

**UNILATERALISM IN CANADIAN FOREIGN POLICY: AN EXAMINATION  
OF THREE CASES**

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## ABSTRACT

Though often overlooked, unilateralism as a foreign policy approach deserves to be studied, even in the case of Canada, a country that has developed a reputation as a staunch defender of its opposite, multilateralism. This thesis studies does precisely that, and is prompted, by a proposition recently put forward by Allan Gotlieb, the former Canadian Ambassador to the United States, that, when other methods have proven ineffective, unilateralism has been a very real option for Canada. The thesis explores the validity of Gotlieb's claim by examining three cases cited by Gotlieb as examples of a unilateral approach taken by Canada: the Arctic Waters Pollution Prevention Act in 1970, its declaration of straight baselines around the Arctic Archipelago in 1985, and the so-called Turbot War launched by enforcement of amendments to the Coastal Fisheries Protection Act in 1995. Were these in fact cases of determined unilateralism, prompted as Gotlieb argues, by a basic need to defend the most basic of Canada's core interests, its territorial sovereignty?

Further investigation of the cases cited by Gotlieb reveals that he is correct in one sense but not in another. In all of the cases Canada undeniably acted unilaterally. But Gotlieb's analysis misses the larger reality that the three initiatives were pursued within a framework of multilateralism. Canada acted unilaterally not simply for the purpose of protecting Canada's territorial integrity, but in the hopes of reinvigorating a multilateral process.

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If it takes a village to raise a child, it has taken one filled with my family and friends to finish my thesis. My colleagues in graduate school provided me with numerous opportunities to share my concerns and ample stress relief. I feel honoured to have worked with all of you. Many, many thanks to my editing and thesis completion team including Robin Anderson, Kiley Frantik, Ashley Metz, James Snyder and Jacquie Thomarat. I know that editing my thesis may have been an arduous task, but I sincerely hope it has not ruined our rapprochement. Thanks also to Tasha Elliott and Genevieve Prevost, for their great encouragement and advice. To Donna Bretell, who has served many roles in my life including both colleague and mentor – my life plan would not have been the same without you. My family has given me invaluable love and good humour – you have handled my time in graduate school better than I have! Thank you all so much for your dedication, encouragement, and commitment.

Rhiannon Stromberg, 2006

## **DEDICATION**

This thesis is dedicated to my mother, and her mother before her, who taught me the value of hard work.

## **LIST OF NON-STANDARD ABBREVIATIONS**

AWPPA – Arctic Waters Pollution Prevention Act (1970)

CFPA – Coastal Fisheries Protection Act (Amendments – 1994)

MT – metric tonne

TAC – total allowable catch

TFNOD – Task Force on Northern Development

TSGCO – Territorial Sea and Geographic Coordinates (Area 7) Order (1985)

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## Chapter 1

### Introduction

Unilateralism is “. . . a lot easier to work than genuine multilateralism. . .”  
and it is “. . . not, in all circumstances, [a] sin.”<sup>1</sup>

Brilliantly simple, John Holmes’ observation suggests to us that unilateralism as a foreign policy approach deserves to be studied, even in the case of Canada, a country that has developed a reputation as a staunch defender of its opposite, multilateralism. This thesis does precisely that, and is prompted, in particular, by a proposition recently put forward by Allan Gotlieb, the former Canadian Ambassador to the United States, that, when other methods have proven ineffective, unilateralism has been a very real option for Canada. Gotlieb argues that writers have paid far too little attention to the reality that Canada has not infrequently resorted to unilateralism as a foreign policy approach and with considerable effect. In his words: “. . .when it comes to pursuing our national interest, Canada has a long history of unilateralism. Even if we have a multilateralist chromosome, when our territory or sovereignty is at stake, there is a zest for unilateralism in our genes.”<sup>2</sup>

The goal of the thesis is to explore the validity of Gotlieb’s claim that Canada has a preference to acting unilaterally to protect its territory by examining three cases that he himself cites as examples under three different Prime Ministers: its enactment under Pierre Trudeau of the Arctic Waters Pollution Prevention Act in 1970, its declaration under Brian Mulroney of straight baselines around the Arctic Archipelago in 1985, and the so-called Turbot War launched by the Jean Chrétien government in 1995. Were these in fact cases of determined unilateralism, prompted as Gotlieb argues, by a basic need to defend the most basic of Canada’s core interests, its territorial sovereignty? This is the central question to be answered.

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<sup>1</sup> John Homes, “The New Agenda for Canadian Internationalism,” Canada and the New Internationalism, eds. John Holmes and John Kirton (Toronto: Canadian Institute for International Affairs, 1988), 13.

<sup>2</sup> Allan Gotlieb, Realism and Romanticism in Canada’s Foreign Policy, (Toronto: C.D. Howe Institute, 2004), 33.



Unilateralism deserves some kind of definition. Unfortunately, many of the definitions were written in the context of the Cold War. As a result, they often addressed unilateralism in relation to nuclear disarmament, where countries were encouraged to unilaterally announce the destruction of their nuclear weapons.<sup>3</sup> Since the end of the Cold War, with the emergence of the United States (US) as the major global power, new definitions of unilateralism have developed negative connotations. Unilateralism is largely used pejoratively to describe the US “acting by itself and then coerc[ing] others to fall in line.”<sup>4</sup> What this definition fails to articulate is that states other than the US frequently operate unilaterally and do so for legitimate reasons. They simply choose not to describe their behaviour as unilateral because of the off-putting impressions associated with it. As one author says, “unilateralism often seems tantamount to a dirty word.”<sup>5</sup> Perhaps because of the different implications associated with unilateralism, there is no widely accepted definition.<sup>6</sup>

Still, unilateralism must be defined for the purposes of the thesis. A workable definition comes from Daniel Bodansky, who defines unilateralism as “one state proceed[ing] independently, on its own authority, with minimal involvement by other states” in the resulting decision or action.<sup>7</sup> Writers have noted that there are varying degrees of unilateralism, which reflect the undeniable reality of a world that is used to operating multilaterally.<sup>8</sup> States will rarely take action in complete isolation. Even great powers will consider the possible reactions of other major international players.<sup>9</sup> Indeed it is unusual for a state to take unilateral action against another state without first attempting to negotiate or resolve differences.<sup>10</sup>

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<sup>3</sup> Graham Evans and Jeffrey Newnham, Dictionary of International Relations, (Toronto: Penguin Books Canada Ltd., 1998), 550.

<sup>4</sup> Jay M. Shatritz, Phil Williams, and Ronald Calinge, The Dictionary of 20<sup>th</sup> Century World Politics, (New York: Henry Holt and Company, Inc., 1993), 459.

<sup>5</sup> Daniel Bodansky, “What’s so bad about unilateral action to Protect the Environment?” European Journal of International Law 11(2) (2000), 339.

<sup>6</sup> Bernhard Jansen, “Limits of Unilateralism,” European Journal of International Law 11(2) (2000), 309.

<sup>7</sup> Bodansky, 340.

<sup>8</sup> Graham F. Walker, “Introduction,” Independence in an Age of Empire: Assessing Unilateralism and Multilateralism, ed. Graham F. Walker (Halifax: Centre for Foreign Policy Studies, 2004), 4-5.

<sup>9</sup> Bodansky, 342.

<sup>10</sup> Pierre-Marie Dupuy, “The Place and Role of Unilateralism in Contemporary International Law,” European Journal of International Law 11(2) (2000), 24.

One of the perhaps paradoxical features of unilateralism is that it can actually end up furthering the prospects of multilateralism. It has been the case that states will act unilaterally to enforce or further the development of international norms.<sup>11</sup> Where unilateralism arouses international condemnation, it tends to remind the international community that multilateral cooperation is viewed as desirable in international relations.<sup>12</sup>

On the other hand, states often find themselves acting unilaterally and for legitimate reasons. At times, states are faced with a choice not between unilateralism and multilateralism, but between unilateralism and inaction.<sup>13</sup> In fact states act unilaterally on a daily basis as governments “implement policies, make decisions, and adopt administrative and other acts.”<sup>14</sup> In many cases, such actions will mainly affect only that particular state. It is when they affect another state that they are sometimes criticized, most often by those affected by the action.<sup>15</sup>

Unilateralism is not a prevalent topic in the literature on Canadian foreign policy. On the contrary, the literature tends to focus on Canada’s overwhelming tendency to act multilaterally or to operate within the context of multilateral institutions. Authors who stress the prominence of multilateralism in Canadian foreign policy usually pay little attention to evident instances of unilateral behaviour. They argue that multilateralism is not only the primary method used in Canadian foreign policy but the ideal one.

The literature’s preoccupation with multilateralism, often equated with the broader concept of internationalism, is attributed to the influence of distinguished scholar John Holmes.<sup>16</sup> For Holmes, multilateralism allowed states to pragmatically develop ways to solve problems; this was often the goal of foreign policy. By acting multilaterally, states promoted ongoing discussion and dialogue in the international

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<sup>11</sup> Sharitz et al., 682; Berridge and James, 266-267; and Bodansky, 340 and 343.

<sup>12</sup> Dupuy, 24.

<sup>13</sup> Bodansky, 339.

<sup>14</sup> Philippe Sands, “‘Unilateralism,’ Values, and International Law,” European Journal of International Law 11(2) (2000), 292.

<sup>15</sup> Bodansky, 341 and Jansen, 310.

<sup>16</sup> A good discussion of how the term “internationalism” is translated into “multilateralism” by Holmes and others is found in Don Munton’s and Tom Keating’s article, “Internationalism and the Canadian Public,” Canadian Journal of Political Science (September 2001), 517-549.

community and could work together to counterbalance the greater powers.<sup>17</sup> When Holmes spoke of unilateralism, he was usually referring to unfortunate or ill-advised actions taken by larger powers such as the United States and the Soviet Union. He did suggest that there is an appropriate and viable place for unilateralism in international relations: “[unilateralism, bilateralism, and multilateralism] each has its place – if only one can figure out what that is.”<sup>18</sup> But he was no advocate of unilateralism as a serious alternative diplomatic approach for Canada. He was only prepared to admit that it might be necessary on an occasional basis, such as when Prime Minister Pierre Trudeau enacted the Arctic Waters Pollution Prevention Act in 1970 — an anomalous decision prompted by the “domination of international law by large powers with special maritime and naval interests”; this was a situation “...not likely to arise often.”<sup>19</sup>

Tom Keating has also written on the primacy of multilateralism in Canadian foreign policy. Keating argues that “over time and across different issues, Canadian policy makers have repeatedly relied on multilateralism in the pursuit of a diverse range of foreign policy objectives.”<sup>20</sup> Though he admits that Canada can use methods other than multilateralism, he maintains that “the government in the [post-World War II] period had neither the will nor the capability to impose order on others in either the security or the economic realm.”<sup>21</sup> This tradition has continued and Canada still “rel[ies] on multilateral strategies in the pursuit of foreign policy goals.”<sup>22</sup>

Yet scholars have, in recent times, started to concern themselves with unilateralism as a genuine feature of Canadian foreign policy. These studies proceed largely from the standpoint of power analysis and the premise that Canada is a significant actor in the international system. The implication is that Canada possesses the necessary power or capabilities to act unilaterally.

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<sup>17</sup> John Holmes, “Introduction,” No Other Way: Canada and International Security Institutions, ed. John Holmes (Don Mills, Ontario: T.H. Best Printing Co. Ltd., 1986), 7.

<sup>18</sup> Holmes, “The New Agenda for Canadian Internationalism,” 15.

<sup>19</sup> John Holmes, “Canada: The Reluctant Power,” in Canada: A Middle Aged Power, (Toronto: McClelland and Stewart Limited, 1976), 26-27.

<sup>20</sup> Tom Keating, Canada and the World Order: The Multilateralist Tradition in Canadian Foreign Policy, 2nd ed. (Don Mills, Ontario: Oxford University Press, 2002), 2.

<sup>21</sup> Keating, Canada and the World Order, 10.

<sup>22</sup> Keating, Canada and the World Order, 12.

James Eayrs was one of the first to assert that Canada was best described not as a middle power but rather a “‘foremost power’ – foremost in the dictionary definition of ‘most notable or prominent’.”<sup>23</sup> Eayrs examined the nature of power and argued that because of its elusiveness, power “may be seen not only in its possession by those who, on ‘rational calculations’, have no right to it but also in its lack by those who, on calculations no less rational, have every right to it.”<sup>24</sup> Countries may have the necessary capabilities to possess power, but they must also have legitimacy and the will to act if they are to succeed in using it. Canada, in Eayrs’ view, possessed the legitimacy and the will to succeed in acting on its own.

Building upon Eayrs’ theme, Garth Stevenson and Norman Hillmer edited a volume entitled A Foremost Nation: Canadian Foreign Policy and a Changing World in which they focused on the changing position of Canada in the world. The implication of their work was that Canada could, and should, pursue foreign policy through means other than multilateralism, and more specifically, bilateralism or unilateralism.<sup>25</sup> Developing the argument even further, Peyton Lyon and Brian Tomlin next produced a work whose central argument was that “Canada should now be regarded as a major power.”<sup>26</sup> They called for an approach that focused on the capabilities that Canada possessed rather than on how Canada should use its capabilities.<sup>27</sup>

David Dewitt and John Kirton’s influential book, Canada as a Principal Power: A Study in Foreign Policy and International Relations, proceeded from the similar premise that Canada was truly a “principal power”, defined as a nation that stood “. . . in the top tier of the global hierarchy of power” and act[ed] “without direct reference to any group.”<sup>28</sup> Principal powers, Dewitt and Kirton maintained, “. . . act autonomously in

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<sup>23</sup> James Eayrs, “From middle to foremost power: Defining a new place for Canada in the hierarchy of world power,” International Perspectives (March/April 1975), 15.

<sup>24</sup> Eayrs, “From middle to foremost power,” 17.

<sup>25</sup> Norman Hillmer and Garth Stevenson, “Foreword,” Canada: A Foremost Nation, eds. Norman Hillmer and Garth Stevenson, (Toronto: McClelland and Stewart, 1977), 2.

<sup>26</sup> Peyton V. Lyon and Brian W. Tomlin, Canada as an International Actor, (Toronto: Macmillan of Canada, 1979), 72.

<sup>27</sup> Lyon and Tomlin, Canada as an International Actor, 72.

<sup>28</sup> David B. Dewitt and John J. Kirton, Canada as a Principal Power: A Study in Foreign Policy and International Relations, (Toronto: John Wiley and Sons, 1983), 15 and 38.

pursuit of their own interests, rather than as mediators among others or agents for them.”<sup>29</sup>

It is clear that Dewitt and Kirton were talking about the phenomenon of unilateralism in Canadian foreign policy as a means used to further national interests. They argued that this approach is used by principal powers because of the competitive orientation of states to achieve and maintain a certain level of power. States will act unilaterally to achieve power through the pursuit of national interests.<sup>30</sup> They defined national interests largely in functional terms, as interests particular to the “military, economic, social and cultural spheres.”<sup>31</sup>

The most recent and provocative claim concerning Canada and unilateralism has come from Allan Gotlieb, who has been referred to as one of “Canada’s foremost foreign-policy experts and practitioners.”<sup>32</sup> Gotlieb served as Undersecretary of State in the Department of External Affairs and as Canadian Ambassador to the United States from 1981 - 1988. He argues that while it does not possess the resources of a great power, Canada has not infrequently used a unilateral approach as a means of pursuing its foreign policy objectives: “When it comes to asserting our own territoriality based on national interests, Canadian unilateralism has been consistent, aggressive, and the dominant strategy for over half a century. It cannot properly be seen as consisting of sporadic and minor deviations from the true path of multilateralism.”<sup>33</sup>

The primary objective of this thesis is to investigate Gotlieb’s claim that unilateralism is a genuine feature of Canadian foreign policy, that it is a primary means by which Canada has protected its territorial interests. The thesis explores more fully the three cases cited by Gotlieb as examples of Canada using unilateral initiatives to pursue its territorial interests: the Arctic Waters Pollution Prevention Act in 1970, Canada’s declaration of straight baselines around the Arctic Archipelago in 1985, and the Turbot War of 1995. More specifically, it seeks to determine if these cases were genuine examples of unilateralism and, if they were, if the primary force

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<sup>29</sup> Dewitt and Kirton, *Canada as a Principal Power*, 38.

<sup>30</sup> Dewitt and Kirton, *Canada as a Principal Power*, 41-42.

<sup>31</sup> Dewitt and Kirton, *Canada as a Principal Power*, 39.

<sup>32</sup> Jack M. Mintz, “Foreword” in *Realism and Romanticism in Canada’s Foreign Policy*, (Toronto: C.D. Howe Institute, 2004), page unnumbered.

<sup>33</sup> Gotlieb, *Realism and Romanticism in Canada’s Foreign Policy*, 34.

driving Canadian unilateralism was the national interest of protecting Canadian territorial sovereignty.

Further investigation of the cases cited by Gotlieb reveals that he is correct in one sense but not in another. In all of the cases Canada undeniably acted unilaterally. But Gotlieb's analysis misses the larger reality that the three initiatives were pursued within a framework of multilateralism. The cases do not serve as substantial evidence that Canada has an inherent preference to act unilaterally – where “there is a zest for unilateralism in our genes”.<sup>34</sup> Canada acted unilaterally not simply for the purpose of protecting Canada's territorial integrity, but in the hopes of reinvigorating a multilateral process.

The thesis shows that Canada's unilateral actions were consistent with pervading international legal norms. More particularly, they were directed toward the larger goal of changing international law. To this end they were successful. In the case of the Arctic Waters Pollution Prevention Act, Canada's enactment of new laws led to the formation of Article 234 at the 1982 Law of the Sea Convention which recognized the right of coastal states to adopt and enforce laws for the purposes of pollution prevention.

Canada's unilateral actions provided impetus for the further pursuit of international negotiations. In the case of the Territorial Seas and Geographical Coordinates (Area 7) Order, where Canada enacted straight baselines around the Arctic archipelago, its decisions forced the US to enter into negotiations with Canada concerning the Northwest Passage. These negotiations led to the signing of the 1988 Arctic Co-operation Agreement.

Similarly in the case of the Coastal Fisheries Protection Act amendments enacted by Canada in the Turbot War, Canadian actions provided impetus for further international acceptance of the precautionary principle, where states recognize a duty to protect the environment from the unknown. After Canada unilaterally introduced the Coastal Fisheries Protection Act amendments, Canada and the European Union worked together to increase the power of regulatory agencies such as the North Atlantic Fisheries Organization at the Convention on the Law of the Sea.

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<sup>34</sup> Gotlieb, Realism and Romanticism in Canada's Foreign Policy, 33.

## Chapter 2

### The Arctic Waters Pollution Prevention Act (AWPPA)

#### 2.1 Introduction

The first case cited by Gotlieb as a demonstration of Canada's unilateral behaviour for the purpose of protecting territorial sovereignty is the Arctic Waters Pollution Prevention Act (AWPPA).<sup>35</sup> Others have not been so apt to view the AWPPA in this light. For instance, John Roberts sees the AWPPA as one of a multitude of actions taken by the Trudeau government that recognized the growing environmental conscience of Canadians.<sup>36</sup> Thomas Axworthy, Trudeau's Chief of Staff, argues that the AWPPA was not so much about territory, but about recognizing that Canada had a protectionist role to play over the Arctic, as he states: "Instead of beating the nationalist drum for territorial possessions, [the AWPPA] spoke about Canada's responsibility as a 'custodian' of the North."<sup>37</sup> Other analysts focus not so much on the unilateral aspect of Canada's action but rather on the way in which Canada deals with the US where there are policy differences between the two governments. Maxwell Cohen and Edgar J. Dosman, stated that the AWPPA was largely an attempt to avoid overreacting to a US initiative that it considered unacceptable.<sup>38</sup> Canada's actions have also been interpreted as illiberal. John Kirton and Don Munton maintain that Canada's actions are consistent with a state

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<sup>35</sup> For the purposes of this paper, this case study includes not only the AWPPA legislation, but also amendments to the Territorial Sea and Fishing Zones Act, which changed the territorial sea limit from three miles to 12. Though the title of the case study becomes a little bit confusing because it encompasses changes to two pieces of legislation, these pieces of legislation are often lumped together by most commentators on the AWPPA. For the purposes of remaining consistent with other examinations of the case, I will also do so here.

<sup>36</sup> See John Roberts, "Meeting the Environmental Challenge," in Towards a Just Society: The Trudeau Years, eds. Thomas S. Axworthy and Pierre Elliott Trudeau (Markham, Ontario: Penguin Books Canada Ltd, 1990), 148-176.

<sup>37</sup> Thomas S. Axworthy, "'To Stand Not So High Perhaps but Always Alone': The Foreign Policy of Pierre Elliott Trudeau," in Towards a Just Society: The Trudeau Years, eds. Thomas S. Axworthy and Pierre Elliott Trudeau (Markham, Ontario: Penguin Books Canada Ltd, 1990), 29.

<sup>38</sup> See Maxwell Cohen, "The Arctic and the National Interest," International Journal 26(1) (1970-1971), 52-81 and E.J. Dosman, "The Northern Sovereignty Crisis 1968-1970," in The Arctic in Question, ed. E.J. Dosman (Toronto: Oxford University Press, 1976), 35-57.

redefining its foreign policy in a fundamentally different manner than the liberal internationalist perspective.<sup>39</sup>

While these are all interesting perspectives from which to view the AWPPA, they fail to explain why Canada adopted a unilateral approach as a matter of policy. The evidence reveals that Canada did so only after exhausting all other options for reaching an agreement with the US. Moreover, its goal was to enact legislation that was acceptable to the international community.

The purpose of this chapter is to demonstrate that initiatives taken by Canada in introducing and implementing the AWPPA were not only an example of unilateralism but part of a larger exercise to move along the multilateral agenda regarding issues that were viewed as central to Canada's national interest.

## **2.2 Societal Context Surrounding the Introduction of the AWPPA**

The societal context in which the AWPPA was enacted provides important clues to understanding Canada's actions. It was defined by the historic interactions between Canada and the US over the Northwest Passage, the discovery of a huge reserve of natural resources in the Arctic, growing public awareness of environmental threats, the emergence of a vibrant nationalism in Canadian society, and the strong beliefs of particular members of the Trudeau government.

Historically, the high seas have been an issue of conflict between states. The underlying principle that is supposed to regulate state behaviour on the oceans is "freedom of the high seas," which affirms the oceans as an area of safe transit for ships from any country (based on the presumption of innocent passage).<sup>40</sup> Yet as transit became more prevalent on the high seas, it became increasingly difficult to know who was in control of the oceans. Longstanding contention existed between Canada, Norway,

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<sup>39</sup> See John Kirton and Don Munton, "Protecting the Canadian Arctic: The Manhattan Voyages, 1969-1970," in *Canadian Foreign Policy: Selected Cases*, eds. Don Munton and John Kirton (Scarborough, ON: Prentice-Hall Canada, Inc., 1992), 205-224 and John Kirton and Don Munton "Chapter 4: The Manhattan Voyages and their Aftermath," in *Politics of the Northwest Passage*, ed. Franklyn Griffiths (Kingston: McGill-Queen's University Press, 1987), 67-97.

<sup>40</sup> Florsheim, "Territorial Seas – 3000 Year Old Question," *Journal of Air, Law and Commerce* 36(1970), 73 as quoted in Edgar Gold, "Pollution of the Sea and International Law: A Canadian Perspective," *Journal of Maritime Law and Commerce* 3(1) (October 1971), 18.



Denmark and the US over control of the high seas in the Arctic.<sup>41</sup> Canada and the US in particular have disagreed over economic and resource developments, as well as international legal standards.<sup>42</sup> One of the major reasons these disputes have arisen is that Canada recognizes the Arctic archipelago as part of its territory, while the US does not. The Arctic sovereignty issue had come to a head in the mid-1960s when Canadian Prime Minister Lester B. Pearson attempted to draw baselines around the Arctic archipelago, claiming the area internal to Canadian waters. The US administration responded that Canada's action was unacceptable, as it would set precedent for other countries to take similar action, which was not in the US interest.<sup>43</sup>

The discovery of a large amount of natural resources in the North caused renewed contention between Canada and the US over the Northwest Passage. In particular, the finding of substantial oil reserves enticed greater US interest in developing the Northwest Passage as a commercial route. In 1968, a considerable amount of oil was discovered off the coast of Prudhoe Bay in Alaska. In an attempt to find a cost-effective manner to transport the oil, Humble Oil, an American company acting on behalf of EXXON, sent the *Manhattan*, an oil tanker, to test the feasibility of the Northwest Passage as a delivery route.<sup>44</sup> Reacting to Humble Oil's decision, Canada announced that it would have the icebreaker *John A. Macdonald* (nicknamed the *Johnny Mac*) accompany the *Manhattan* on its journey. The Canadian government also created the Task Force on Northern Development (TFNOD) to examine the consequences of Northern resource development.<sup>45</sup> On September 14, 1969, after much help from the Canadian icebreaker, the *Manhattan* completed its voyage of the Northwest Passage. It was discovered that transporting oil by commercial tanker could save Humble Oil 60 cents/barrel compared to shipping by pipeline, but it also posed a real threat to the Arctic environment, as ice had significantly damaged the *Manhattan*. Because of the favourable economic results,

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<sup>41</sup> Cohen, "The Arctic and the National Interest," 54-55.

<sup>42</sup> Cohen, "The Arctic and the National Interest," 52 and 63-64.

<sup>43</sup> In particular, the US was concerned with protecting its interests in Indonesia and the Philippines. See E.J. Dosman, "The Northern Sovereignty Crisis 1968-70," 35.

<sup>44</sup> Kirton and Munton, "Protecting the Canadian Arctic," 207.

<sup>45</sup> Kirton and Munton, "Protecting the Canadian Arctic," 207 and Elizabeth B. Elliot-Meisel, Arctic Diplomacy: Canada and the United States in the Northwest Passage, (New York: Peter Lang Publishing, 1998), 141.

Humble, ARCO, and British Petroleum began preparing other tankers for further test voyages.<sup>46</sup>

Canadians, like much of the global population, were learning about the disastrous effects that oil pollution could have on the environment. On February 4, 1970, an oil tanker named the *Arrow* ran aground on the coast of Chedabucto Bay, Nova Scotia. The disaster was strikingly similar to that of the *Torrey Canyon*, a large oil tanker that had crashed off the coast of Britain, spilling millions of gallons of oil into the ocean. Both shipping disasters drew attention to the complex legal regulations that governed the international shipping industry. The *Arrow's* shipping company was owned by a corporation registered in Panama on behalf of a Monte Carlo corporation that was registered in Bermuda. The ship itself had been loaned to a US company that was incorporated in the Bahamas. This made it very difficult to determine the company, let alone the country, that could be held liable for damages, as the costs associated with cleaning up these oil spills were quite substantial. Since Canada could not hold anyone responsible in the case of the *Arrow*, the Canadian government paid approximately three million dollars to clean up the oil dumped off the coast of Nova Scotia.<sup>47</sup>

An emerging sense of nationalism in Canada in the late 1960s further contributed to tension between Canada and the US over the Arctic. Canadians were concerned about their country's ability to maintain a distinct identity in the face of the growing influence of the US. For much of the Canadian public, the voyage of the *Manhattan* represented a direct challenge to Canada's sovereignty by the US. It seemed indicative of US interest not only in Canadian territory, but also in Canadian resources.<sup>48</sup> Though the vast Northern territory was an integral part of how Canadians defined their country, the issue was further complicated as the area had never been formally recognized as part of Canada by the international community.<sup>49</sup>

The Canadian public's concerns over Canada's Northern territory were echoed in the Department of External Affairs. External Affairs considered Canadian sovereignty in

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<sup>46</sup> Kirton and Munton, "Protecting the Canadian Arctic," 207 and 211.

<sup>47</sup> Gold, "Pollution of the Sea and International Law," 33.

<sup>48</sup> Cohen, "The Arctic and the National Interest," 65, 72.

<sup>49</sup> William R. Morrison refers to this as "mappism". See William R. Morrison, "Eagle over the Arctic: Americans in the Canadian North, 1867-1985," in *Interpreting Canada's North: Selected Readings*, eds. Kenneth S. Coates and William R. Morrison (Toronto: Copp Clark Pitman Ltd., 1989), 170.

the North non-negotiable.<sup>50</sup> Acting as the lead department, it proposed a strategy whereby Canada would extend the territorial sea from three miles to 12-nautical miles by amending the Territorial Sea and Fishing Zones Act. Officials believed that this policy would receive wide acceptance in the international community as 57 other states had already enacted similar legislation. External Affairs also claimed that the extension of the territorial sea would be the first step to gradually enclosing the waters of the Arctic archipelago within Canadian borders.<sup>51</sup>

Another strategy explored by policy makers came from recommendations by the Standing Committee on Indian Affairs and Northern Development. It proposed that Canada consider the Northwest Passage a domestic strait under Canadian control. Accordingly, it recommended that Canada draw straight baselines around the Arctic archipelago.<sup>52</sup>

Because Cabinet could not reach a compromise between these two positions, Trudeau entered discussions to try and broker some sort of agreement.<sup>53</sup> He favoured adopting a 100-nautical mile pollution prevention zone in the Arctic, which was recommended by a group of his senior staff.<sup>54</sup> He thought that the adoption of a pollution prevention zone would be better received in the international community than drawing straight baselines around the Arctic archipelago.<sup>55</sup> The pollution prevention zone would still allow Canada to regulate innocent passage of ships up to 100-nautical miles from the Arctic shoreline, largely placing the Northwest Passage under Canadian jurisdiction.<sup>56</sup>

Eventually, two different strategies were seriously considered by Cabinet. The first, brought forward by Mitchell Sharp, then Secretary of State for External Affairs, advocated that Canada should implement only those measures likely to receive

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<sup>50</sup> E.J. Dosman, "The Northern Sovereignty Crisis 1968-70," 34.

<sup>51</sup> E.J. Dosman, "The Northern Sovereignty Crisis, 1968-70," 50-51; Ivan L. Head and Pierre Elliott Trudeau, The Canadian Way: Shaping Canada's Foreign Policy 1968-1984, (Toronto: McClelland and Stewart Inc., 1995), 38-39.

<sup>52</sup> E.J. Dosman, "The Northern Sovereignty Crisis, 1968-70," 50-51; Head and Trudeau, The Canadian Way, 38-39.

<sup>53</sup> Head and Trudeau, The Canadian Way, 33.

<sup>54</sup> This group included Ivan Head, International Relations Adviser to the Prime Minister; J.A. Beesley, legal advisor to the Department of External Affairs; Allan Gotlieb, former legal advisor in the Department of External Affairs; and Gordon Robertson, Secretary to the Cabinet and Clerk of the Privy Council.

<sup>55</sup> E.J. Dosman, "The Northern Sovereignty Crisis 1968-70," 50; Head and Trudeau, The Canadian Way, 38-39.

international support, while strengthening sovereignty through Northern development. Sharp argued that any actions taken by Canada must be either compatible with international law or, at the very least, be defensible in court. As a result, the Canadian right to a sovereign Northern territory would eventually be recognized by the international community.<sup>57</sup> But Trudeau still favoured the adoption of a pollution prevention zone because it would allow Canada to act as a leader in the international community, forging new conventions in international law in areas such as ice-covered waters.<sup>58</sup>

Cabinet sided with Trudeau, deciding to create a 100-nautical mile pollution prevention zone, but disagreement arose over whether Canada, in order to prevent the regulation from being challenged by another country, should reserve its decision from the World Court. Mitchell Sharp and Paul Martin (Sr.) were strongly against Canada placing a reservation with the World Court. Both Sharp and Martin maintained that Canada had a reputation as a country that embraced international law. To reserve the court's jurisdiction would be seen as hypocritical by the international community. Furthermore, Canada's reservation could then be used by other countries to withdraw support from the World Court, an act to which Canada, not having reserved an World Court decision since 1929, was firmly opposed. Both Sharp and Martin were averse to setting such a dangerous precedent.<sup>59</sup> In contrast, Trudeau and Allan Gotlieb contended that, given the uncertain state of international law on the territorial sea, Canada must reserve the Act from the jurisdiction of the World Court.<sup>60</sup> Gotlieb argued that the US had no obligation to recognize either Canada's 12-mile territorial sea limit or the pollution prevention zone and could therefore be in a position to file a grievance against Canada on any action against a vessel. A challenge at the World Court could see Canada's pollution prevention zone dismissed, further weakening Canada's case for sovereignty over the Northwest

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<sup>56</sup> E.J. Dosman, "The Northern Sovereignty Crisis 1968-70," 50; Head and Trudeau, The Canadian Way, 38-39.

<sup>57</sup> For the difference between a gradualist and an activist approach see Franklyn Griffiths, "Canadian Sovereignty and Arctic International Relations," in The Arctic in Question, ed. E.J. Dosman, (Toronto: Oxford University Press, 1976), 141-149.

<sup>58</sup> Kirton and Munton, "Protecting the Canadian Arctic," 213.

<sup>59</sup> Gold, "Pollution of the Sea and International Law," 35.

<sup>60</sup> Allan Gotlieb had formally served as the legal adviser in External Affairs. At the time he was Deputy Minister of the Department of Communications. See Kirton and Munton, "Protecting the Canadian Arctic," (footnote #23), 225.

Passage. Eventually, as only Sharp and Martin remained opposed to the reservation, Cabinet agreed to such action.<sup>61</sup>

Mitchell Sharp unveiled Canada's new Arctic sovereignty strategy on January 22, 1970. He announced that Canada would introduce a pollution prevention bill that regulated ships travelling through the Arctic archipelago. In a declaratory statement, Canada also announced that the *Manhattan* would no longer receive assistance from any Canadian icebreakers until it met the new environmental regulations. This announcement curtailed further exploratory voyages by Humble Oil, as Canada controlled the only icebreakers capable of navigating the Arctic waters.<sup>62</sup>

### **2.3 Implementation of the AWPPA**

Canada chose to act unilaterally through the introduction of two different pieces of legislation: the Arctic Waters Pollution Prevention bill and amendments to the Territorial Sea and Fishing Zones Act. The Arctic Waters Pollution Prevention bill was introduced in the House of Commons on April 8, 1970, as Bill C-202, implementing a 100-mile pollution prevention zone within the offshore jurisdiction of Canada.<sup>63</sup> It outlined regulations for navigation and commercial transit in the Arctic archipelago, which protected the Arctic mainland and islands north of the sixtieth parallel from environmental damage. To ensure these regulations were followed, the AWPPA authorized Canadian pollution prevention officers to board and inspect ships transiting the area.<sup>64</sup>

Bill C-203 amended the Territorial Sea and Fishing Zones Act to create fishing zones in areas adjacent to the coast of Canada, establishing a 12-mile territorial sea limit instead of the previous three-mile limit.<sup>65</sup> Both pieces of legislation passed in the House of Commons unanimously and were given royal assent on June 26, 1970.<sup>66</sup> Together, the legislation allowed Canada to reinforce jurisdiction over two of the narrowest parts of the Northwest Passage, the Barrows and Prince of Wales straits, which were integral to

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<sup>61</sup> Kirton and Munton, "Protecting the Canadian Arctic," 218, 219.

<sup>62</sup> Kirton and Munton, "Protecting the Canadian Arctic," 215, 216.

<sup>63</sup> Kirton and Munton, "Protecting the Canadian Arctic," 205.

<sup>64</sup> Cohen, "The Arctic and the National Interest," 74.

<sup>65</sup> Kirton and Munton, "Protecting the Canadian Arctic," 205.

<sup>66</sup> Elliot-Meisel, Arctic Diplomacy, 143; Head and Trudeau, The Canadian Way, 60.

Northwest Passage navigation. Accordingly, Canada secured jurisdiction over the Northwest Passage without making a direct claim to sovereignty.<sup>67</sup>

It is inaccurate to assert that Canada's decision making process was largely a reaction to public outrage over the *Manhattan* incident.<sup>68</sup> The Canadian government was aware of the planned voyage of the *Manhattan* long before it gained public attention. While the government took substantial time to determine a policy strategy, this delay was largely due to the contentious nature of the issue, not only for Canadians, but also for Canadian-American relations. Once a strategy was in place, the Canadian government acted swiftly on a variety of initiatives well before the AWPPA was introduced in the House of Commons. These initiatives included a series of public declarations, multilateral discussions, bilateral discussions, and, finally, unilateral action.

Even while working on the language of the AWPPA, the Canadian government issued a variety of public declarations. Both Trudeau and Sharp spoke publicly about Canada's position on Arctic sovereignty. The government also announced that then Governor General Roland Michener would tour Canada's Arctic from April 22 to May 4, 1969. On May 15, 1969, Trudeau declared that the Arctic lands and the Arctic continental shelf were considered part of Canadian territory. During this speech, Trudeau also declared that Canada viewed the Arctic waters as national terrain.<sup>69</sup> In the Throne Speech of that year, the government announced that the Arctic was as an area of prime importance for Canada. Specifically, the speech detailed Canada's role and responsibility as a custodian of the Arctic.

Throughout this period, Canada also announced a number of symbolic initiatives pertaining to Canada's effective occupation of the North. The Canadian flag was flown more prominently on public buildings and property in the area. Military flights by patrol aircraft became more frequent as part of a more active military presence in the North.<sup>70</sup>

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<sup>67</sup> Cohen, "The Arctic and the National Interest," 75; J.A. Beesley, "Rights and Responsibilities of Arctic Coastal States: The Canadian View," *Journal of Maritime Law and Commerce* 3(1) (October 1971), 7; and Kirton and Munton, "Protecting the Canadian Arctic," 205.

<sup>68</sup> Idea is argued in Cohen, Elliot-Meisel, and Dosman. See Cohen, "The Arctic and the National Interest," 52-81 and Dosman, "The Northern Sovereignty Crisis 1968-1970," 35-57 and Elliot-Meisel, *Arctic Diplomacy*, 143.

<sup>69</sup> Kirton and Munton, "Protecting the Canadian Arctic," 209.

<sup>70</sup> P.C. Dobell, "The Policy Dimension," in *The Arctic in Question*, (Toronto: Oxford University Press, 1976), 126-128.

The Prime Minister also invited Queen Elizabeth II to tour the Canadian North. When Queen Elizabeth II stopped in Yellowknife in July, 1969, her speech highlighted the importance of fighting pollution.<sup>71</sup>

At the same time Canada was issuing declarations of its unique role in the Arctic, a variety of multilateral discussions were also held. In November of 1969, Trudeau met with United Nations Secretary General U Thant, using the meeting to learn if other members of the international community had strong objections to Canada regulating environmental standards in the Arctic archipelago.<sup>72</sup> The Canadian government also lobbied other Arctic and non-Arctic coastal states to support its initiative, both prior to and following the passage of the AWPPA.<sup>73</sup> One of the first countries to support the AWPPA was the Soviet Union, as the legislation supported its claim to the Northeast Passage.<sup>74</sup>

Canada was at the same time attempting bilateral negotiations with US leaders. In March of 1969, Trudeau expressed concerns to then President Richard Nixon, over international respect for Canadian fishing rights and territorial sea boundaries. At a ministerial meeting in June of that year, Canada agreed to continue negotiating with the US and to provide significant notice preceding its claim over the North. In response, the US warned that an extension of Canadian fishing and territorial rights would constitute a violation of international law. By behaving in such a manner, Canada would set dangerous precedent, leading to further repercussions for US interests in other areas, particularly Southeast Asia, the Mediterranean, and the Middle East. When discussions reached a stalemate, the US administration indicated that a Canadian claim to Arctic sovereignty would result in an American challenge before the World Court.<sup>75</sup>

Canada unilaterally implemented the AWPPA to mixed reactions from the international community. The introduction of the bill was quite controversial in the US.

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<sup>71</sup> J.L. Granatstein, "External Affairs and Defence," Canadian Annual Review for 1970, ed. J. Saywell (Toronto: University of Toronto Press, 1971), 353.

<sup>72</sup> Kirton and Munton, "Protecting the Canadian Arctic," 213 and John Burns, "Trudeau plays down Arctic control issue," Globe and Mail, 12 November 1969, 1.

<sup>73</sup> Dobell, "The Policy Dimension," 125; Head and Trudeau, The Canadian Way, 59.

<sup>74</sup> Griffiths, "Canadian Sovereignty and Arctic International Relations," 154 and Interview with Ivan Head as quoted in Clyde Sanger, Ordering the Oceans: The Making of the Law of the Sea, (Toronto: University of Toronto Press, 1987), 113.

<sup>75</sup> A much more detailed discussion of these initiatives, among others, is found in Kirton and Munton, "Protecting the Canadian Arctic," 210 and 211.

Humble Oil, in accordance with its corporate interests, cooperated with the new regulations even though Canada possessed little means of enforcement.<sup>76</sup> In March of 1970 the company requested the assistance of a Canadian icebreaker for the *Manhattan's* second voyage. It also agreed to the presence of a Canadian government representative aboard their ship to ensure its compliance with the pollution prevention standards dictated by the AWPPA.<sup>77</sup>

The Nixon Administration did not take such a conciliatory approach. On April 9, 1970, the day following the AWPPAs introduction in the House of Commons, a State Department press release announced that the US would not recognize Canada's claim to Arctic waters, or its creation of a 12-nautical mile fishing zone.<sup>78</sup> On April 14, 1970, Canada received a diplomatic note from Washington which chastised the country for unilaterally resolving an issue that should have been settled multilaterally. The note also stated that the US, irrespective of Canada's claims, would continue recognizing the Northwest Passage as an international strait.<sup>79</sup>

Relations between the Prime Minister and the President also remained tense. Nixon reportedly refused to take Trudeau's call announcing the Canadian government's policy.<sup>80</sup> Shortly afterward, he announced a policy that proposed to reduce imports of Canadian oil by 20%; the policy would be in effect from March 1 until the end of the year. Also signalling its strong opposition to Canada's initiative, the US Congress, on April 1, 1970, approved the construction of the world's most powerful non-nuclear icebreaker.<sup>81</sup> Twelve years later, the US Administration would still not accept Canada's position, refusing to sign Article 234 of the Law of the Sea Accord, which gave Arctic coastal states the right to adopt and enforce laws for the "prevention, reduction and control of marine pollution from vessels in ice-covered areas."<sup>82</sup>

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<sup>76</sup> Elliot-Meisel, *Arctic Diplomacy*, 143.

<sup>77</sup> Kirton and Munton, "Protecting the Canadian Arctic," 221.

<sup>78</sup> Richard Rohmer, *The Arctic Imperative: An Overview of the Energy Crisis*, (Toronto: McLelland and Stewart Limited, 1973), 55-56.

<sup>79</sup> Rohmer, *The Arctic Imperative*, 57.

<sup>80</sup> *Globe and Mail*, 25 August 1973 as quoted in J.L. Granatstein and Robert Bothwell, *Pirouette: Pierre Trudeau and Canadian Foreign Policy*, (Toronto: University of Toronto Press, 1990), 81.

<sup>81</sup> Kirton and Munton, "Protecting the Canadian Arctic," 221.

<sup>82</sup> John Honderich, *Arctic Imperative: Is Canada Losing the North?*, (Toronto: University of Toronto Press, 1987), 53.



Though the US reaction to the AWPPA was decidedly negative, Canadians overwhelmingly supported the legislation. In a rare show of solidarity, Members of the House of Commons supported it unanimously, 198-0.<sup>83</sup> Surprisingly, the most frequent complaint by citizens was that Canada had not been aggressive enough, a grievance especially voiced by opposition leaders in the House of Commons. Throughout 1969, the Globe and Mail printed many letters urging the government to adopt a stronger position on protecting Canada's northern territory.<sup>84</sup>

#### **2.4 Analysis of the Implementation of the AWPPA**

Most commentators concur with Ivan Head's conclusion that the AWPPA was used to "weave a fabric of sovereignty in the north;" a strategy of environmental concern and protection which allowed Canada to reinforce sovereignty claims, consistent with the spirit of international law.<sup>85</sup> As Elizabeth Elliot-Meisel points out, the right of innocent passage was not suspended under the AWPPA, but instead was redefined to acknowledge the environmental consequences of shipping in the Northwest Passage. It was the first time any nation asserted authority over an area of water for environmental reasons.<sup>86</sup> Peter Dobell agrees with Head and asserts that the "pollution-control legislation was adopted as a device for gaining control without the need to assert sovereignty...The government's action was an extension of jurisdiction, not a claim to sovereignty, an assertion of effective control without the confrontation that a claim to sovereignty might have produced."<sup>87</sup> As a result, the AWPPA forwarded Canada's claim over the Northwest Passage, which, in time it was hoped, would receive further acceptance within the international community.

Clearly, the AWPPA aided recognition of the Northwest Passage as part of Canadian territory. The case is also a clear instance of Canada exercising unilateral foreign policy. Gotlieb is correct in his assertion that the AWPPA is an illustration of Canada acting unilaterally for the purposes of protecting its territorial integrity. But he fails to recognize that Canada acted unilaterally within a framework of multilateralism.

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<sup>83</sup> J.L. Granatstein, *Canadian Annual Review* 1970, 353; Dobell, "The Policy Dimension," 121.

<sup>84</sup> Kirton and Munton, "Protecting the Canadian Arctic," 209.

<sup>85</sup> Interview with Ivan Head as quoted in Sanger, Ordering the Oceans, 113.

<sup>86</sup> Elliot-Meisel, Arctic Diplomacy, 143.

Canada's claims over the Arctic were not made in a vacuum. As demonstrated, Canada continued to employ bilateral and multilateral means prior to the introduction of the AWPPA, acting unilaterally only after exhausting all other possibilities of reaching a satisfactory agreement with the US. Upon unilateral implementation of the AWPPA, Canada was quick to return to multilateral negotiations, lobbying other countries to support the legislation. Negotiations between Canada and the US also resumed.

Canada's unilateralism should not be characterized as a deviation from liberal internationalism to some new paradigm in which Canadian foreign policy would be conducted.<sup>88</sup> There are several authors who provide evidence that Canada continues to prefer to work multilaterally to solve challenges in the international community but, as the AWPPA demonstrates, will act unilaterally on occasion.<sup>89</sup> Unilateralism allowed Canada's position to receive recognition in the international community, regardless of US opposition. Furthermore, it may be argued that Canada had no other option but to act unilaterally. If the US was determined to act in a way that posed a threat to Canada's sovereignty, and if as Franklyn Griffiths states, Canadian-Soviet relations were limited by American-Soviet relations, than Canada had few allies to work with in the North, and may have been forced to act unilaterally to protect its interests.<sup>90</sup>

Canada's unilateral initiative also served other purposes. By introducing the AWPPA, Canada actually moved the agenda on the rights of coastal states forward. More specifically, Canada created new norms in international law where none had previously existed. No state had extended its jurisdiction over surrounding coastal waters for the purposes of pollution control. As Alan Beesley, then Legal Adviser to the Department of External Affairs, points out, "State practice is an essential part of the international law-making process and, where there is a lacuna in the law, may be the only means for a state, acting reasonably and responsibly, to protect itself."<sup>91</sup> In fact, Canada was not the first country to act unilaterally concerning the Law of the Sea. In 1945, the Truman Declaration claimed the continental shelf around the US as part of its territory.

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<sup>87</sup> Dobell, "The Policy Dimension," 123.

<sup>88</sup> Kirton and Munton, "Protecting the Canadian Arctic," 207.

<sup>89</sup> John Holmes has written extensively on this topic. See Holmes, No Other Way: Canada and International Security Institutions, The Better Part of Valour: Essays on Canadian Diplomacy, and Canada and the New Internationalism. Also see Keating, Canada and the World Order.

<sup>90</sup> Griffiths, "Canadian Sovereignty and Arctic International Relations," 158.

Following this announcement, other coastal states made similar declarations and the principle was eventually adopted in international law at the 1958 Geneva Convention on the Law of the Sea.<sup>92</sup> In the case of the AWPPA, Canada attempted to extend existing provisions to protect its coastal boundaries from pollution.<sup>93</sup> As coastal states had followed the US in the post-war years, with the case of the AWPPA, they followed Canada.

Canada's intention to create new international law is evidenced by an examination of statements by Trudeau and Sharp about the AWPPA. In a letter sent to the United Nations in which Canada reserved its decision from the World Court, the Canadian Prime Minister wrote: "State practice, or unilateral action by a state, has always been accepted as one of the ways of developing international law."<sup>94</sup> This explanation was further elaborated by Mitchell Sharp, addressing the House of Commons on April 16: "State practice, or in other words, unilateral action by states, has always been a legitimate means open to states to develop customary international law....The bill we have introduced should be regarded as a stepping stone toward the elaboration of an international legal order..."<sup>95</sup> Trudeau provided a similar explanation in a speech to the Canadian Press Association: "In this respect we have acted as we have because of necessity, but also because of our awareness of the impetus given to the development of international law by individual state practice."<sup>96</sup>

Certain commentators have suggested that Canada's actions resulted from a growing environmental consciousness among Canadians.<sup>97</sup> While the AWPPA largely

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<sup>91</sup> Beesley, "Rights and Responsibilities of Arctic Coastal States," 11.

<sup>92</sup> Gold, "Pollution of the Sea and International Law," 37.

<sup>93</sup> For an expanded version of this argument, see Beesley, "Rights and Responsibilities of Arctic Coastal States," 11. This argument is also made by Cohen who states that, "the delicate position for Canada was that it had undertaken a policy of unilateral anti-pollution regulation in the Arctic the in the absence of general international machinery for the Arctic basin or the globe as a whole." See Cohen, "The Arctic and the National Interest," 63-64.

<sup>94</sup> Pierre Elliott Trudeau, "Statement to the House of Commons on April 8, 1970," in Canadian Foreign Policy 1966-1976: Selected Speeches and Documents, ed. Arthur E. Blanchette (Gage Publishing Limited, 1980), 284.

<sup>95</sup> Mitchell Sharp, "Statement to the House of Common on April 16, 1970," Statements and Speeches 1970(5), 2.

<sup>96</sup> Pierre Elliott Trudeau, "Canada Leads the Fight Against Pollution: Part of an Address to the Annual Meeting of the Canadian Press in Toronto on April 15, 1970," Statements and Speeches 1970-1972(3), 4.

<sup>97</sup> John Roberts asserts that the establishment of the AWPPA by Canada was one of many policies adopted by the Trudeau government that recognized the growing concern and environmental conscience of Canadians. See John Roberts, "Meeting the Environmental Challenge," in Towards a Just Society: The

concerned regulating navigation for the purposes of pollution prevention, this concern was not reflected in Canadian society. Even after the *Torrey Canyon* ran aground off the coast of Britain, interest in environmental issues remained low in Canada.<sup>98</sup> Instead, environmental issues allowed the government to frame recognition of Canadian sovereignty within the environmental context of the AWPPA, extending Canada's territory in a manner acceptable to the international community.

## 2.5 Conclusion

The case of the AWPPA clearly demonstrates the willingness of Canada to act unilaterally to maintain territorial integrity. The Canadian government enacted and implemented the AWPPA in defence of its position as the primary custodian of the Northwest Passage. Accordingly, the AWPPA confirms Gotlieb's claim that Canada will act in a unilateral manner to defend territorial interests. But Gotlieb fails to recognize that Canada's unilateral action occurred within a multilateral framework; only after Canada exhausted all other bilateral and multilateral options did it implement the AWPPA unilaterally. Furthermore, after enacting the AWPPA, Canada restarted negotiations with the US and other Arctic and non-Arctic coastal states to reinforce its position. It also needs to be recognized that the AWPPA was implemented in a manner largely consistent with pervading international norms. As a result, Canada used the AWPPA to create international law where none previously existed, while constructing a viable claim to Canadian sovereignty in the North.

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Trudeau Years, eds. Thomas S. Axworthy and Pierre Elliot Trudeau (Markham, Ontario: Penguin Books Canada Ltd, 1990), 148-176.

<sup>98</sup> R. Michael M'Gonigle and Mark W. Zacher, "Canadian Foreign Policy and the Control of Marine Pollution, in Canadian Foreign Policy and the Law of the Sea, eds. Barbara Johnson and Mark W. Zacher (Vancouver: University of British Columbia Press, 1977), 106.

## Chapter 3

### **The Territorial Sea and Geographic Coordinates (Area 7) Order (TSGCO): Drawing Straight Baselines around the Arctic Archipelago**

#### **3.1 Introduction**

The second case of Canadian unilateralism cited by Gotlieb and examined here is the order passed by the Mulroney government, drawing straight baselines around the Arctic archipelago known as Standing Order Regulation 85-872, the “Territorial Sea and Geographic Coordinates (Area 7) Order” (TSGCO).<sup>99</sup> As a result of the TSGCO, Canada and the US negotiated the 1988 Arctic Co-operation Agreement. As with the AWPPA, commentators disagree over the significance of the TSGCO. Rob Huebert maintains that, in the case of the TSGCO, Canada’s behaviour was caused by a deliberate US violation of Canadian sovereignty over the Northwest Passage. Canada’s actions may have appeared to be proactive, but in reality, they were largely reactive.<sup>100</sup> Elizabeth Elliot-Meisel supports Huebert in her evaluation of the TSGCO, suggesting that the Canadian government acted in a “passive-reactive manner” where Canada sought to assert its sovereignty on a “de jure,” rather than on a “de facto,” basis.<sup>101</sup>

Ronald Purver takes a very different stance on the TSGCO. He claims that it was “the most dramatic assertion of Arctic sovereignty claims ever made by a Canadian government.”<sup>102</sup> Franklyn Griffiths agrees with Purver and suggests that countries are

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<sup>99</sup> At the time, there were two regulations announced. The first, the “Territorial Sea and Geographic Coordinates Order” refers to the points from which Canada could choose to draw baselines and the “Territorial Sea and Geographic Coordinates (Area 7) Order” actually draws the baselines around these points based on section 5(1) of the Territorial Sea and Fishing Zones Act (now The Oceans Act). This chapter will limit its analysis to the main regulation.

<sup>100</sup> Robert Huebert, “Arctic Maritime Issues and Canadian Foreign Policy,” in Proceedings of a Conference on A Northern Foreign Policy for Canadians, (Ottawa: The Canadian Polar Commission and The Canadian Centre for Global Security, 1994), 103.

<sup>101</sup> Elliot-Meisel, Arctic Diplomacy, 148.

<sup>102</sup> Ronald G. Purver, “Aspects of Sovereignty and Security in the Arctic,” in Canadian Oceans Policy: National Strategies and the New Law of the Sea, (Vancouver: University of British Columbia Press, 1989), 170.

likely to act in a unilateral manner in the Arctic because it is a region where there are few interests except for economic ones.<sup>103</sup>

While these are interesting characterizations of the TSGCO, they fail to adequately explain Canada's unilateral behaviour. The evidence suggests that Canada's unilateral declaration, enacted through the TSGCO, provided the impetus to restart stalled negotiations with the US, leading to the 1988 Arctic Co-operation Agreement. This chapter demonstrates how Canada's unilateral behaviour can be best explained as an initiative not only to assert Canada's territorial sovereignty, but more importantly, to keep an issue of national importance on the international agenda.

### **3.2 Societal Context Surrounding the TSGCO**

The societal context within which the Mulroney government acted in passing the TSGCO was defined by different Canadian and US perceptions of the Northwest Passage; issues of accessibility to Northern resources, especially oil resources; problems resulting from a lack of communication between Canada and the US over the Northwest Passage; and the Arctic voyage of the US Coast Guard vessel, the *Polar Sea*, which culminated, as had the voyage of the *Manhattan* fifteen years earlier, in an outpouring of criticism by the Canadian public.

The drawing of straight baselines around the Arctic archipelago again caused significant cleavages in Canadian and US perceptions of the North. For Canada, the Northwest Passage symbolized lingering sovereignty questions over the territory. Control over the Arctic had important connotations for Canada's national identity, as Canadians viewed the North as an inherent part of their country, whether the rest of the international community agreed or not.<sup>104</sup> While Canadians thought of Arctic threats in terms of the US, the US considered Canada to be merely an afterthought.<sup>105</sup>

Though the Canadian position on the Northwest Passage had evolved somewhat since the 1970s, the US still maintained that the Northwest Passage was an international

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<sup>103</sup> Franklyn Griffiths, "Challenge and Leadership in the Arctic," in Sovereignty and Security in the Arctic, ed. Edgar J. Dosman (New York: Routledge, 1989), 212.

<sup>104</sup> Oran R. Young, "Arctic Shipping: An American Perspective," in Politics of the Northwest Passage, ed. Franklyn Griffiths (Kingston: McGill-Queen's University Press, 1987), 119.

strait. The US was concerned with ensuring, in the context of the Cold War, that the Soviet Union did not have the ability to attack the US from a Northern location. Since 1978, concerns had heightened over rumours of the sighting of Soviet submarines in the straits of the Arctic archipelago.<sup>106</sup> For the US, apprehension over Northern security often translated into anxiety over Canada's ability to defend the North.<sup>107</sup> Canada did not have the defence capacity to satisfy Washington that the Soviet Union could not launch an attack on the US across the North. With the enactment and implementation of the AWPPA, Canada had attempted to take a stronger stance on the Northwest Passage. As of 1973, Canadian officials cited the waters of the passage as historically internal to Canada even if they were unable to defend it.<sup>108</sup>

While Canada and the US could not agree on the status of the Northwest Passage, corporate interest in exploiting Northern resources grew throughout this period. Since the successful voyage of the *Manhattan*, there had been considerable appeal in the development of a commercial shipping route through the Northwest Passage to capitalize on the growing oil reserves discovered in the area. Developments included Petro-Canada's Arctic Pilot Project, Dome Canada's idea to run icebreaking oil tankers year-round from the Beaufort Sea to East coast ports, and Panarctic Oil's shipping route from the Arctic to Montreal.<sup>109</sup> Canada had done little to address these new development projects and still did not have a comprehensive Arctic maritime policy.<sup>110</sup> As a result, the federal government had also not addressed Inuit concerns over land rights and ownership of resources. Louis Tapardjuk, then president of the Baffin Regional Inuit Association, stated that the Canadian government must develop a position acceptable to the Inuit

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<sup>105</sup> David Lenarcic and Robert Reford, "Sovereignty vs. Defence: the Arctic in Canadian-American Relations," in Sovereignty and Security in the Arctic, ed. Edgar J. Dosman (New York: Routledge, 1989), 161.

<sup>106</sup> Jeff Sallot, "Unknown in Arctic worries Ottawa: Soviet subs suspected, patrols still cut," Globe and Mail, 29 July 1985, 1.

<sup>107</sup> Wayne C. Thompson, "Canadian Defense Policy," Current History (March 1988), 128 and Young, "Arctic Shipping: An American Perspective," 119-120.

<sup>108</sup> Joseph T. Jockel, Security to the North: Canada-US Defense Relations in the 1990s, (East Lansing: Michigan State University Press, 1991), 29.

<sup>109</sup> Franklyn Griffiths, "Where Vision and Illusion Meet," in Politics of the Northwest Passage, ed. Franklyn Griffiths (Kingston: McGill-Queen's University Press, 1987), 5.

<sup>110</sup> Rob Huebert, "Polar Vision or Tunnel Vision: The Making of Canadian Arctic Policy," Marine Policy 19(4), 360.

peoples or would face “the start of something that [the Inuit peoples] simply [could] not allow to happen.”<sup>111</sup>

Without a comprehensive Arctic maritime policy, there had been little incentive for Canada and the US to fix communication problems. Due to the implementation of the AWPPA, Canada and the US remained in sharp disagreement over how the Northwest Passage was recognized. The US had not signed on to Article 234 of the United Nations Law of the Sea Convention – which recognized the right of coastal states to regulate areas outside of its jurisdiction for the purposes of pollution control.<sup>112</sup> Discussions broke down whenever Canada and the US attempted to develop a more collegial position on the Arctic.

Problems culminating from the uncommunicative relationship between Canada and the US were well illustrated by the voyage of the *Polar Sea*.<sup>113</sup> After the US ship the *Northwind* broke down due to mechanical problems, the *Polar Sea* was assigned by the US Coast Guard to the *Northwind*'s duty in Greenland. Afterward the US Coast Guard decided to send the *Polar Sea* back to the Beaufort Sea from Greenland through the Northwest Passage. Travelling through the Northwest Passage instead of the Panama Canal would save 20 – 30 days of travel time and approximately 500 000 dollars.<sup>114</sup> The US Coast Guard informed the US State Department and the Canadian Coast Guard of the intended journey on May 21, 1985.<sup>115</sup> On June 11, 1985, the Canadian government replied that the journey could proceed on a cooperative basis.<sup>116</sup>

Once the voyage of the *Polar Sea* garnered significant public attention in Canada, it became an acute problem. Although the voyage had earlier been approved by the Canadian government, this position produced criticism by both the Canadian press and the Canadian public who referred to Canada's lack of position as “toothless,”

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<sup>111</sup> Louis Tapardjuk as quoted in Christopher S. Wren, “U.S. Ship's Arctic Voyage Draws Heat in Canada,” New York Times, 1 August 1985, 2.

<sup>112</sup> Young, “Arctic Shipping: An American Perspective,” 119-120.

<sup>113</sup> Huebert, “Polar Vision or Tunnel Vision,” 356.

<sup>114</sup> David Leyton-Brown, “Canada-US Relations: Towards a Closer Relationship,” in Canada Among Nations 1985: The Conservative Agenda, eds. Maureen Appel Molot and Brian W. Tomlin (Toronto: James Lorimer & Company, 1986), 191.

<sup>115</sup> Rob Huebert, “A Northern Foreign Policy: The Politics of Ad Hocery,” in Diplomatic Departures: The Conservative Era in Canadian Foreign Policy, eds. Nelson Michaud and Kim Richard Nossal (Vancouver: UBC Press, 2001), 85.



“embarrassing,” and an “affront to Canada.”<sup>117</sup> In response to public attacks, the Mulroney government released another statement — the day before the *Polar Sea*’s voyage began on July 31, 1985. In the statement, which was signed by Secretary of State for External Affairs, Joe Clark, Minister of Transport, Don Mazankowski, and Minister of Northern Affairs David Crombie, Canada expressed deep regret over US unwillingness to recognize the Northwest Passage as part of Canada’s jurisdiction. The Canadian government also granted permission for the voyage of the *Polar Sea*, although it was never requested.<sup>119</sup>

The Canadian government’s last minute objection to the intended voyage bewildered the US government. When the US Coast Guard received notification from the Canadian Coast Guard for the voyage to proceed, it was thought that the issue was settled.<sup>120</sup> The voyage, it was agreed, was to be conducted in compliance with the regulations outlined in the AWPPA: three Canadian observers would be on board the *Polar Sea*, and the ship would be escorted by the Canadian icebreaker the *John A. Macdonald*.<sup>121</sup> But the Canadian government was still not happy. A US Coast Guard official stated in response: “the voyage is not meant to test Canada’s claim to the Northwest Passage, merely to take the shortest route from Greenland...to Alaska, before the ice sets in.”<sup>122</sup> Even the US Ambassador to Canada, Paul Robinson, was surprised

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<sup>116</sup> Huebert, “A Northern Foreign Policy: The Politics of Ad Hocery,” 85; Leyton-Brown, “Canada-US Relations: Towards a Closer Relationship,” 191.

<sup>117</sup> “Staking our Arctic claim,” Toronto Star, 2 August 1985, A16; Michael Cobden, “Let’s behave like a sovereign nation,” The Whig – Standard (Kingston, ON), 3 August 1985, 1; “Group plans confrontation with US ship on Arctic ice,” Toronto Star, 6 August 1985, A1. Martin Shadwick also details the public uproar to this low-key approach. Martin Shadwick, “Military and Security Issues,” in Canadian Annual Review of Politics and Public Affairs 1985, ed. R.B. Byers (Toronto: University of Toronto Press, 1988), 227-228. See also John Turner as quoted in Jockel, Security to the North, 31.

<sup>118</sup> “Staking our Arctic claim,” Toronto Star, 2 August 1985, A16; Michael Cobden, “Let’s behave like a sovereign nation,” The Whig – Standard (Kingston, ON), 3 August 1985, 1; “Group plans confrontation with US ship on Arctic ice,” Toronto Star 6 August 1985, A1. Martin Shawick also details the public uproar to this low-key approach. Martin Shadwick, “Military and Security Issues,” In Canadian Annual Review of Politics and Public Affairs 1985, Ed. R.B. Byers, (Toronto: University of Toronto Press, 1988), 227-228.

<sup>119</sup> Leyton-Brown, “Canada-US Relations,” 191 and “Arctic trip by US ship gets approval,” Toronto Star, 1 August 1985, A3.

<sup>120</sup> Huebert, “A Northern Foreign Policy,” 85.

<sup>121</sup> David L. Larson, “US Interests in the Arctic Region,” Ocean Development and International Law 20 (1990), 180.

<sup>122</sup> US Coast Guard official as quoted in the New York Times, 1 August 1985, as quoted in Margaret Royal, “External Affairs and Defence,” in Canadian Annual Review of Politics and Public Affairs 1985, ed. R.B. Byers (Toronto: University of Toronto Press, 1988), 170.

by the contention that was created in Canada over the voyage, stating that the “dispute was nothing more than a creation of the news media.”<sup>123</sup>

Although the public’s reaction to the voyage of the *Polar Sea* surprised both governments, it well illustrated the growing Canadian discontent over the Mulroney government’s friendly relationship with the Reagan administration. With the restructuring of the North American Aerospace Defence Command earlier that year, Canadians were aware of the strategic importance of the Arctic.<sup>124</sup> Many were also adamantly opposed to the free trade negotiations that had started with the US. These fears were reinforced and furthered by the voyage of the *Polar Sea*, which to Canadians, demonstrated the emptiness of claims made by Prime Minister Mulroney and then President Ronald Reagan on the importance of good relations between the two countries.<sup>125</sup> Instead, many Canadians viewed the *Polar Sea* as a perfect example of the exploitation of Canadian interests for US ones.

The Privy Council Office (PCO) was quickly given the assignment of rectifying the controversy over the *Polar Sea*. In response to public backlash over the voyage, the PCO examined policies that could reaffirm Canada’s sovereignty. In August of 1985, the PCO contacted various line departments working on Canadian sovereignty initiatives. Policies were targeted included those that: indirectly enhanced Canada’s claims, were symbolically important to Canada’s sovereignty, or would directly protect Canada’s Arctic territory and surrounding waters.<sup>126</sup> These initiatives were discussed from August 21 – 23, 1985 at the Priorities and Planning Committee meeting of Cabinet in Vancouver.<sup>127</sup>

Providing leadership on the issue were certain Members of Cabinet, including those on the subcommittee of Defence and External Relations for the Priorities and Planning Committee of Cabinet. This subcommittee was chaired by Joe Clark. In general, Prime Minister Mulroney was more apt to focus on specific foreign relations

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<sup>123</sup> Paul Robinson as quoted in Ken MacQueen and Ian Austen, “An Arctic challenge,” *Maclean’s* 21 August 1985 (98), 12.

<sup>124</sup> Jockel, *Security to the North*, 29.

<sup>125</sup> Jockel, *Security to the North*, 29.

<sup>126</sup> Huebert, “A Northern Foreign Policy,” 85-86.

<sup>127</sup> Huebert, “A Northern Foreign Policy,” 85-86.

issues that interested him, such as free trade,<sup>128</sup> and thus he limited his involvement in the TSGCO to the occasional brief discussion with Reagan.<sup>129</sup> Accordingly, the decision-making process was largely dominated by Joe Clark, the Department of External Affairs, and the Cabinet subcommittee of Defence and External Relations.<sup>130</sup>

Cabinet considered a number of policies that had been strategically developed by senior officials, in the event that Canada's sovereignty was again challenged by another case similar to the voyage of the *Manhattan*.<sup>131</sup> Clark strongly pushed to draw straight baselines around the Arctic archipelago and to declare the area part of Canada's internal waters. The act of drawing straight baselines had already been debated by Canadian governments for quite some time but previous discussions to this point were not well-received by the international community.<sup>132</sup> However, recent decisions at the World Court suggested that, if challenged, Canada's claim might now be supported.<sup>133</sup> Important developments on the Law of the Sea, including Article 234, and the emergence of exclusive economic zones, could also substantiate Canada's case in the event of a challenge to the TSGCO.<sup>134</sup>

Canada also looked at other strategies to strengthen its Northern sovereignty claim. Included among these policies were an increase in surveillance flights and more substantial naval activities in the North. Although these initiatives had taken place since the voyage of the *Manhattan*, they would now happen on a greater scale. Surprisingly, the most controversial strategy was the construction of a class 8 icebreaker. The *Polar 8*, at a cost of 500 million dollars, would have been the most powerful icebreaker in the

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<sup>128</sup> Royal, "External Affairs and Defence," 155.

<sup>129</sup> John Kirton, "The Foreign Policy Process," in Canada Among Nations 1985: The Conservative Agenda, eds. Maureen Appel Molot and Brian W. Tomlin (Toronto: James Lorimer & Company, 1986), 33.

<sup>130</sup> Kirton, "The Foreign Policy Process," 41.

<sup>131</sup> Huebert, "Arctic Maritime Issues and Canadian Foreign Policy," 104.

<sup>132</sup> E.J. Dosman, "The Northern Sovereignty Crisis 1968-70," 35.

<sup>133</sup> Purver, "Sovereignty and Security in the Arctic," 174. J. Bruce McKinnon also argues that Canada's decision to draw straight baselines would be valid under international law, but cites the World Court decision in the *Fisheries Case (United Kingdom v. Norway)* as proof. McKinnon argues the court decision allows countries with irregular coastlines to declare straight baselines that follow the general direction of the coast. See McKinnon, "Arctic Baselines: A Litore Usque Ad Litus," Canadian Bar Review 66(December 1985), 790 – 817.

<sup>134</sup> Huebert, "A Northern Foreign Policy," 88-90.

world.<sup>135</sup> However the icebreaker would take approximately five years to build and the government could not find a Canadian company to build it. The Department of National Defence also had concerns that its construction would deplete its operating budget. These problems had persisted since the government first looked at building a class 7 icebreaker in the 1970s.<sup>136</sup>

### 3.3 Implementation of the TSGCO

The eventual decision reached by the Canadian government was to unilaterally implement straight baselines around the Arctic archipelago. Joe Clark announced in the House of Commons on September 10, 1985 that the government had adopted an order-in-council which established straight baselines around the Arctic archipelago.<sup>137</sup> The baselines would come into effect on January 1, 1986, and would include both the islands of the Arctic archipelago, and the surrounding waters. When Clark announced the order, he argued that the voyage of the *Polar Sea* “demonstrated that Canada in the past had not developed the means to ensure our sovereignty over time.”<sup>138</sup> As “Canada ha[d] long maintained and exercised sovereignty over the waters of the Arctic archipelago,” its declaration would allow Canada to further protect the area.<sup>139</sup> Henceforth, the AWPPA, the 200-mile exclusive economic zone, and the 12-mile territorial sea would now be measured from the new baselines.<sup>140</sup>

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<sup>135</sup> Franklyn Griffiths, “Preface,” Politics of the Northwest Passage, ed. Franklyn Griffiths (Kingston: McGill-Queen’s University Press, 1987), viii and Jeff Sallot, “US Challenged: Ottawa acts to strengthen Arctic claims,” Globe and Mail, 11 September 1985, 1

<sup>136</sup> Huebert, “A Northern Foreign Policy,” 90-91 and Kim Richard Nossal, “Polar Icebreakers: The Politics of Inertia,” in Politics of the Northwest Passage, ed. Franklyn Griffiths (Kingston: McGill-Queen’s University Press, 1987), 216 - 240.

<sup>137</sup> Joe Clark, “Policy on Canadian Sovereignty: Statement by the Right Honourable Joe Clark, Secretary of State for External Affairs, in the House of Commons, Ottawa, September 10, 1985,” Statements and Speeches 1985(7), 3. For a copy of the regulation, see Canada, Department of Justice, Territorial Sea and Geographical Coordinates (Area 7) Order, SOR 85/872, Online, <http://laws.justice.gc.ca/en/o-2.4/sor-85-872/154988.html>, (Retrieved 25 April 2006).

<sup>138</sup> Joe Clark as quoted in Jeff Sallot, “US Challenged: Ottawa acts to strengthen Arctic claims,” Globe and Mail, 11 September 1985, 5.

<sup>139</sup> Canada, Department of Justice, Territorial Sea and Geographical Coordinates (Area 7) Order.

<sup>140</sup> Elliot-Meisel, 149.

The enactment and implementation of the TSGCO was more of an ad hoc reaction, defined by the public's reaction to the voyage of the *Polar Sea*,<sup>141</sup> than the AWPPA. The Canadian government's response to the ship's transit came only after there was significant public outcry. Still, it is important to remember that the government's policy options were not created overnight; they had essentially been under development since the voyage of the *Manhattan* in the early 1970s. Even if the Mulroney government was unprepared to respond to the *Polar Sea* voyage, senior public servants certainly were. That the Mulroney government was relatively new and in the process of restructuring many government departments may also partially account for Canada's delay in responding to the crisis.<sup>142</sup> Once the Mulroney government decided on a plan, it moved relatively quickly to implement it through public declarations and unilateral initiatives, which helped facilitate an environment conducive to restarting negotiations with the US.

Before implementing the TSGCO, the Mulroney government made a variety of public declarations outlining Canada's position on the Arctic. Both Mulroney and Clark discussed Canada's position in the House of Commons, before the press, and at public engagements. In late August, Mulroney issued a strong statement on Canada's sovereignty over the Northwest Passage, arguing that any declaration otherwise would be seen as "an unfriendly act...."<sup>143</sup> Mulroney also gave a television interview where he announced that the Northwest Passage "[is] ours lock, stock and icebergs."<sup>144</sup> Clark's statements on the Arctic were just as robust. He contended that "any cooperation with the US or with other Arctic nations shall be only on the basis of full respect for Canada's sovereignty."<sup>145</sup> He also reminded the media that Canadian observers would be on board the *Polar Sea* in order to "guide them through the waters we consider to be ours."<sup>146</sup>

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<sup>141</sup> This idea is put forward by Rob Huebert. See Huebert, "A Northern Foreign Policy," "Arctic Maritime Issues and Canadian Foreign Policy," 103-107; and "Polar Vision or Tunnel Vision," 343-363. Elliot-Meisel also makes this point.

<sup>142</sup> Kirton, "The Foreign Policy Process," 37.

<sup>143</sup> Leyton-Brown, "Canada-US Relations," 191.

<sup>144</sup> "Transcript of an interview with Prime Minister Brian Mulroney to Global Television, 29 August 1985," 18 as quoted in Christopher Kirkey, "Smoothing troubled waters: the 1988 Canada-United States Arctic Co-operation Agreement," *International Journal* 50 (Spring 1995), 404.

<sup>145</sup> Joe Clark as quoted in Purver, "'Sovereignty and Security in the Arctic,'" 173.

<sup>146</sup> Joe Clark as quoted in Elaine Carey, "Trip by US ship called threat to Arctic Sovereignty," *Toronto Star* 23 July 1985, A15.

In addition to the TSGCO, the Mulroney government announced a number of other initiatives. These included the immediate adoption of the Canadian Laws Offshore Application Act, an increase in surveillance flights and naval activity in the Arctic, and construction of a class 8 polar icebreaker. Assured that any challenge to the AWPPA or the TSGCO at court would result in a decision in Canada's favour, the government also announced the withdrawal of the 1970 reservation over the compulsory jurisdiction of the World Court. Finally, Canada issued a declaratory statement announcing its willingness to begin immediate talks with the US "on co-operation in Arctic waters, on the basis of full respect for Canadian sovereignty."<sup>147</sup> All of these policies were implemented largely without consulting other states. Instead, Canada relied on precedent in international law and other international norms to provide assurance that these initiatives would be accepted by the international community.<sup>148</sup>

Not surprisingly, the implementation of the TSGCO received mixed reactions in the international community. Even before Canada made its policy announcements in September of 1985, the Soviet Union announced its support for Canada's position.<sup>149</sup> Evgeni Pozdnyakov of the Soviet Embassy in Ottawa stated that the Soviet Union "supported Canada's position that the Northwest Passage is Canadian internal waters just as the Soviet Union believes the Northeast Passage belongs to them."<sup>150</sup> In contrast, a dozen other countries objected to Canada's claims in writing.<sup>151</sup> Canada's assertion of sovereignty was also not recognized by the US, although the language used by the US administration seemed a little more moderate than it had been at the time of the announcement of the AWPPA. As a State Department memorandum put it, "we regret that Canada is taking this action but we appreciate that Canada recognizes that the matter affects U.S. interests."<sup>152</sup> Even though the US did not recognize Canada's position, it

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<sup>147</sup> Clark, "Policy on Canadian Sovereignty," 4.

<sup>148</sup> Ted L. McDorman, "In the wake of the *Polar Sea*: Canadian Jurisdiction over the Northwest Passage," *Marine Policy* (October 1986), 254.

<sup>149</sup> Philip J. Briggs, "The Polar Sea Voyage and the Northwest Passage Dispute," *Armed Forces and Society* 16(3) (Spring 1990), 441.

<sup>150</sup> Matthew Fisher, "US remains silent over testing claim on soviet passage," *Globe and Mail*, 8 August 1985, 1 and 8.

<sup>151</sup> Interview with John Merritt, Executive Director, Canadian Arctic Resources Committee, Ottawa, 9 March 1988 as quoted in Purver, "Sovereignty and Security in the Arctic," 170.

<sup>152</sup> Memorandum as quoted in Brian Butters, "Regret expressed over Arctic claim," *Calgary Herald*, 12 September 1985, A18.

entered into negotiations almost immediately after Canada made its policy announcement. On the same day Clark introduced the measures in the House of Commons, Thomas Niles, the new US Ambassador to Canada, announced that the US would begin talks directly with Canada on the issue of Northern sovereignty.<sup>153</sup>

It is important to remember that the US showed a willingness to enter into negotiations only after Canada unilaterally announced its policy initiatives. From Canada's point of view, the primary goal of the meetings was to have the US recognize Canada's claim to Arctic waters.<sup>154</sup> Not only would this allow Canada to assert its sovereignty, but it would also ensure that a "politically volatile" situation was mitigated in a manner defensible before the Canadian Parliament and the public.<sup>155</sup>

Initially, discussions were dominated by Leonard Legault and Barry Mawhinney from Canada's Department of External Affairs and David Colson from the US State Department.<sup>156</sup> Early negotiations were constrained by the fact that neither country was prepared to make any concessions. Canada insisted that its sovereignty over the Northwest Passage must be recognized. The US was unwilling to acquiesce formal recognition of the Passage as an internal strait to Canada.<sup>157</sup> Discussions quickly became deadlocked and were only rejuvenated by a personal visit between Reagan and Mulroney. The two leaders agreed to appoint special envoys that would report directly to them on the status of negotiations. Canada appointed Derek Burney, Mulroney's chief of staff, and the US appointed Ed Derwinski, the Under-Secretary of State.<sup>158</sup> Yet even after the appointment of special negotiating teams, discussions ended in stalemate.

In the end, the personal relationship between Mulroney and Reagan was key to achieving a final agreement. During a meeting in April 1987, Mulroney showed Reagan, using a globe, the area that Canada's claim would affect. Upon seeing the area, Reagan acknowledged "that [it] look[ed] a little different than the maps they showed [him] on the

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<sup>153</sup> "US prepared to negotiate new ambassador declares," *Toronto Star*, 11 September 1985, A4.

<sup>154</sup> Huebert, "A Northern Foreign Policy," 93.

<sup>155</sup> Kirkey, "Canada-U.S. Arctic Co-operation Agreement," 405-406.

<sup>156</sup> Huebert, "A Northern Foreign Policy," 93 and Kirkey, "Canada-U.S. Arctic Co-operation Agreement," 408.

<sup>157</sup> Kirkey, "Canada-U.S. Arctic Co-operation Agreement," 409.

<sup>158</sup> Kirkey, "Canada-U.S. Arctic Co-operation Agreement," 411.

plane coming into Ottawa.”<sup>159</sup> Reagan committed the US to the achievement of an agreement that was equitable to both Canadian and US interests.<sup>160</sup> In a speech later that day in the House of Commons, he announced that “[both Mulroney and I] are determined to find a solution based on mutual respect for sovereignty and our common security and other interests.”<sup>161</sup> The personal relationship between the two leaders clearly revitalized and ensured the success of the negotiation process.<sup>162</sup> On January 11, 1988, Canada and the US signed the Arctic Co-operation Agreement.

The Canada-US Arctic Co-operation Agreement was designed primarily to serve a functional purpose. Specifically, it regulated icebreaker traffic in the Arctic, whereby the “US pledge[d] that all navigation by US icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada.”<sup>163</sup> Supporters of the agreement believed it amounted to US recognition of Canadian sovereignty, as US icebreakers would now have to receive Canadian permission before transiting the Northwest Passage. Critics maintained that the agreement offered little assurance of Canadian sovereignty, as it applies only to government icebreakers.<sup>164</sup> Furthermore, the agreement specifically outlined that it did not affect “the respective positions of [either government] on the Law of the Sea” in any area.<sup>165</sup> But when all was said and done, the agreement still allowed Canada to exercise jurisdiction over the Northwest Passage in a functional manner. Arguably as well, it could assert sovereignty over the area in a way acceptable to the international community. There was hope that this gradualist exercise would eventually lead to full recognition of the Northwest Passage as part of Canada.

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<sup>159</sup> Former President Ronald Reagan as quoted in Kirkey, “Canada-U.S. Arctic Co-operation Agreement,” 413.

<sup>160</sup> Derek Burney speaking about President Reagan, as quoted in Kirkey, “Canada-U.S Arctic Co-operation Agreement,” 412-413.

<sup>161</sup> Reagan as quoted in Canada, House of Commons, Debates, 33<sup>rd</sup> parl, 2<sup>nd</sup> sess, 6 April 1987, A1, A2 as quoted in Kirkey, “Canada-U.S. Arctic Co-operation Agreement,” 413.

<sup>162</sup> Huebert, “A Northern Foreign Policy,” 93.

<sup>163</sup> Canada and the United States, “Agreement between the Government of the United States of America and the Government of Canada on Arctic Cooperation,” International Legal Materials 28(1) (January 1989), 143.

<sup>164</sup> Purver, “Sovereignty and Security in the Arctic,” 171.



### 3.4 Analysis of the Implementation of the TSGCO

Most commentators on the TSGCO believe it was an attempt by Canada to assert sovereignty over the North. These individuals contend that Canada traditionally controlled the Arctic through functional jurisdiction, where, rather than attempting to claim sovereignty outright, Canada affirmed an authority to act only in specific areas.<sup>166</sup> Accordingly, they maintain that the TSGCO is a refreshing example of Canada's willingness to "accept no substitutes" and pursue the singular goal of sovereignty.<sup>167</sup>

Although Canada declared its sovereignty in an outright manner with the TSGCO, the Canada-US Arctic Co-operation Agreement called for the continued exercise of functional jurisdiction over the Arctic. Through a process of integrative bargaining, Canada and the US forged an agreement that was mutually satisfactory, even though it did not reflect the original goals both had hoped to achieve in the negotiation process.<sup>168</sup> Originally, Canada was unwilling to consider any policy that did not require the US to recognize the Northwest Passage as part of Canadian territory, which was unacceptable to the US. The final agreement acknowledged that the US must receive permission from Canada for the transit of government-owned icebreakers conducting scientific research in the Northwest Passage. Forged through compromise, the agreement allowed Canada to extend its control over the Northwest Passage.<sup>169</sup> However, Canada's control is extended for functional purposes and not for the purposes of sovereignty outright.

Still, the TSGCO case is clearly an example of Canada acting unilaterally to assert its territorial sovereignty. It announced the implementation of straight baselines around the Arctic archipelago, and other related measures, basically without consulting other countries. Furthermore, these initiatives were implemented under Canadian legislation. In this sense, Gotlieb is correct in characterizing the TSGCO as an instance of unilateralism.

What Gotlieb fails to note is that Canada's unilateral action occurred largely within a framework of multilateralism. Although Canada did not consult with other

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<sup>165</sup> Canada and the United States, "Agreement on Arctic Cooperation," 143.

<sup>166</sup> Griffiths, "Preface," vii. For a good explanation of functional jurisdiction versus claims of sovereignty, see Dawn Russel, "International Ocean Boundary Issues and Management Arrangements," in Canadian Ocean Law and Policy, ed. David VanderZwaag (Vancouver: Butterworths, 1992), 466-474.

<sup>167</sup> Clark, "Policy on Canadian Sovereignty," 3.

<sup>168</sup> Kirkey, "Smoothing troubled waters," 402.

countries before implementing the TSGCO, the Department of External Affairs maintained that international norms and, in particular, recent decisions by the World Court, would support Canada's claims. What was acceptable to the international community influenced Canada's decision to implement the TSGCO.

Although Canada acted unilaterally to protect its territorial interests, it was more concerned with restarting a series of negotiations with the US. Previously, all discussions between Canada and the US on the Northwest Passage had broken down. When Canada declared its new Canadian maritime Arctic strategy, it also announced the start of "immediate talks with the US on co-operation in Arctic waters, on the basis of full respect for Canadian sovereignty."<sup>170</sup> It was only by maintaining a firm stance on the Northwest Passage that Canada could provide the impetus for new discussions with the US. As a result, Canada's initiatives, though implemented unilaterally, were meant to restart bilateral negotiations.

### **3.5 Conclusion**

As this chapter demonstrates, the TSGCO was a clear instance of Canada acting unilaterally to protect its territorial integrity. Canada unilaterally implemented straight baselines around the Arctic archipelago to protect its claim as the custodian of the Northwest Passage, supporting Gotlieb's claim that Canada will act unilaterally to protect its territorial interests. What has been demonstrated here is that the decision to enact and implement the TSGCO was consistent with recent developments in international law and decisions at the World Court, and had as its larger goal the creation of a new impetus for negotiations between Canada and the US that would further the recognition of Canada's jurisdiction over the Arctic.

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<sup>169</sup> Kirkey's article provides an excellent overview of the negotiation process and the resulting agreement.

<sup>170</sup> Clark, "Policy on Canadian Sovereignty," 4.

## Chapter 4

### The Coastal Fisheries Protection Act Amendments:

#### Leading to the Turbot War

##### 4.1 Introduction

The third and final case referenced by Gotlieb where Canada acted unilaterally to affirm its sovereign territory is the Turbot War of 1995, or rather the conflict between Canada and the European Union (EU) over offshore fishing resulting from the introduction of amendments to Canada's Coastal Fisheries Protection Act (CFPA).<sup>171</sup> Though Gotlieb is certain that the Turbot War is a case in which Canada proceeded unilaterally to protect its territorial integrity, others disagree. They argue that the CFPA amendments were basically an attempt to preserve the environment. Allen L. Springer argues that Canada's actions in the Turbot War constitute clear evidence that countries will act unilaterally to protect important environmental resources.<sup>172</sup> Tuchman Matthews, Kaplan, and Homer-Dixon concur with Springer's position and contend environmental issues should be considered a primary cause leading to international conflict more generally.<sup>173</sup> Similarly, Peter J. Stoett recognizes that Canada's actions advanced international acceptance of the precautionary principle whereby states have a duty to protect the environment from the unknown.<sup>174</sup>

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<sup>171</sup> The CFPA amendments were originally passed as Bill C-29: "An Act to Amend the Coastal Fisheries Protection Act" on May 12, 1994. The bill gave Canadian officials the powers to enforce regulations as stipulated in the Act on ships from other countries. Originally, the regulations were only applicable to those countries allowing ships to fly flags of convenience in the area. On March 3, 1995 Canada extended the legislation to apply to Spanish and Portuguese ships in the area. On March 5, 1995 the legislation was again extended to apply to all ships fishing in the area. The "Turbot War" arose after Canada enforced these regulations on Spanish ships.

<sup>172</sup> Allen L. Springer, "The Canadian turbot war with Spain: unilateral state action in defense of environmental interests," *Journal of Environment and Development* 6(1) (March 1997), 26.

<sup>173</sup> As quoted in Andrew F. Cooper, "The Politics of Environmental Security: The Case of the Canada-Spain 'Fish War,'" in *Canadian Foreign Policy: Old Habits and New Directions*, (Scarborough, Ontario: Prentice Hall Allyn and Bacon Canada, 1997), 142.

<sup>174</sup> Peter J. Stoett, "Fishing for Norms: Foreign Policy and the Turbot Dispute of 1995," in *Ethics and Security in Canadian Foreign Policy*, ed. Rosalind Irwin (Vancouver: UBC Press, 2001), 261.

But other academics who have studied the Turbot War are more apt to characterize Canada's unilateral actions as part of a broader multilateral agenda. Andrew F. Cooper maintains that "Canada's resort to use unilateral tactics... was precisely because Canada placed so much value on 'global governance' that it was prepared to use any means possible to bring about an agreement based on order and universally accepted rules."<sup>175</sup> Alexander Thompson largely accepts Cooper's conclusions, and insists that Canada "used direct action to protect [the turbot] while simultaneously taking advantage of the NAFO framework to legitimize its actions."<sup>176</sup>

While these authors provide valuable insight into Canada's behaviour in the Turbot War, they fail to explain sufficiently why Canada resorted to unilateral action. Donald Barry provides the most accurate depiction of Canada's conduct — as a series of unilateral actions aimed at reinvigorating the negotiation process with the EU.<sup>177</sup> The evidence indicates that Canada's intention was basically to keep the issue of overfishing on the international agenda until Canada and the EU could negotiate new turbot quotas and strengthen the North Atlantic Fisheries Organization (NAFO) regulations. In other words, Canada's unilateral actions can best be explained not only as a means of protecting territorial integrity, but also as a way of highlighting an issue until Canadian interests were secured.

#### **4.2 Societal Context Surrounding the Introduction of the CFPA Amendments**

The societal forces that shaped Canada's actions in the Turbot War included: a dramatic increase in world fishing catches; the decimation of Canada's fishing industry; disagreement over world fishing quotas, especially those set by the NAFO; and the ensuing conflict over the NAFO total allowable catch quota for turbot.

During the 1980s there was a dramatic increase in the amount of fish caught throughout the world. In 1989 the world's fishing fleet caught more fish than had ever been recorded, with a total catch of over 86 million metric tonnes (MT).<sup>178</sup> These catch

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<sup>175</sup> Cooper, "The Politics of Environmental Security," 142.

<sup>176</sup> Alexander Thompson, "Canadian Foreign Policy and Straddling Stocks: Sustainability in an Interdependent World," *Policy Studies Journal* 28(1) (2000), 227.

<sup>177</sup> Donald Barry, "The Canada-EU turbot war: Internal politics and transatlantic bargaining," *International Journal* 53(Spring 1998), 283.

<sup>178</sup> Jennifer Bailey, "Hot Fish and (Bargaining) Chips," *Journal of Peace Research* 33(3) (1996), 258.

levels were simply not sustainable, and fish stocks could not recuperate. Eventually, fish stocks throughout various parts of the world were destroyed. The international community recognized that for certain stocks to ever recover, strict limitations would have to be implemented.

In an attempt to contain the fishing crisis, Canada implemented total allowable catch (TAC) quotas on certain types of groundfish. In 1992, the Canadian government introduced a northern cod moratorium, and in 1994, it enacted severe limitations on the catch of other groundfish in Canadian waters.<sup>179</sup> The sudden implementation of lower TAC quotas devastated the Canadian fishing industry, most severely affecting Atlantic Canada. Large segments of Canada's fisheries had to be shut down and 40 000 fisheries workers in Atlantic Canada became unemployed, with 27 000 losing their jobs in Newfoundland alone.<sup>180</sup>

While Canada struggled to implement tougher TAC quotas on the Canadian fishing industry, other states were not so concerned about the purported decimation of fishing stocks. These states argued that the stocks would somehow recover and that record-breaking catches could still take place. One of the greatest offenders of overfishing was Spain. Spain had the largest fishing fleet in the EU, and Spanish trawlers fished off of every continent except for Antarctica and Australia.<sup>181</sup> Spanish fishing boats were restricted from fishing in parts of Europe in 1994 and, in the past, had been arrested for illegal fishing off the coasts of South Africa, Ireland, and Britain.<sup>182</sup>

Still, Canada hoped that its new fishing quotas would lead other states to follow similar practices. The cause of much of the overfishing in the North Atlantic was a lack of appropriate NAFO TAC quotas. The NAFO set out the rules and regulations for those states fishing in the North Atlantic region as well as the TAC quotas for fish stocks found in the area. But the NAFO quotas were hotly contested by some member states. Because the NAFO had no real regulatory powers, a country which felt strongly enough about their portion of a certain TAC quota, could choose to ignore the NAFO limit and behave

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<sup>179</sup> Barry, "The Canada-European Union turbot war," 256.

<sup>180</sup> Barry, "The Canada-European Union turbot war," 256.

<sup>181</sup> Andrew Schaefer, "1995 Canada-Spain Fishing Dispute (The Turbot War)," Georgetown International Environmental Law Review 8(Summer 1996), 439.

<sup>182</sup> Mark Clayton, "War over fish sticks? Canada, Spain spar," Christian Science Monitor 87(73) (March 13, 1995), 6.

as it wished. Ongoing EU opposition to the NAFO quotas began after Spain entered the EU in 1986.<sup>183</sup> Foreign catches of the EU exceeded the TAC quota assigned by the NAFO in five of the six years prior to 1993.<sup>184</sup>

In 1994, Canada restricted the TAC quota on another type of groundfish, the turbot. Turbot, also known as the Greenland halibut, had historically attracted little attention from foreign fishermen off Canada's East coast, being located primarily inside Canada's 200-nautical mile zone. During the early 1990s, however, the turbot began to migrate outside of the 200-nautical mile zone, where they were intensively overfished by Spanish and Portuguese ships.<sup>185</sup> In the 1990s, the average Spanish turbot catch was approximately 50 000 MT per year, while Canada caught around 3 000 MT.<sup>186</sup> In 1992 alone, the EU's TAC turbot quota exceeded 22 600 MT, roughly 853% greater than the specified limits.<sup>187</sup>

At the next round of NAFO negotiations in September, 1994, Canada argued for a reduced turbot TAC quota. Under the Canadian proposal, the quota would be limited to 27 000 MT, with 16 500 MT allocated to Canada, 3 400 MT to the EU, 3 000 MT to Russia, 2 600 MT to Japan, with the rest divided among the remaining countries.<sup>188</sup> The EU agreed to the 27 000 MT TAC quota, but proposed that the EU be given 16 800 MT and the remaining 10 200 MT divided among all other NAFO countries, including Canada. Canada maintained that the EU proposal was unacceptable and in response, began lobbying other NAFO countries to support the Canadian quota.<sup>189</sup> Eventually, enough countries were convinced and the Canadian proposal was adopted.

The adoption of the Canadian proposal shocked the EU and its Commissioner for Fisheries, Emma Bonino.<sup>190</sup> Spain and Portugal declared that Canada should receive a smaller quota, as Canadian fishermen did not catch a significant portion of turbot, even if

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<sup>183</sup> Schaefer, "The Turbot War," 439.

<sup>184</sup> Paul C. Missios and Charles Plourde, "The Canada-European Turbot War: A Brief Game Theoretic Analysis," Canadian Public Policy 22(2) (June 1996), 145.

<sup>185</sup> Ted L. McDorman, "Canada's Aggressive Fisheries Actions: Will they Improve the Climate for International Agreements?" Canadian Foreign Policy 2(3) (Winter 1994), 25.

<sup>186</sup> Stoett, "Fishing for Norms," 252.

<sup>187</sup> Missios and Plourde, "The Canada-European Turbot War," 145.

<sup>188</sup> McDorman, "Canada's Aggressive Fisheries Actions," 25 and Missios and Plourde, "The Canada-European Turbot War," Canadian Public Policy 22(2) (June 1996), 144.

<sup>189</sup> Brian Tobin with John Lawrence Reynolds, All in Good Time, (Toronto: Penguin Canada, 2002), 99.

<sup>190</sup> Tobin with Reynolds, All in Good Time, 102.

the fish were mostly found within Canada's territorial sea. On March 1, 1995, the EU unilaterally declared its own turbot TAC quota of 18 630 MT, an amount five times larger than that adopted in the NAFO proposal.<sup>191</sup>

Canada's response to the NAFO proposal was largely shaped by Brian Tobin, then Minister of Fisheries and Oceans. Tobin, a notorious member of the Liberal "rat pack," served as a Member of Parliament since the 1980s and had been appointed Minister of Fisheries and Oceans on November 4, 1993.<sup>192</sup> Tobin had a personal, longstanding relationship with Chrétien which gave him influence in Cabinet possessed by few other Ministers. As both Minister of Fisheries and a native Newfoundlander, Tobin made it his priority to ensure that the fishing industry was a major consideration for the Liberal government. He convinced Chrétien to include the issue of overfishing in the 1994 Speech from the Throne, which read as follows: "The East Coast fishery, which has provided a livelihood to thousands of families in the Atlantic provinces and Quebec, confronts significant challenges due to the groundfish resource collapse. . . as such [Canada] will take the action required to ensure that foreign overfishing of East Coast stocks comes to an end."<sup>193</sup> Clearly, Tobin wanted to guarantee that the issue of overfishing would stay on Canada's agenda.

Regardless of opposition from senior public servants in the Departments of Fisheries and Oceans, Foreign Affairs, and Defence, Tobin was adamant that a strong approach to overfishing be adopted. No matter how strong the case, senior officials argued, Canada should not act unilaterally on the high seas.<sup>194</sup> While there was disagreement in the Department of Fisheries and Oceans over the position Canada should adopt, officials in the Department of Foreign Affairs and International Trade (DFAIT) insisted that Fisheries and Oceans should not make decisions in areas related to the

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<sup>191</sup> Elizabeth Sneyd, "Fighting over Fish: A Look at the 1995 Canada-Spain Turbot War," Paper presented at the 8<sup>th</sup> Annual Graduate Student Symposium, Security and Defence: National and International Issue, Online, Conference of Defence Associations, Internet, <http://www.cda-cdai.ca/symposia/2005/Sneyd.pdf>, (Retrieved 29 May 2006), 7.

<sup>192</sup> Kathryn O'Handley and Robert Lang (Eds.), "Brian Tobin," Canadian Parliamentary Guide, (Toronto: Globe and Mail Publishing, 1994), 305.

<sup>193</sup> As quoted in Tobin with Reynolds, All in Good Time, 83 and Canada, Speech from the Throne to Open the First Session 35<sup>th</sup> Parliament of Canada, Library of Parliament, Online, <http://www.parl.gc.ca/information/about/process/info/throne/index.asp?Language=E>, (Retrieved 30 May 2006).

<sup>194</sup> Tobin with Reynolds, All in Good Time, 84-85.

conduct of Canada's foreign policy. It was DFAIT that needed to be the lead Department on the overfishing issue. The Department of National Defence had little inclination to get involved with Tobin's initiative. It did not want to provide any naval support and was only later convinced to monitor the situation.<sup>195</sup>

With the backing of Prime Minister Chrétien, Tobin persuaded the Department of Fisheries and Oceans to take the matter in hand. He then outlined a number of policy strategies for the government to consider, including boarding more EU fishing vessels in the area, adding Spain to the list of states whose vessels were prohibited from fishing for straddling stocks on the Nose and Tail of the Grand Banks, and amending the CFPA to allow fisheries officers to halt vessels caught overfishing.<sup>196</sup> Tobin favoured amending the CFPA as it would allow Canada to send a strong message on overfishing to the international community. He also advocated that Canada remove fisheries disputes from the compulsory jurisdiction of the World Court.<sup>197</sup> His position received support from other senior Ministers including Herb Gray, Allan Rock, and David Collenette and most importantly, the Prime Minister.<sup>198</sup>

On May 14, 1994, Canada introduced amendments to the Coastal Fisheries Protection Act. These amendments allowed the government to "prohibit classes of foreign fishing vessels from fishing for straddling stocks in the NAFO Regulatory Area in contravention of certain conservation and management measures."<sup>199</sup> Canada first used the legislation to target fishing trawlers flying flags of convenience in the area. Pursuing these ships served to warn EU vessels overfishing in the North Atlantic that their behaviour would not be tolerated. As the EU ships remained unresponsive, Canada announced on March 3, 1995, that the new rules would apply to Spanish and Portuguese vessels fishing in international waters around the Grand Banks of Newfoundland<sup>200</sup> — launching, with great occasion, the onset of the so-called Turbot War. Shortly afterward, the new rules were applied to all vessels fishing in the area outright.<sup>201</sup>

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<sup>195</sup> Cooper, "The Politics of Environmental Security," 165.

<sup>196</sup> Tobin with Reynolds, All in Good Time, 108.

<sup>197</sup> Schaefer, "The Turbot War," 439.

<sup>198</sup> Tobin with Reynolds, All in Good Time, 97-98.

<sup>199</sup> Canada, Act to Amend the Coastal Fisheries Protection Act, 1994, 1.

<sup>200</sup> Tobin with Reynolds, All in Good Time, 86.



### 4.3 Implementation of the CFPA Amendments

In introducing and enforcing the CFPA amendments, Canada declared that “straddling stocks on the Grand Banks of Newfoundland [were] a major renewable world food source [that] provided a livelihood for centuries to fishers [and] . . . that those stocks are threatened with extinction.”<sup>202</sup> The major amendment to the legislation was the addition of section 5.2, which stated that “No person, being aboard a foreign fishing vessel of a prescribed class, shall in the NAFO Regulatory Area, fish or prepare to fish for a straddling stock in contravention of any of the prescribed conservation and management measures [of the NAFO].”<sup>203</sup> If vessels chose to violate the NAFO conservation and management measures, the legislation accorded fisheries protection officers to “use force that is intended or is likely to disable a foreign fishing vessel,” seize offending vessels, and arrest the vessel’s crew, if necessary.<sup>204</sup>

Canada had originally hoped to reach an agreement with the EU through well-publicised negotiations. It was only after talks completely broke down that Canada moved unilaterally to stop overfishing in the North Atlantic region.

Tobin was the Canadian government’s primary spokesperson on the CFPA amendments. In attempting to justify Canada’s position, Tobin would often draw parallels between the AWPPA and the CFPA amendments, arguing that in both cases Canada was forced to protect the environment.<sup>205</sup> Prime Minister Chrétien also publicly discussed the matter: at a speech to the American Society of Newspaper Editors, Chrétien insisted that the Turbot War was evidence of Canada’s sense of international duty.<sup>206</sup> Other declaratory statements released by the government stressed that Canada was forced to act as the “guardian” or “steward” of straddling stocks off the Grand Banks.<sup>207</sup> To generate sympathy abroad for Canada’s actions, the Canadian government launched a media campaign in Europe which depicted the negative effects of Spanish overfishing on

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<sup>201</sup> Schaefer, “The Turbot War,” 440.

<sup>202</sup> Canada, Act to Amend the Coastal Fisheries Protection Act, 1994, 2.

<sup>203</sup> Canada, Act to Amend the Coastal Fisheries Protection Act, 1994, 2.

<sup>204</sup> Canada, Act to Amend the Coastal Fisheries Protection Act, 1994, 3-4.

<sup>205</sup> David R. Matthews, “Mere Anarchy? Canada’s “Turbot War” as the moral regulation of nature,” Canadian Journal of Sociology 21(4), 511.

<sup>206</sup> Joan Fraser, “U.S. media cottons to Chrétien,” Edmonton Journal, 13 April 1995, A18.

<sup>207</sup> Cooper, “The Politics of Environmental Security,” 151.

world stocks.<sup>208</sup> Canada also used NAFO research to support its claims, for the NAFO had strong empirical data that demonstrated that Spain and Portugal were overfishing the turbot at the expense of Canada, Russia, Japan, and other NAFO members.<sup>209</sup> To create greater public awareness in Canada, the Chrétien government recruited Canadian celebrities to publicly mention the issue, such as Don Cherry on Hockey Night in Canada.<sup>210</sup>

While increasing public consciousness of the Turbot War, the Canadian government continued negotiating with the EU. Canadian Ambassadors delivered letters to the heads of all EU states, as well as to the President of the EU. The letters warned that unless the EU stopped fishing off Canada's Northeast coast, there would be serious consequences. To deescalate the conflict, Canada also proposed a 60 day moratorium on fishing for turbot.<sup>211</sup> In addition, Tobin briefed the Spanish Ambassador to Canada, Dr. Jose Luis Pardos, on Canada's position. On the off-chance of reaching a last minute agreement, Chrétien continued to speak with both President Santer of the EU and Prime Minister Felipe Gonzalez of Spain throughout March of 1995.<sup>212</sup> Once negotiations reached a complete impasse, Canada unilaterally enforced the CFPA amendments.

Under the CFPA amendments, Canada forcibly seized the *Estai* on March 9, 1995, which had been fishing 45 nautical miles outside of Canada's jurisdiction. Canadian authorities boarded the trawler, arrested its captain, and towed the seized ship to St. John's, Newfoundland, where the captain was jailed.<sup>213</sup> The warning shots fired during the seizure marked only the second time in recent years that gunfire had been employed by Canada to arrest a fishing vessel.<sup>214</sup> Four Canadian patrol vessels also forced several Spanish trawlers to pull up their nets and flee on March 26, 1995. During this incident, Canadian authorities attempted to board the *Verde*, but were unsuccessful. Fisheries officers did succeed in cutting the nets of the trawler *Pescamara Uno* after the captain refused to let Canadian officials aboard.

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<sup>208</sup> James Bartleman, Rollercoaster: My Hectic Years as Jean Chrétien's Diplomatic Advisor, 1994-1998, (Toronto: McClelland and Stewart, 2005), 106.

<sup>209</sup> Thompson, "Canadian Foreign Policy and Straddling Stocks," 231-232.

<sup>210</sup> Tobin with Reynolds, All in Good Time, 120.

<sup>211</sup> Bartleman, Rollercoaster, 91-92.

<sup>212</sup> Canada, House of Commons, Debates, 22 March 1995, 10830.

<sup>213</sup> Thompson, "Canadian Foreign Policy and Straddling Stocks," 228.

<sup>214</sup> McDorman, "Canada's Aggressive Fisheries Actions," 26.

Canada's unilateral implementation and enforcement of the CFPA amendments received a mixed reaction. A crowd of several thousand people in Madrid flung eggs and dead fish at the Canadian Embassy.<sup>215</sup> In retaliation to the seizure, Spain imposed visa requirements on Canadian visitors and initiated an action against Canada before the World Court.<sup>216</sup> Spain also announced to the international news media that Canada's seizure of the *Estai* was an attempt to divert attention from internal problems plaguing the country, hinting at Canada's problems with Quebec separatists.<sup>217</sup> On March 21, 1995, Spain sent the *Vigia* into the NAFO regulatory fishing area to guard ten Spanish fishing vessels. The *Vigia* was authorized to use deadly force, if necessary, to protect the Spanish fleet.<sup>218</sup> Canada was also sued for piracy and malicious prosecution by Capt. Enrique Davilla Gonzalez, of the *Estai*, and the company, Jose Pereira E Hijos, for unspecified damages.<sup>219</sup>

At the outset of the event, the EU condemned Canada's actions as a breach of international law and impeded formal diplomatic interaction between Canada and Brussels.<sup>220</sup> Though the EU officially denounced Canada's actions, it never imposed the retaliatory sanctions on Canada that Spain had requested. John Major, then Prime Minister of Britain, spoke out on the incident, insisting that "Canada is quite right to take a tough line on enforcement . . . But I hope in taking a tough line, she doesn't undermine her own good case which exists at present."<sup>221</sup> Britain also announced that it would not back any move by the EU to impose sanctions against Canada. Germany and the Netherlands were also reluctant to impose sanctions.<sup>222</sup>

In Canada, the Chrétien government received much public support. Chrétien and Tobin maintained high approval ratings throughout the incident. An Angus Reid poll

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<sup>215</sup> Joan Bryden, "Canada's embassy pelted with fish," Edmonton Journal, 7 April 1995, A1.

<sup>216</sup> McDorman, "Canada's Aggressive Fisheries Actions," 26 and "Canada, Europe end fight over turbot," Calgary Herald, 30 September 1995, A5.

<sup>217</sup> Tobin with Reynolds, All in Good Time, 126.

<sup>218</sup> Bartleman, Rollercoaster, 103.

<sup>219</sup> Alan Jeffers, "Estai's owners suing Canada: seizure of Spanish trawler 'act of piracy'," Daily News (Halifax), 21 September 1995, 11.

<sup>220</sup> McDorman, "Canada's Aggressive Fisheries Actions," 26.

<sup>221</sup> John Major as quoted in Juliet O'Neil and Joan Bryden, "Turbot Wars: Advantage Canada as EU stands divided; Spain embarrassed by others stance," Ottawa Citizen, 31 March 1995, A3.

<sup>222</sup> Helen Branswell, "'Never let Britain down': U.K. supporting Canada," Daily News (Halifax), 29 March 1995, 10 and J. Palmer and S. Bates, "Canada fishing dispute grows," The Guardian Weekly, 19 March 1995, 1 as quoted in Thompson, "Canadian Foreign Policy and Straddling Stocks," 231.

showed that nine out of ten Canadians supported Canada's actions, with support surprisingly highest in the Prairie provinces, with 94% of the Manitoba and Saskatchewan populations supporting the initiative.<sup>223</sup> Canadians wrote into newspapers announcing that they "ha[d] never been more proud to be a Canadian," and urged fellow Canadians to support Canada's actions.<sup>224</sup> After the *Estai's* capture, Tobin entered the House of Commons to a standing ovation from all Members of the House, including those from the Bloc Quebecois.<sup>225</sup> Members encouraged Tobin "to stand firm in protecting Canada's interests in this dispute...confident that Canadians stand with him"<sup>226</sup> and commented on how the "turbot [though] a miserable looking little fish... rallied an entire nation."<sup>227</sup> Parliamentarians urged Canadians to rally together: "We stand shoulder to shoulder beside our fellow Canadians in Atlantic Canada. Together we must and we will save the fishery."<sup>228</sup>

After the *Estai* was captured, negotiations between Canada and the EU resumed immediately. To aid in depoliticizing the process, Canadian officials met with their counterparts from a variety of EU member states, including Britain, Spain and Portugal, as well as EU administrators. As the EU's Commissioner for External Trade, Sir Leon Brittan put it, "Even as the Brian and Emma show goes on...while they are throwing dirt in public, we are negotiating in private."<sup>229</sup> As a result, poor relations between Bonino and Tobin had little impact on negotiations.

Finally, an agreement was struck between Canada and the EU on April 16, 1995. Canada and the EU agreed to keep the 27 000 MT TAC turbot limit for 1995, but both would now receive a 10 000 MT TAC quota. Canada arranged to drop all charges against the Spanish crew of the *Estai* and release the ship from custody. In return, the EU acceded to implementing a number of conservation and surveillance measures at the NAFO. New measures included improvements to inspection procedures, tougher

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<sup>223</sup> Michael Harris, Lament for an Ocean: The Collapse of the Atlantic Cod Fishery A True Crime Story, (Toronto: McClelland and Stewart Inc., 1998), 7.

<sup>224</sup> Michelle Stihl, "Tobin made Canadian feel proud," Calgary Herald, 9 April 1995, A7 and Jurgen Hesse, "Support Canada in turbot wars," Vancouver Sun, 4 April 1995, A12.

<sup>225</sup> Thompson, "Canadian Foreign Policy and Straddling Stocks," 229.

<sup>226</sup> Joe McGuire as quoted in Canada, House of Commons, Debates, 28 March 1995, 11134.

<sup>227</sup> Roger Simmons as quoted in Canada, House of Commons, Debates, 17 March 1995, 10658.

<sup>228</sup> Pat O'Brien as quoted in Canada, House of Commons, Debates, 3 April 1995, 11402.

<sup>229</sup> Sir Leon Brittan as quoted in Paul Koring, "EU likely to win on fish quota: Deal shaping up would tighten monitoring, but Canada's share of turbot would shrink," Globe and Mail, 30 March 1995, A1.

penalties for infringements, more detailed catch reports to increase transparency, an increase in the minimum retention size of turbot to 30 centimetres, and a pilot project to observe all fishing vessels in the area, with 35% of these ships tracked by satellite.<sup>230</sup>

Later that spring, the agreement between Canada and the EU was put to the test. On April 28, 1995, Canadian officials received permission from Ottawa to board the Spanish trawler, the *Mayi Cuatro*. Officials inspected the boat and then released a net determined to be illegal. EU inspectors reviewed the evidence seized by Canadian officials and, concurring with their judgement, ordered the *Mayi Cuatro* to return to port.<sup>231</sup>

After the successful implementation of the Canada-EU agreement, Canada and the EU continued working together to strengthen world fishing regulations. On August 4, 1995, at the United Nations Conference on Straddling and Highly Migratory Fish Stocks, Canada and the EU, along with other member states, crafted provisions which provide officials with the power to board foreign-flag vessels in international waters upon suspicion of illegal activity.<sup>232</sup> Tobin believed that this new convention could provide “Canada the means to end foreign overfishing permanently.”<sup>233</sup> Later, the Food and Agriculture Organization of the United Nations passed an agreement which devolves more power to regional organizations, so they can effectively enforce regulations.<sup>234</sup>

#### 4.4 Analysis of the Implementation of the CFPA Amendments

Most commentators agree that the enforcement of the CFPA amendments was not meant as an attack on international law. Instead Canada’s actions are characterized as a

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<sup>230</sup> See Text of Minutes, Treaties and Agreements: Canada-European Community: Agreed Minute on the Conservation and Management of Fish Stocks,” International Legal Materials 34(5) (September 1995), 1262-1271. See also NAFO, Meetings Proceedings of the General Council and Fisheries Commission for 1995, (Dartmouth, Nova Scotia: NAFO Headquarters, 1996), 152 as quoted in Thompson, “Canadian Foreign Policy and Straddling Stocks,” 228 and McDorman, “Canada’s Aggressive Fisheries Actions,” 27.

<sup>231</sup> Schaefer, “The Turbot War,” 442.

<sup>232</sup> Brian Tobin as quoted in “Canada: Fisheries Minister Welcomes UN Consensus,” Reuter Textline Agency Europe, 10 August 1995 as quoted in Schaefer, “The Turbot War,” 443. For a copy of the agreement see [http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm).

<sup>233</sup> Schaefer, “The Turbot War,” 443.

<sup>234</sup> This is known as the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. See Sneyd, “Fighting over Fish,” 17. A copy of the agreement is available at <http://www.fao.org/docrep/meeting/003/x3130m/x3130m00.htm>.

state taking an aggressive stance for a justifiable cause.<sup>235</sup> Clearly, Canada's own domestic policies, together with those of other states, contributed to the decimation of the world's fishing stocks. Yet once the Canadian government realized that many fish stocks were in jeopardy, it drastically reduced catch limits. When other states were unwilling to apply similar measures, Canada enforced the CFP amendments to communicate to the international community and, in particular, to other members of the NAFO, that Canada would not stand by and be the only country to suffer from the decimation of world fishing stocks.

Canada's unilateral actions can be seen as a deliberate act to preserve Canada's territorial integrity. As the turbot was a migratory fish stock traditionally found within Canada's territorial sea, the Canadian government wanted to preserve the resources found within this boundary. Accordingly, Gotlieb's characterization of this instance of unilateralism is correct. What he fails to take into account is that Canada acted unilaterally within a multilateral framework. Its goal was to keep the issue of overfishing on the international agenda long enough to negotiate a suitable agreement. As Tobin stated, "Mr. Speaker, we have taken rather dramatic measures so far, but our goal is to find a solution through negotiation."<sup>236</sup>

Canada clearly had a preference for negotiation. Even after numerous failed attempts to reach a suitable agreement, including the rejection of the Canadian-written NAFO TAC turbot quota, Canada persisted in negotiating with the EU. Once discussions reached an impasse, the Canadian government attempted to reinvigorate the negotiation process. Chrétien even called President Santer to attempt last minute negotiations before Canada resorted to enforcing the CFP amendments.<sup>237</sup>

Once Canada had begun to enforce its policy, it quickly returned to discussions with the EU. After these deliberations were stalled by Spain, Canada moved two navy gunboats, the frigate *Gatineau* and the destroyer *Nipigon*, into the area. Tobin then gave a television interview on CTV where he confirmed that Canada had not ruled out the possibility of using further force, but actually that, "it had been ruled in." These

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<sup>235</sup> David VanderZwaag as quoted in Greg Coleman, "Fish war highlighted weakness of international law—experts," *Daily News* (Halifax), 18 April 1995, 12.

<sup>236</sup> Canada, House of Commons, *Debates*, 28 March 1995, 11137.

measures were meant to prevent Spain from completely stalling the negotiation process. Finally, after an emergency meeting in Brussels, the EU ratified the agreement.<sup>238</sup> Which is to support Donald Barry's contention that the Turbot War can be understood as a series of unilateral actions aimed at reinvigorating the negotiation process with the EU.<sup>239</sup> As Tobin stated, "We much prefer to talk. We much prefer to negotiate. We will go to the nth degree to settle our differences by agreement. However we warn all those who are listening that we will not sit and talk while the last fish is being caught."<sup>240</sup>

Canada's unilateral actions also served other purposes. It advanced international acceptance of the precautionary principle, where states recognize that they have a duty to protect the environment from the unknown.<sup>241</sup> In this sense, Canada was able to further "the process of progressive legal developments".<sup>242</sup> Furthermore, its actions led to increased commitment by other members of the international community to negotiate more stringent international limits on fishing and regulatory measures. Accordingly, Canada's actions could aid in "the development of a body of law [that would actually] eliminate the need for gunboat diplomacy."<sup>243</sup>

It is also likely that Canada's actions provided impetus for the negotiation of other stalled fishing agreements. Allen Springer maintains that it was because of Canada's strong stance during the Turbot War that the US quickly restarted discussions on the Pacific salmon dispute: "Canada's willingness to take tough unilateral action against Spain and the degree of support that position ultimately attracted both in Canada and abroad, including [in] the U.S., likely affected American perceptions of the value of a negotiated solution."<sup>244</sup> Only five months after the Turbot War, Canada and the US appointed Christopher Beeby, New Zealand's former ambassador to France, to mediate

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<sup>237</sup> Tobin with Reynolds, All in Good Time, 124 and Tim Harper and Allan Thompson, "PM in emergency talks as turbot war heats up," Toronto Star, 9 March 1995, A1.

<sup>238</sup> Jeff Sallot, "Naval threat brought turbot deal: Diplomacy prevailed as Canadian warships sailed toward confrontation with Spain," Globe and Mail, 17 April 1995, A1.

<sup>239</sup> Barry, "The Canada-EU turbot war," 283.

<sup>240</sup> Canada, House of Commons, Debates, 22 February 1995, 1520.

<sup>241</sup> Stoett, "Fishing for Norms," 261.

<sup>242</sup> David VanderZwagg as quoted in Coleman, "Fish war highlighted weakness of international law," 12.

<sup>243</sup> Coleman, "Fish war highlighted weakness of international law," 12.

<sup>244</sup> Larry Pynn, "Tobin's Stand in Turbot War Credited with Influencing U.S.: Action helped resolve salmon row, report says," Vancouver Sun, 30 November 1995, B12.

the salmon dispute. Both states committed themselves to negotiating an agreement, regardless the problems that had plagued earlier discussions.<sup>245</sup>

In the case of the CFPA amendments, there is not sufficient evidence to prove that Canada acted in a unilateral manner primarily to protect the environment.<sup>246</sup> Though Canada's unilateral actions did secure the survival of the turbot, and it did advance ideas in the international community that would advance environmental safeguards, its primary concern was protecting the resource for fishing purposes. Fish stocks had been decimated to the point that it was questionable if certain species would ever recover. It was only by securing a level of fish stocks that Canada could help to save the Atlantic fishing industry, contributing to the stabilization of the failing economies of the Atlantic provinces.

#### **4.5 Conclusion**

As this chapter has demonstrated, the CFPA amendments are a clear illustration of Canada's willingness to act in a unilateral manner for the purposes of maintaining territorial integrity — accordingly, supporting Gotlieb's claim. What Gotlieb's analysis overlooks is that Canada's unilateral actions must also be recognized within a multilateral framework, where Canada resorted to unilateralism only when negotiations between Canada and the EU were at a standstill. Furthermore, Canada's actions were consistent with international norms and advanced new areas of international law. In this sense, Canada's actions primarily served to reinvigorate the negotiation process within a multilateral setting.

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<sup>245</sup> Larry Pynn, "Tobin's Stand in Turbot War Credited with Influencing U.S.," B12.

<sup>246</sup> This argument is made by Allen Springer and Tuchman Matthews, Kaplan, and Homer-Dixon. For Springer's argument see Springer, "The Canadian turbot war with Spain," 26.



## Chapter 5

### Conclusions

Under at least four prime ministers – St. Laurent, Pearson, Trudeau and Mulroney – Canadians have asserted unilateral claims to sovereignty or jurisdiction over vast Maritime zones...All these actions, including Canada's questionable legal behaviour on the high seas during the turbot war, and our renouncing of recourse to the rule of law whenever we could be challenged, were greeted favourably by Canadian public opinion – sometimes with wild acclaim. When it comes to asserting our own territoriality based on national interests, Canadian unilateralism has been consistent, aggressive and the dominant strategy for over half a century. It cannot properly be seen as consisting of sporadic and minor deviations from the true path of multilateralism.<sup>247</sup>

If we agree with Allan Gotlieb's claim that, in certain instances, Canada has a propensity to act unilaterally in the world, what conclusions can we draw about the reasons why it does? Even if the instances of unilateral action have been infrequent, they can draw attention to an instinctual way in which Canada conducts its foreign policy.<sup>248</sup> They also serve to remind us that unilateral action by state actors need not be viewed in a negative light, as it often is.

Though the three case studies examined in this thesis are examples of Canadian unilateralism, they are not sufficient evidence to demonstrate that unilateralism is an inherent Canadian preference. Gotlieb argues that in all three instances, including the Arctic Waters Pollution Prevention Act, 1970, the Territorial Seas and Geographic Coordinates (Area7) Order, 1985 and the Turbot War, 1995, Canada acted unilaterally to protect its territorial sovereignty. He insists these instances were not unique and that Canada has a long history of acting unilaterally in the international system. The cases cannot be characterized as "minor deviations from the true path of multilateralism"<sup>249</sup>

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<sup>247</sup> Allan Gotlieb, Realism and Romanticism in Canada's Foreign Policy, 33-34.

<sup>248</sup> The argument that there is an instinctual way that Canada operates in the international system was made persuasively long ago by Robert W. Reford in Canada and Three Crises, (Toronto: Canadian Institute for International Affairs, 1968), 243.

<sup>249</sup> Allan Gotlieb, Realism and Romanticism in Canada's Foreign Policy, 33-34.

and reinforce the point that Canada must adopt a reality-based foreign policy rather than one based on “utopianism, millenarianism, and visionary crusades.”<sup>250</sup> But the evidence found raises questions about Gotlieb’s argument. It does not demonstrate clearly that Canada has a preference for acting unilaterally to protect its territory; rather its unilateral actions are better described as a means toward the achievement of the greater goal of multilateralism. Gotlieb is correct in a sense: Canada was concerned about protecting its territorial sovereignty. But what he misses is that protecting territorial sovereignty is not an achievable goal for a small power like Canada; it cannot make its claims stick. What Canada was doing rather, through its unilateral initiatives, was keeping issues such as Arctic jurisdiction and the regulation of fisheries alive for further discussion at the multilateral level. Put another way, its unilateral actions were always conceived and viewed within a framework of multilateralism. Each of the three cases demonstrates that Canada unilaterally implemented or enforced legislation in order to restart negotiations on either a multilateral or even a bilateral basis.

Unilateralism is often defined in pejorative terms. In the international community it is often considered “tantamount to a dirty word,” though it is paradoxically both absolutely prohibited and protected by the UN Charter.<sup>251</sup> On the other hand, multilateralism has positive connotations as it implies the achievement of consensus and cooperation among international actors. It is critical, however, that unilateralism and multilateralism not be considered independent concepts. In a globalized world, it is almost impossible for states to act completely independently or without consulting one another. Instead, it is more useful to think of unilateralism and multilateralism as falling on a continuum, where decisions may be classified as more one than the other.<sup>252</sup> It is also important to note that there are other options for states outside of unilateralism and multilateralism. States may attempt to work bilaterally or may choose to not take any

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<sup>250</sup> Allan Gotlieb, *Realism and Romanticism in Canada’s Foreign Policy*, 37.

<sup>251</sup> For an understanding of the negative connotations associated with unilateralism see Bodansky, 339. John Van Oudenaren outlines how unilateralism is “prohibited and protected” in the UN Charter. Under Article 25, states are prohibited to unilateral action as they have an obligation to carry out the decisions of the security council. While unilateral action is “protected” under both Article 51, which recognizes that states have an inherent right to self-defence, and under Article 2, which defines states sovereign equality and sanctity over their domestic jurisdiction. For a further discussion see John Van Oudenaren, “What is ‘Multilateral’?,” *Policy Review* (117) (February/March 2003), 34.

<sup>252</sup> Walker, 4-5.

action. Unilateralism, as it has been understood in this thesis, thus refers to “one state proceed[ing] independently, on its own authority, with minimal involvement by other states” in the resulting decision or action.<sup>253</sup> It occurs when a state acts on its own with or without consulting other international players and where their positions or opinions may or may not be taken into account.

Similarly, there has been no consensus on how multilateralism should be understood.<sup>254</sup> One of the best definitions comes from John Gerard Ruggie who recognizes that multilateralism coordinates interaction between states, within a certain framework to order these relations.<sup>255</sup> As a result, multilateralism determines what appropriate state conduct is, regardless of the particular context or actors involved.<sup>256</sup> Because multilateralism is understood to be built upon cooperation and the achievement of consensus at some level, it carries “an international legitimacy not enjoyed by other means.”<sup>257</sup>

Yet the legitimacy of multilateralism has been recently thrown into question. States will act within a multilateral framework but still adhere to their own idea of what is acceptable behaviour and show a concern often only for their own benefit from multilateral relationships. For this reason, or because of what John Van Oudenaren calls “dysfunctional multilateralism,” other states, who might otherwise have a multilateral orientation, sometimes turn to unilateralism in order to defend their interests.<sup>258</sup> Here, they see a choice not between unilateralism and multilateralism but in fact between unilateralism and inaction.<sup>259</sup> Yet, in certain instances, their unilateral actions will be an attempt to lead or initiate change, proceeding in the hope of influencing other states to

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<sup>253</sup> Bodansky, 340.

<sup>254</sup> Oudenaren, 34.

<sup>255</sup> John Gerard Ruggie, “Multilateralism: The Anatomy of an Institution,” in Multilateralism Matters: The Theory and Praxis of an Institutional Form, ed. John Gerard Ruggie (New York: Columbia University Press, 1993), 11.

<sup>256</sup> Ruggie, “Multilateralism: The Anatomy of an Institution,” (1993) 11.

<sup>257</sup> Ruggie, “Multilateralism: The Anatomy of an Institution,” (1993) 23.

<sup>258</sup> Oudenaren, 41.

<sup>259</sup> Bodansky, 339.

follow with similar behaviour.<sup>260</sup> In other words, unilateralism is still ultimately predicated on the survival, indeed the success, of a multilateral framework.

There is substantial evidence from the three cases investigated in this thesis to show that they are examples of unilateralism pursued for the purpose of initiating change as described above. In the case of the AWPPA, Canada acted unilaterally to introduce regulations for pollution prevention in the Arctic. After lengthy negotiations with the US, the Canadian government came to the realization that no agreement was possible over the territorial status of the Northwest Passage. Rather than taking a position that these northern waters were recognized as an international strait, Ottawa sought to reaffirm its sovereignty over the territory through the AWPPA. Under the Act, Canada, viewing itself as a custodian of the North, created a 100-mile pollution prevention zone. Ships transiting the Northwest Passage within this jurisdiction were now required to follow regulations outlined by the Canadian government and could be searched by pollution prevention officers working in the area. As Gotlieb suggests, it was through the unilateral implementation of the AWPPA that Canada was able to protect its territorial sovereignty by functionally regulating the area.

But while Canada may have acted unilaterally to protect its territorial sovereignty in the case of the AWPPA, its larger purpose was to keep an issue of national importance for Canada on the multilateral agenda. The Canadian government was aware that claiming sovereignty over the Northwest Passage might not be accepted by the international community. But it understood that the legislation was in harmony with evolving international norms and values. Indeed its unilateral initiative enshrined principles that would later become part of international law in Article 234 of the Law of the Sea Convention, which gave coastal states the right to adopt and enforce laws for the “prevention, reduction and control of marine pollution from vessels in ice-covered areas.”<sup>261</sup>

Similarly, the drawing of straight baselines under the TSGCO provides evidence that Canada is willing to act unilaterally, although for reasons beyond a desire to affirm

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<sup>260</sup> John Gerard Ruggie uses this understanding of “unilateralism for the purposes of multilateralism” to describe Britain’s behaviour in implementing the gold standard and free trade. See Ruggie, “Multilateralism: The Anatomy of an Institution,” *International Organization* 46(3) (Summer 1992), 582.

<sup>261</sup> Honderich, *Arctic Imperative*, 53.

territorial sovereignty. Under the TSGCO, Canada drew baselines around both the islands and the surrounding waters of the Arctic archipelago. As the 100-mile pollution prevention zone, the 200-mile exclusive economic zone, and the 12-mile territorial sea, would then be measured from these baselines, the TSGCO effectively enclosed the Northwest Passage within Canada's jurisdiction.

But while the TSGCO drew straight baselines around the Arctic archipelago, Canada's unilateral behaviour was punctuated by a return to multilateralism. The Canadian government was quite aware that the US was unwilling to move from its position on the Northwest Passage and discussions between Canada and the US on the territorial sea quickly reached an impasse. Knowing that the US was unlikely to accept its declaration of straight baselines around the Arctic archipelago, Ottawa offered to enter into immediate negotiations with the US after introducing the TSGCO. This allowed Canada to once again keep an issue of national importance, on the bilateral and multilateral agenda. Negotiations soon began between the two countries which led to the signing of the Canada-US Arctic Cooperation Agreement, furthering US recognition of Canadian jurisdiction over the Arctic.

Finally, the Turbot War illustrates similar behaviour and similar goals on the part of Canada in pursuing unilateral action. The major difference with the Turbot War, compared to the AWPPA and the TSGCO, is that Canada did not act simply to assert jurisdiction over territory. Instead, it acted to protect resources (namely the turbot) found within its territorial sea. It did so by amending the Coastal Fisheries Protection Act to provide Canadian fisheries officers with the power to board or forcibly stop ships suspected of violating NAFO regulations or catch limits. On March 9, 1995, Canada enforced these amendments by forcibly seizing the Spanish fishing trawler the *Estai*. After negotiations between Canada and the EU to create a new agreement fell apart, Canada forced other Spanish fishing trawlers, including the *Verde* and the *Pescamara Uno*, to flee the area after cutting fishing nets on nearby ships.

But again, although Canada unilaterally enforced amendments to the CFPA to protect its territoriality, there is another explanation for its behaviour. Canada had struggled with the consequences of overfishing for decades. When it became apparent that other countries were unwilling to seriously address the issue, Ottawa chose to move

unilaterally to keep the issue of overfishing on the international agenda. Protecting the turbot was important to Canada, but it was not the primary concern. It provided Canada with the opportunity to demonstrate the importance of new regulations to end overfishing, which would later be implemented by the international community. In the end, Canada and the EU were able to negotiate a new agreement, which changed the total allowable catch quota for turbot, created more stringent NAFO regulations, and provided the NAFO with further regulatory powers. Canada and the EU subsequently encouraged stronger fishing regulations in other areas. In particular, they worked to approve firmer regulations at the Law of the Sea Convention to devolve further regulatory power to regional organizations.

The three cases studied in this thesis prove that, as Gotlieb has said, Canada is willing to act unilaterally to protect its territorial sovereignty. Canada's unilateral acts in these cases are consistent with the definition offered by Daniel Bodansky, where Canada "proceed[ed] independently, on its own authority, with minimal involvement by other states" in the resulting decision or action.<sup>262</sup> Though Canada consulted other states before implementing the AWPPA and the CFPA amendments, it was still the primary actor that executed the legislation, against the wishes of the US and the EU, respectively. In the case of the TSGCO, Canada had limited consultations with other states prior to implementing the legislation. Instead, Canadian officials ensured the Mulroney government that the legislation was consistent with current norms and values found in the international community, as evidenced by recent decisions at the World Court.

Although Gotlieb's characterization of Canada as a unilateral actor is correct, it is important to note that Canada had a larger purpose in mind. The cases do not provide sufficient evidence that Canada has a strong preference to act unilaterally in the name of national interests. What Gotlieb's analysis overlooks is that Canada quickly returned to acting multilaterally. All three cases provide evidence that after Canada unilaterally implemented legislation it quickly moved to restart multilateral or bilateral negotiations. It also worked to garner support from other members of the international community for the legislation it had implemented. Above all, Canada was concerned with keeping issues, such as jurisdiction over the Northwest Passage and rights to certain TAC fishing

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<sup>262</sup> Bodansky, 340.

quotas, on the multilateral agenda. It was quite aware that it did not have the resources or the status in the international community to avoid challenges to its claims. Instead, its declarations served primarily to garner the attention of the international community. Unable to ignore Canada's actions, other states were forced to negotiate an agreement more acceptable to Canada. Where these allies were unwilling to negotiate, such as the US in the AWPPA, Canada's declarations and later consultations with the international community led other states to accept the principles promoted by Canada until these ideas were enacted in international law.

Gotlieb fails to acknowledge that Canada's unilateral actions succeeded in advancing the multilateral and global agenda — by fostering new developments in international law. Canada had no way to enforce its claims, except through acquiring international legitimacy. Acting in harmony with evolving norms in the international community and international law, afforded Canada, a state with limited resources, the credibility it needed to act unilaterally. This in turn allowed it to protect its interests in the face of international opposition. This is precisely what Franklyn Griffiths means when he describes Canada's approach to questions of territorial sovereignty as one involving unilateral action first and then subsequently efforts to gather multilateral support.<sup>263</sup> It was a functional approach that allowed Canada to gain support for sovereignty with the assistance of other states.

Canada's intention in the AWPPA was clearly to advance international law. In a letter sent to the United Nations in which Canada reserved its decision from the World Court, the Canadian government wrote that "State practice, or unilateral action by a state, has always been accepted as one of the ways of developing international law."<sup>264</sup> Through the AWPPA, Canada exercised the right of coastal states to protect its environment from pollution, which was later protected by Article 234 of the Law of the Sea Convention.

The case of the TSGCO also illustrates an attempt by Canada to change international law. Its decision to remove its 1970 reservation over acceptance of the compulsory jurisdiction of the International Court, as well as the decision to forge ahead

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<sup>263</sup> Franklyn Griffiths refers to this as "special-purpose regional multilateralism." See Griffiths, "Canadian Sovereignty and Arctic International Relations," 140-162.

with the drawing of straight baselines around the Arctic archipelago, was consistent with reinforcing new developments in international law. These actions were compatible with recent decisions at the World Court that recognized the right of states with irregular coast lines to draw straight baselines around these areas.

The Turbot War is a third example of Canada acting unilaterally for the larger purpose of developing principles in international law. Because of Canada's actions, Canada and the EU were able to negotiate stronger regulations for the NAFO. The principles behind these regulations were later adopted more widely by the international community at UN Conferences on Straddling and Highly Migratory Fish Stocks, where states increased the powers of regulatory bodies. Furthermore, Canada's behaviour during the Turbot War advanced an idea in international law known as the precautionary principle, where states recognize a duty to protect the environment from the unknown.

Overall, Canada's unilateral behaviour focused more on advancing Canadian national interests within an acceptable multilateral or international framework than acting unilaterally to defend its territory. Canadians resorted to unilateralism only because a suitable agreement that would recognize Canada's national interests could not be reached. In all three cases, Canada was involved in extensive negotiations, and it was only after negotiations proved futile that it acted unilaterally to restart discussions by creating a sense of urgency. Unilateralism proved to be an effective method of restarting stalled negotiations. Afterwards, Canada quickly returned to operating within a multilateral framework.

Accordingly, Canada's actions in these three case studies prove that smaller powers can use unilateralism effectively. Indeed had Canada not acted unilaterally, the issues in question might have been passed over by the international community. Though Canada could not enforce its unilateral claims, it gathered support from the international community until its positions obtained backing in international law. This is to say, Canada, like other smaller states in the world, can act as a leader on certain international issues if it has support within the international community to provide legitimacy for its initiatives. Support for Canada's unilateral actions may also have been facilitated by the

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<sup>264</sup> Trudeau, "Statement to the House of Commons on April 8, 1970," 284.



nature of Canada's interests. Canada's actions were consistent with international norms, allowing Canada to garner support from other states who agreed with these principles.

Though Gotlieb draws attention to an important feature of Canadian foreign policy with his description of Canada as a unilateral actor, the problem is that there remains a clear lack of understanding of what unilateralism is by both practitioners of Canadian foreign policy and the academic community. While questioning the pejorative characterization of unilateralism, Gotlieb discounts the meliorative nature of multilateralism. He fails to recognize that Canada's punctuated acts of unilateralism happen within a multilateral framework, where Canada sometimes acts unilaterally in the face of dysfunctional multilateralism. In the end, Canada quickly returns to multilateralism once its unilateral actions have created enough awareness for the issue in the international community.

Further research should focus on changing the limited understanding of both unilateralism and multilateralism in this regard. Unilateralism does have its place: it is a method used by larger and smaller powers alike in the multilateral and international system. It can no longer be defined in such a pejorative manner and instead must be seen as a legitimate way for smaller powers (with significant support) to act in the international community. States may on occasion act unilaterally if they do so within a framework of internationally accepted norms and principles and have legitimacy within the international community. Its legitimacy as a method cannot be underrated, especially in the face of dysfunctional multilateralism.

Additional research might also be conducted on how and why unilateralism is a viable option not only for Canada, but for other smaller powers to exercise. What are the factors that cause smaller powers to act unilaterally? Is it only questions of sovereignty that prompt such action or are there other issues such as global security threats or human security issues, that will force smaller powers to act unilaterally? Is there evidence to suggest smaller powers undertake unilateral initiatives due to public support or because of the strength of the country's leader? What are the factors that allow smaller powers to succeed at unilateralism? The three cases in the thesis provide evidence that suggests that for smaller powers to undertake successful unilateral initiatives they must have the ability to garner support from the international community. In the end, how effective do these

initiatives actually turn out to be? All three cases advanced areas of international law, but are these laws actually followed in the international community?

Further research in these areas may contribute to a more sophisticated understanding of unilateralism by policy makers and members of the international community. Unilateralism may be considered a viable option for smaller powers, and major powers may not face immediate condemnation because they choose to act unilaterally.

This thesis demonstrates that Canada's willingness to act unilaterally in areas of national importance allowed it to effectively keep issues on the multilateral and international agenda. These acts of unilateralism within a multilateral framework allowed Canada to continue negotiations until suitable solutions were reached. By strategically using unilateralism, Canada initiated new developments and then gathered support from the international community. As a result, it could act in areas of national importance as a world leader.

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