S. claim that the Passage is an ‘international strait’ under international law. The setting aside of these current claims could herald a renewed, 21st century period of cooperation between Canada and the United States.

Another important element of Flemming’s proposal is to bring “the territorial governments of Nunavut, the North West Territories and the

²² Brian Flemming, “Canada-US Relations in the Arctic: A Neighbourly Proposal”, paper presented at the conference *Canada and the United States: What Does it Mean to Be Good Neighbours?* Canadian Defence & Foreign Affairs Institute, Ottawa (October 27, 2008).

²³ Flemming, quoting Borgerson, *op. cit.*

Yukon – plus the state government of Alaska” – around the table. In his view, the Inuit people should play “a major role in helping shape the final form of this new international institution”, and their participation “will be fundamental to making the initiative work on both sides of the table”. On this question too, Flemming is close to Griffiths, even if the latter was making a recommendation at the national, rather than international level.

Canada-US bilateralism in the North: promise and obstacles

When considering these proposals, certain common features are evident. Most obviously, they are all rooted in an appreciation of the strong historical experience of cooperation between the United States and Canada. Informing these proposals, therefore, is an underlying expectation that this historical pattern of cooperation can be repeated in the Arctic. Second, a consensus seems to be emerging around the necessity of leaving the sovereignty issue aside, at least regarding the Northwest Passage. Moreover, despite the pessimism shown by some authors, there is no emergency to force its resolution in the short term. Indeed, addressing the sovereignty issue in a direct way could launch a spiral of conflict that would block progress on other fronts of cooperation, whereas progress on these other fronts could potentially pave the way in the longer term for a resolution of the sovereignty issue. Taken together, these proposals reflect the sense that the sovereignty issue is not necessarily a ‘deal breaker’ when it comes to the development of a Canada-US bilateral relationship in the North. Indeed, as Julia Jabour and Melissa Weber note, “positive outcomes...have occurred coincidentally with the assertion of sovereignty and yet indifferently to this assertion” in the development of both bilateral and multilateral instruments in the Arctic.²⁴

Nevertheless, these proposals are not without their limitations. Among the most significant is the lack of explicit attention paid to the question of the relative merits and potential effectiveness of bilateral versus multilateral solutions to Arctic challenges. Many observers are of the view that many of the core challenges facing the Arctic states require a

²⁴ Julia Jabour and Melissa Weber, “Is it Time to Cut the Gordian Knot of Polar Sovereignty?” *RECIEL*, Vol. 17, No. 1 (2008).

multilateral approach in order to be truly effective. As Rob Huebert warns,

Continental shelf claims need to be resolved by all four claimant states, just as the problems of increased shipping in the Northwest Passage and environmental risks to the Arctic Ocean should be resolved multilaterally. Bilateral solutions would give rise to a patchwork of shipping regulations and environmental standards, which would be unworkable.²⁵

However, it is equally possible to advance an opposing view, one which takes seriously the potential of building multilateral arrangements on the foundation established by bilateral agreements. In the face of Huebert's fears of an 'unworkable patchwork,' Brian Flemming suggests that a "Canada-U.S. treaty could be framed in such a way as to allow other "Arctic Powers", including especially Russia, to adhere to it in some way, either as a full Party or as a Party with less than Contracting Party status." Flemming concludes that, "[i]t may be better to get the simpler, easier Canada-U.S. NWPA treaty done and then allow other interested states, most importantly Russia, either to accede to the NWPA treaty, or to negotiate parallel bilateral treaties that, together, would add up to a consistent and legally viable regime".²⁶

None of this necessarily implies an 'either/or' logic, although some observers point to the challenges that would be associated with attempts to make simultaneous progress on bilateral and multilateral arrangements. As Flemming notes, "[w]hether a corporate model could be created while Canada and the U.S. were attempting simultaneously to negotiate a multilateral treaty among all the Arctic powers for settling the many claims and possible disputes that might arise in the Arctic may be a bridge too far"²⁷ Thus, it may be that it is necessary to focus in the short term at least on

²⁵ Rob Huebert, "Canada and the Changing International Arctic: At the Crossroads of Cooperation and Conflict", pre-released chapter in Frances Abele, *et al.* (eds.) *Northern Exposure: Peoples, Powers and Prospects for Canada's North* (Institute of Research on Public Policy, Ottawa, Canada, September 2008), p. 22, online: http://www.irpp.org/research/re_aots.asp

²⁶ Flemming, *op. cit.*

²⁷ *Ibid.*

either the bilateral or the multilateral context, and it is not clear where the greatest benefits – or obstacles – lie. Notwithstanding Flemming’s view that it might be most effective to adopt an incrementalist approach to Arctic governance based on potentially expandable bilateral agreements, there remains the possibility that a focus on bilateral arrangements might actually work at cross-purposes to the development of multilateral arrangements. Consider, for example, Rob Huebert’s assessment of the dilemma:

[A bilateral approach] could...result in Canada offending a neighbour. For example, by entering into direct negotiations over the continental shelf with Russia, Canada could easily cause the US to feel slighted; or if Canada were to negotiate with the US and Denmark, the Russians could interpret it as an instance of NATO allies ganging up on them.²⁸

But on this point too, counter-arguments can be made; Flemming disagrees with Huebert on the risk of marginalizing Russia, suggesting that “[o]ddly enough, such a bilateral treaty might even be welcomed by Russia which believes its North East Passage is more likely to become an international shipping route than the Northwest Passage”.²⁹

Huebert is probably overly-pessimistic about another problem he anticipates with a bilateral approach arising from the imbalance of power between Canada and the US or Russia. In fact, history tends to prove the opposite: over the 19th and 20th centuries, Canada-US relations improved even while the power imbalance between them increased after the withdrawal of the British forces from North America and gradual evaporation of Canada’s links with British Empire.³⁰ But the historical record reveals another problem related to the difficulty of making bilateral arrangements alongside multilateral ones.

Contrary to the image of a strong transatlantic link, relations

²⁸ Huebert, *Canada and the Changing ... op. cit.*

²⁹ Flemming, *op. cit.*

³⁰ See Roussel, *op. cit.*

between North America and Europe have not been particularly close, especially on security and defence issues. While Americans (and Canadians) were strongly committed to the defence of Western Europe during the Cold War, this relationship was not reciprocal. To the contrary, European allies were kept away from the defence of the North American continent. Americans were reluctant to cede any control of their nuclear deterrence system to their European allies, while Canadians feared that the establishment of a NATO strategic command in North America would simply result in placing their forces under American command. Hence, the defence of the two continents evolved independently, with NORAD clearly separated from NATO.³¹ The same could be said on the security side; while the Europeans created the Schengen Space to manage common immigration issues after the opening of their borders, Canada and the US created an informal security perimeter that remains totally distinct from its European counterpart.³²

The same divergence could appear in the Arctic in that the extension of bilateral security arrangements in the North could leave little space for multilateral undertakings. Put differently, the more NORAD becomes involved in security activities in the North American sector of the Arctic, the less likely it becomes that NATO will be involved in the same sector. In this way, the separation between NATO and NORAD observed in other sectors could be reproduced in the North. Moreover, while Americans and Canadians might be willing to participate in multilateral arrangements to manage the various problems emerging in the region, they also want to retain the freedom to manoeuvre, for different reasons. For example, America's participation in the Arctic Council was very much contingent upon the exclusion from the mandate of the Council of any elements that might interfere with their activities (especially military ones). Canadians face a similar dilemma, since any multilateral treaty designed to deal with navigation issue that bears legal obligations could force the delicate issue of sovereignty. According to Suzanne Lalonde,

³¹ *Ibid.*, pp. 204-210.

³² For a comparison of the two "perimeters", see Michel Fortmann, Alex Macleod and Stéphane Roussel (eds.), *Vers des périmètres de sécurité? La gestion des espaces continentaux en Amérique du Nord et en Europe* (Montréal, Athéna, 2003).

barring the adoption of a specified multilateral Arctic treaty, international law provides a choice between only two possible navigational regimes for the Northwest Passage and these two regimes are poles apart. The Passage is either subject to the Canadian legal regime or it is governed by the international legal system.³³

Tasking a “Maritime NORAD” with a mandate to monitor the Arctic waters is not without technical difficulties akin to those affecting the maritime mandate as a whole. First, contrary to the air and aerospace dimensions of its mandate, the Command does not have the capability to directly monitor the surface of the ocean, nor therefore to track suspect vessels. Moreover, and still contrary to NORAD’s air mission, the Command is not able engage in interception on its own. In an important way, then, the “maritime NORAD” remains essentially a function of information sharing. While certainly important, it is clear that such a mandate could not presently meet the expectations of the authors presented above.

Rob Huebert has written that “the challenge before anyone who wishes to consider the different threats to security in the Arctic is to determine what is the nature of the threat; who is being threatened?; and what are the best means of responding to the threat?”³⁴ This challenge is relevant to the question of developing Canada-US bilateral security arrangements in the North because Ottawa and Washington do indeed have sometimes divergent answers to the questions posed by Huebert.

Reflecting on the divergent debates about Arctic security, it is clear that the development of a coordinated bilateral Arctic policy faces significant challenges. However, it is illustrative to consider, for example, the question of when the Northwest Passage is expected to be sufficiently ice-free so as to allow for summertime shipping. Focusing only on the

³³ Suzanne Lalonde, “Arctic Waters: Cooperation or Conflict”, *Behind the Headlines* (July 1, 2008), p. 8.

³⁴ Rob Huebert, “Arctic Security: Different Threats and Different Responses – A Discussion Paper”, (n.d.) available at www.nrf.is/Publications/The%20Resilient%20North/Plenary%204/3rd%20NRF_Plenary%204_PP_Huebert.pdf

Canadian perception of this issue, we might expect that a question such as this would have an uncontroversial, fact-based answer. And yet, timeline projections vary widely; by some accounts, the Passage will be navigable as early as 2030, while according to others this will not occur until the end of the century.³⁵ Disagreements within the scientific community are amplified when divergent scientific studies inform Canadian policy. For example, as O’Neil³⁶ reports, the urgency of the Department of National Defence’s call for a deep-water port in the Arctic and for armed icebreakers is informed by predictions which envision a navigable Northwest Passage as early as 2015. This timeline is echoed in the *International Policy Statement* produced by the Department of Foreign Affairs (2005) and is the basis for a call for increased surveillance in the Arctic; however, it is not the position taken by Environment Canada. Thus, even while there may be agreement that Arctic ice is melting (although the cause of this is also subject to multiple interpretations ranging from ‘natural climate cycles’ to human activity), there exist divergent understandings of the timeline for this process – even within the departments and agencies of the Canadian government. If surveillance or the establishment of a deep-water port are to be components of a policy response, how urgent is this need? What resources are needed, and when?

This is further compounded not only by the fact that a similar divergence of views will be found among American policy-makers and scholars, but also by competing understandings of the implications that flow from an increasingly navigable Northwest Passage. Beyond the sovereignty question, for some, the issue might be related to trafficking in people and drugs, for others the key challenge is framed as one of protecting indigenous peoples and the local environment from the effects of increased traffic in the region.³⁷ Moreover, it must be borne in mind that despite some clear interests in common, Canada and the US are very different countries

³⁵ Peter O’Neil, “Experts Skeptical of Canada’s Northwest Passage”, *Vancouver Sun* (August 12, 2006); for discussion of competing predictions and scenarios, see Lasserre, *op. cit.*

³⁶ O’Neil, *Ibid*

³⁷ Patricia Bell, “Arctic Waters Must be Protected from Increased Traffic: Inuit”, *CBC News* (August 26, 2006), available at <http://www.arcticnet-ulaval.ca/index.php?fa=News.showNews&home=4&menu=55&sub=1&id=243>

in terms of their approach to Northern issues. For Canadians ‘the North’ is part of their national identity, and any perceived threat against Canada’s ‘true north’ is likely to provoke an emotional and counter-productive reaction. These identity concerns must be taken seriously, since the emotional response to any perceived “threat” could paralyze the government response. As polls show, Canadian public opinion tends to perceive the US as the main source of concern in the North and tends to support unilateral initiatives rather than bilateral ones. This is not the case in the US – with the exception of Alaska. At best, it is safe to say that the vast majority of American leaders don’t nurture strong bonds with the North.

Indeed, as S. Jeff Burchall has argued, the debate is characterized by a “sense of alarm” about melting ice which “cloud[s] the real issues”³⁸ affecting the Arctic; however, if melting ice is not the ‘real issue’, there is no agreement about what this might be. Again, the question of how to respond to a problem that is not universally recognized as ‘a problem’ is highlighted. The challenges for bilateral (or multilateral) cooperation in this context are clear – if there is no agreement about causes or timelines, about solutions or implications, the development of a unified policy response is impossible, not only nationally, but regionally.

Conclusions

Proposals calling for the creation of a new bilateral institution certainly make sense from a rational point of view. Based on the preceding discussion, however, the optimism that stems from the historical record of cooperation between Canada and the US, along with the growing practice of setting sovereignty to the side, must be tempered with a degree of caution. Taking this into account, several observations can be derived. First, it is clear that any Canada-US bilateral initiative must steer clear of the sovereignty issue (at least, related to the NWP), as this issue dramatically reduces the prospects for a bilateral agreement. Second, at the same time, any bilateral institution must be carefully designed to take account of the

³⁸ S. Jeff Burchall, “Canadian Sovereignty: Climate Change and Politics in the Arctic”, *Arctic*, Vol. 59, No. 2 (June 2006), p. 3.

range of multilateral arrangements already in place in the North, and the potential tensions between bilateral and multilateral arrangements must be considered.

None of this means that bilateral initiatives are necessarily bound to fail. But it does mean that a prudent approach is required, an approach that focuses on very limited, technical (hence non-political) issues, such as search and rescue, shipping monitoring, environmental disaster response, or human security problems. Moreover, it is probably easier and safer to aim at a very simple agreement (such as Memorandum of understanding rather than a formal treaty that establishes general principles and long-term objectives.

Such an approach offers multiple advantages. First, low profile initiatives allow the actors to circumvent the delicate issue of sovereignty and, eventually, avoid the emotional reaction that even a benign incident or a misunderstanding can trigger. Second, in the same vein, these are less likely to be perceived as “threatening” or “exclusionary” by non-member states. Finally, initiatives that are limited in scope could always serve as a basis for future, more ambitious, proposals. In this sense, they can be considered intermediate steps in a longer process.

In an ideal world, a comprehensive, multilateral treaty remains certainly the most effective option for resolving the conflicts in the region and addressing the huge challenges caused by global warming. But at the time of writing, such a comprehensive agreement remains unlikely; in this context, the prospects for developing limited bilateral accords, despite their weaknesses, merits further attention.