

SANTA CLAUS IS CANADIAN, EH! CANADA’S ICE RUSH TO CLAIM THE NORTH POLE AND THE NORTHWEST PASSAGE

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INTRODUCTION

The Arctic is warming and changing at a rate far faster than anywhere else on earth.¹ It has warmed by four to five degrees Fahrenheit each year since 1950.² Yet the rest of the world has only warmed by about one degree Fahrenheit during the entire twentieth century.³ Scientists expect the Arctic to be ice-free by 2030, if not sooner.⁴

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¹ Jackie Northam, *Arctic Warming Unlocking a Fabled Waterway*, NPR (Aug. 15, 2011), <http://www.npr.org/2011/08/15/139556207/arctic-warming-unlocking-a-fabled-waterway>.

² Bryan Walsh, *Farewell to the Arctic – as We Know It*, TIME, Sept. 27, 2011, available at <http://www.time.com/time/health/article/0,8599,2095114,00.html>.

³ *Id.*

⁴ *Id.*

The melting ice in the Arctic creates the possibility of an ice-free Northwest Passage.⁵ The Northwest Passage is a series of straits connecting the Atlantic and Pacific Oceans.⁶ Since the Northwest Passage has been frozen, access to and through this strait has been limited and extremely difficult.⁷ Because of global warming, an ice-free Northwest Passage “could cut the sea-route for cargo from Europe to the Far East by 4000 miles, from the current route through the Panama Canal.”⁸

Moreover, with the melting Arctic ice, there is the potential for access to 25 percent of the world's undiscovered oil and natural gas resources.⁹ The wealth of potential resources has set off a rush among Arctic countries to lay claim to their piece of the Arctic.¹⁰ Canada, Denmark, Norway, Russia, and the United States are all competing for interests in the Arctic.¹¹

Land claims in the Arctic are governed by UNCLOS, the United Nations Convention on the Law of the Sea.¹² UNCLOS governs the Arctic Ocean and stipulates regulations regarding each member's involvement in the region.¹³ The five member states are Norway, Russia, Canada, Denmark, and the United States.¹⁴ All of these countries, except the United States, have ratified UNCLOS.¹⁵ Each UNCLOS member has ten years from the date of ratification until its deadline to submit its

⁵ See generally Scott G. Borgerson, *Arctic Meltdown: The Economic and Security Implications of Global Warming*, FOREIGN AFF., Mar./Apr. 2008, at 63, available at <http://www.foreignaffairs.com/articles/63222/scott-g-borgerson/arctic-meltdown>.

⁶ Mark Jarashow et al., Note, *UNCLOS and the Arctic: The Path of Least Resistance*, 30 FORDHAM INT'L L.J. 1587, 1605 (2007).

⁷ Northam, *supra* note 1.

⁸ Jarashow et al., *supra* note 6, at 1592. See also *Northwest Passage – Map of Arctic Sea Ice: Global Warming is Opening Canada's Arctic*, GEOGLOLOGY.COM, <http://geology.com/articles/northwest-passage.shtml> (last visited Aug. 21, 2011) (a clear Northwest Passage reduces the shipping routes from Europe to Asia by 4,000 kilometers (2,500 miles)).

⁹ Angelle C. Smith, Note, *Frozen Assets: Ownership of Arctic Mineral Rights Must Be Resolved to Prevent the Really Cold War*, 41 GEO. WASH. INT'L L. REV. 651, 651 (2010).

¹⁰ *It's ours! Denmark Plans to Lay Claim to North Pole as Melting Ice Opens Up Oil Opportunities*, MAIL ONLINE, (May 18, 2011, 02:44 AM), <http://www.dailymail.co.uk/news/article-1388100/Denmark-plans-lay-claim-North-Pole-melting-ice-opens-oil-opportunities.html#ixzz1c01uXWXJ>.

¹¹ *Id.*

¹² Charlie Gillis, *Who Owns the North Pole?*, MACLEAN'S (July 25, 2011, 9:00 AM), <http://www2.macleans.ca/2011/07/25/who-owns-the-north-pole/>.

¹³ See *infra* Part V.

¹⁴ See *infra* Part V.

¹⁵ Martin Kaste, *In the Arctic Race, the U.S. Lags Behind*, NPR (Aug. 19, 2011), <http://www.npr.org/2011/08/19/139681324/in-the-arctic-race-the-u-s-lags-behind>.

exclusive economic zone (“EEZ”) claim.¹⁶ An EEZ is an area where the coastal state has “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources . . . of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone.”¹⁷ Canada can claim sovereignty over an area of the Arctic by submitting its EEZ claim.¹⁸ This claim must be submitted soon. Canada only has until December 2013 to submit a claim with the Commission on the Limits of the Continental Shelf to establish ownership of the Arctic waters beyond its continental shelf.¹⁹

Gaining sovereignty over the Northwest Passage means more than just economics. A successful claim may allow Canada access to billions of dollars of natural resources for itself. But, the Northwest Passage is also important for political and environmental reasons. If the Northwest Passage becomes the new international shipping route,²⁰ Canada will become home to hundreds of ships each year passing right through its own backyard. Political tension and issues are likely to arise.²¹ Further, risks of environmental disasters can be foreseen. Recent memories of catastrophic oil spills have demonstrated their drastic consequences. Because of the Northwest Passage’s proximity to Canadian lands, where indigenous Canadians live,²² these political and environmental issues present a concern for the Canadian government.

Canada has two ways to gain sovereign control over the Arctic waters. First, Canada can establish its EEZ to gain increased sovereignty over the Arctic lands. Each member nation of UNCLOS has an EEZ where the coastal state has sovereign rights to the natural resources found in the waters off its seabed for economic exploitation and exploration.²³

¹⁶ United Nations Convention on the Law of the Sea Annex II, art. 4, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

¹⁷ *Id.* at art. 56.

¹⁸ *Id.* at Annex II, art. 4.

¹⁹ *See id.*; Gillis, *supra* note 12.

²⁰ *See* GEOGLOLOGY.COM, *supra* note 8.

²¹ *See generally* David Isenberg, *A Game of Chicken in the Persian Gulf*, ASIA TIMES ONLINE (Jan. 10, 2008), http://www.atimes.com/atimes/Middle_East/JA10Ak05.html (discussing U.S.–Iran tensions involving the United States accusing Iran Revolutionary Guards Corps boats harassing and confronting US ships).

²² The Northwest Passage and the Arctic are habited by the Inuit, First Nations, and Metis people of Canada. TONINA SIMEONE, LIBRARY OF PARLIAMENT, THE ARCTIC: NORTHERN ABORIGINAL PEOPLES 2 (2008), available at <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0810-e.pdf>.

²³ UNCLOS, *supra* note 16, at art. 56.

Thus, if Canada can establish its EEZ, it can establish its sovereignty in the Arctic region pursuant to the geographic guidelines set forth in UNCLOS.

Second, Canada can bring suit in the International Court of Justice ("ICJ") to claim the Northwest Passage as its own.²⁴ Canada can rely on the *Anglo-Norwegian Fisheries Case*²⁵ to argue that the Northwest Passage falls within Canada's straight baselines around its coastal regions.²⁶ This case is helpful to Canada's argument because Norway was able to successfully establish its sovereignty using a straight-baselines method.²⁷ Norway's *skjærgaard*, a series of islands, is very similar to Canada's Arctic archipelagos.²⁸ Because of this geographic similarity and the favorable outcome for Norway, Canada can use this method and case to establish its sovereignty.

The importance of the Arctic region and the pressing timetable of Canada's EEZ claim require that Canada be strong in its claim for this region. Canada must file its EEZ claim in a timely manner before the UNCLOS mandated deadline of 2013.²⁹ Filing this claim will establish its EEZ and solidify its claims through UNCLOS. If other Arctic countries do not respect these guidelines, then Canada must take action in the ICJ to bring suit to establish the Northwest Passage. This, however, should be the backup plan. But, given the seriousness of the Arctic and its implications, there will likely be challenges surrounding Canada's EEZ claim. Thus, Canada should be ready to bring suit to the ICJ.

This note discusses Canada's territorial claims in the Arctic. Part I discusses the issues of global warming and its effect on the Arctic land claims. Part II explores Canada's history in the Arctic to establish Canada's Arctic interests, particularly regarding the Northwest Passage. Part III examines the sources of conflict in the Arctic region, discussing the economic, political, and military concerns resulting from the competing Arctic claims. Part IV discusses UNCLOS and the provisions helpful to Canada. Finally, Part V examines Canada's arguments for its claim to the Arctic and Northwest Passage. Finally, the Conclusion summarizes the note by emphasizing the economic, cultural, and political

²⁴ *Id.* at art. 287.

²⁵ *Fisheries Case (U.K. v. Nor.)*, 1951 I.C.J. 116 (Dec. 18).

²⁶ *See id.* at 131; Jarashow et al., *supra* note 6, at 1597-99.

²⁷ *Fisheries Case*, 1951 I.C.J. at 131.

²⁸ *See id.* at 127.

²⁹ *See UNCLOS, supra* note 16, at Annex II, art. 4; Gillis, *supra* note 12.

importance of the Arctic to Canada, and suggests that Canada must be strong in claiming its Arctic sovereignty.

I: GLOBAL WARMING

Climate change in polar regions is expected to be among the largest and most rapid of any region on earth.³⁰ The warming temperatures reduce the sea ice in the Arctic, and with increasing carbon emissions, the Arctic sea ice may be going into a “death spiral.”³¹ As the ice melts, more dark, open water is exposed, which absorbs heat.³² This will exacerbate the melting process in the Arctic.³³

The most direct changes will be noticeable in a reduction in the “extent of sea ice and permafrost, less ice in lakes and rivers, pronounced reductions in seasonal snow, and the disappearance of the existing glacier mass.”³⁴ Since 1979, the extent of the sea ice throughout the Arctic has decreased by 0.35 percent.³⁵ Climate models project a reduction in sea ice around 60 percent in the next 50 to 100 years.³⁶

The rapidly melting ice creates the possibility of an ice-free Northwest Passage.³⁷ Beginning in the fifteenth century, “navigators have sought a commercial sea route north and west around the American continents.”³⁸ An ice-free Northwest Passage could potentially eliminate 6,650 nautical miles for a commercial transport from England to Japan.³⁹ The possibility of an open Northwest Passage is thus extremely valuable for commercial shipment and transport.

³⁰ Gordon McBean et al., *Arctic Climate: Past and Present*, in ARCTIC CLIMATE IMPACT ASSESSMENT 22, 22–23 (Carolyn Symon ed., 2005), available at <http://www.acia.uaf.edu/pages/scientific.html>.

³¹ Walsh, *supra* note 2.

³² *Id.* White sea ice reflects sunlight, which slows warming. *Id.*

³³ *Id.*

Mark Nuttall et al., *Hunting, Herding, Fishing, and Gathering: Indigenous Peoples and Renewable Resource Use in the Arctic*, in ARCTIC CLIMATE IMPACT ASSESSMENT 649, 659 (Carolyn Symon ed., 2005), available at <http://www.acia.uaf.edu/pages/scientific.html>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See generally Borgerson, *supra* note 5.

³⁸ Jarashow et al., *supra* note 6 at 1591.

³⁹ *Id.* at 1592.

II: CANADA'S HISTORY IN THE ARCTIC AND ITS NATIVE POPULATION

Canada's historical claims in the Arctic region are rooted in various acts of discovery by English and French explorers.⁴⁰ Through these acts of discovery, Britain had a substantial basis to the lands claimed in the Arctic.⁴¹ Britain gained further control of the Arctic lands through the 1763 Treaty of Paris, where France ceded to Britain all of France's possessions in British North America.⁴²

Following Canadian Confederation in 1867, there was a desire to ensure the legal status of the Canadian territory.⁴³ In 1880, Britain transferred these Arctic lands to Canada through an Order in Council.⁴⁴ Canada further sought to establish its northern lands by purchasing Rupert's Land from the Hudson's Bay Company.⁴⁵ This land subsequently became the Northwest Territory.⁴⁶ It is the largest geographic political unit within the Canadian Confederation and includes the islands of the Arctic Archipelago.⁴⁷

It was not until 1907, however, that Canada made its first claim to the Arctic lands.⁴⁸ Senator Pascal Poirier proposed a resolution before the Canadian Senate making a formal declaration of possession of the lands and islands to the North Pole.⁴⁹ Senator Poirier declared that Canada was claiming possession of "all lands that are to be found in the waters between a line extending from the eastern extremity north, and another line extending from the western extremity north."⁵⁰ This claim

⁴⁰ Donald R. Rothwell, *The Canadian-U.S. Northwest Passage Dispute: A Reassessment*, 26 CORNELL INT'L L.J. 331, 334 (1993) (discussing Sebastian Cabot's visit to the northern coast of Labrador in 1497 and Robert McClure's first crossing of the Northwest Passage in 1850–1854).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 335.

⁴⁴ *Id.*; Ivan L. Head, *Canadian Claims to Territorial Sovereignty in the Arctic Regions*, 9 MCGILL L.J. 200, 212 (1963).

⁴⁵ See Constitution Act, 1867, 30 & 31 Vict., c. 3, § 146 (U.K.).

⁴⁶ Rothwell, *supra* note 40, at 335.

⁴⁷ *Id.*

⁴⁸ Guy Killaby, *Great Game in a Cold Climate: Canada's Arctic Sovereignty in Question*, CAN. MIL. J., Winter 2005–2006, at 34, available at <http://www.journal.dnd.ca/vo6/no4/doc/north-nord-01-eng.pdf>.

⁴⁹ *Id.*

⁵⁰ Senate Debates (20 February 1907) at 271 (P. Poirier) (Can.).

went relatively unchallenged by the international community.⁵¹ In fact, by 1947, the Canadian claim to the Arctic became so solidified “it could be assumed that Canada’s title had been perfected to most of the Arctic islands.”⁵²

But, this title was challenged. In 1969, Canada experienced its first foreign policy crisis regarding its Arctic territory. An oil supertanker owned by Exxon called the *Manhattan* navigated through the Northwest Passage without Canada’s permission.⁵³ The *Manhattan* was used to demonstrate that an icebreaking vessel could make year-round trips between Alaska and the east coast of the United States.⁵⁴ While the trip itself was innocent, the implications of commercial transport in the Arctic worried many Canadians.⁵⁵ First, Canadians were concerned about a potential maritime and environmental disaster if an oil spill occurred.⁵⁶ Second, Canadians realized that their country’s legal status in the Arctic region was not certain.⁵⁷ The *Manhattan*’s voyage was thus portrayed as a direct threat to Canadian sovereignty.⁵⁸

In response, Canada implemented the Arctic Waters Pollution Prevention Act in 1970.⁵⁹ This act extended Canadian jurisdiction 100 nautical miles from the low-water mark to enforce pollution standards on vessels using Canada’s arctic waters.⁶⁰ Canada could thus stipulate standards to be prescribed for vessel construction, navigation, and operation.⁶¹ Through this Act, Canada sought to exceed existing conventions and customary international law.⁶² The previous custom was that pollution enforcement standards were only accepted within internal waters and territorial seas.⁶³ Thus, Canada sought to extend its Arctic sovereignty by a large margin under this Act.⁶⁴

⁵¹ N.D. Bankes, *Forty Years of Canadian Sovereignty Assertion in the Arctic, 1947–87*, 40 *ARCTIC* 285, 287 (1987).

⁵² *Id.*

⁵³ Jarashow et al., *supra* note 6, at 1619.

⁵⁴ Rothwell, *supra* note 40, at 337.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Arctic Waters Pollution Prevention Act, S.C. 1969–70, c. 47 (Can.).

⁶⁰ *Id.*; Rothwell, *supra* note 40, at 339.

⁶¹ Rothwell, *supra* note 40, at 339.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

The importance of this region prompted a second response to the *Manhattan* incident.⁶⁵ Canada extended its “territorial sea from three to twelve nautical miles.”⁶⁶ In doing so, Canada “effectively granted itself full sovereignty over all waters twelve miles offshore the Canadian shoreline.”⁶⁷ This extension further enclosed the Northwest Passage within the territory of the Canadian sea.⁶⁸ Thus, any transit within the passage would fall under Canadian jurisdiction.⁶⁹

In justifying these actions, Canada “relied upon the growing concern for the ecological protection of the Arctic.”⁷⁰ Canadian Prime Minister Pierre Trudeau argued that the international law was not sufficient at the time to protect Canada’s ecological concerns in the Arctic.⁷¹ Thus, it was appropriate for Canada to take unilateral action.⁷²

On September 10, 1985, the Canadian Secretary of State for External Affairs, Joe Clark, read a statement to the House of Commons where he asserted Canadian sovereignty over the Northwest Passage and the Arctic Archipelago.⁷³ Clark stated: “Canada’s sovereignty is indivisible.”⁷⁴ He continued by stating that the “policy of the Government is to maintain the national unity of the Canadian Arctic archipelago and preserve Canada’s sovereignty over land, sea[,] and ice undiminished and undivided.”⁷⁵

Canada, for the first time, “effectively removed all doubts about Canada’s intentions in the Arctic.”⁷⁶ Mr. Clark’s statement clarified Canada’s legal position over the region.⁷⁷ By proclaiming the straight baselines around the Arctic, Canada made all the waters within these baselines “internal waters.”⁷⁸

⁶⁵ *Id.* at 339–40.

⁶⁶ *Id.* at 340.

⁶⁷ *Id.* at 339–40.

⁶⁸ *Id.* at 340.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Suzanne Lalonde, *Increased Traffic Through Canadian Arctic Waters: Canada's State of Readiness*, 38 REVUE JURIDIQUE THEMIS 49, 66–67 (2004) (citing Canada, House of Commons, Debates, Vol. 5, at 6463 (Sept. 10, 1985)).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Rothwell, *supra* note 40, at 344.

⁷⁷ *Id.* at 344–45.

⁷⁸ *Id.* at 344.

III: CANADA'S ARCTIC POPULATION

Canada can claim the Arctic because of its historical ties and aboriginal population in the Arctic. There are approximately 113,000 Canadians living in the Canadian Arctic region, which includes the territories of Nunavut, the Yukon, and the Northwest.⁷⁹ In particular, Canada has a very large indigenous population in the Arctic region.⁸⁰ These Aboriginal peoples have lived in the Arctic for thousands of years, long before European explorers and settlers arrived.⁸¹ The Canadian Aboriginal people “share a deep and abiding connection to the land and continue to rely on local resources for their physical and spiritual well-being.”⁸²

Of the Canadians living in the Canadian Arctic, there are approximately 64,506 Aboriginal Canadians living in the region.⁸³ Of these Aboriginal Canadians, the First Nations, the Inuit, and the Metis people comprise the largest share.⁸⁴ The Inuit alone have more than 20,000 individuals living in the Arctic, including the Arctic Archipelago.⁸⁵ They have been living in this region since prehistoric times and are almost wholly dependent upon hunting and fishing in these areas for their food, clothing, and overall survival.⁸⁶ The Inuit are “indigenous to the Arctic and have used the ice cover of the Northwest Passage as part of their livelihood throughout their habitation, perhaps bestowing sovereignty on them and, in turn, on the State of Canada.”⁸⁷

⁷⁹ SIMEONE, *supra* note 22, at 2.

⁸⁰ *The Canadian Arctic: Canadian High Commission in London Focuses on Canada's Arctic*, GOV'T OF CAN., http://www.canadainternational.gc.ca/united_kingdom-royaume_uni/bilateral_relations_bilaterales/arctic-arctique.aspx?lang=eng&view=d (last updated Dec. 16, 2011).

⁸¹ SIMEONE, *supra* note 22, at 2.

⁸² *Id.*

⁸³ *Id.* The figures were taken from a census done by Statistics Canada in 2006. For further information, see STATISTICS CANADA, ABORIGINAL PEOPLES IN CANADA IN 2006: INUIT, MÉTIS AND FIRST NATIONS, 2006 CENSUS (2008), available at <http://www12.statcan.gc.ca/english/census06/analysis/aboriginal/pdf/97-558-XIE2006001.pdf>.

⁸⁴ *Id.*

⁸⁵ Jarashow et al., *supra* note 6, at 1602.

⁸⁶ *Id.* at 1602–03.

⁸⁷ *Id.* at 1621.

IV: SOURCES OF CONFLICT IN THE ARCTIC

The Arctic region poses economic, ecological, and political challenges for Canada. The economic challenges are clear. The melting ice in the Arctic creates the potential for increased access to the world's next frontier for oil and gas discovery.

Global warming is creating the potential for access to twenty-five percent of the world's undiscovered oil and natural gas resources.⁸⁸ In 2008, the United States Geological Survey completed an assessment of undiscovered oil and gas resources in the Arctic Circle.⁸⁹ The survey estimated that 90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids might remain to be found, of which eighty-four percent is expected to be found in offshore areas.⁹⁰ The reserves of Kuwait, in comparison, comprise 90 billion barrels, while Iraq has approximately 135 billion barrels.⁹¹

Because of the tremendous potential for the next oil frontier, several of the Arctic countries are embroiled in a race to claim the Arctic. In the recent years, Russia made the first attempt to claim the Arctic. In 2007, it planted a flag at the bottom of the Arctic Ocean.⁹² Canada "mocked Russia's ambitions and said the expedition was nothing more than a show."⁹³ This is true. Russia's flag planting was nothing more than a symbolic gesture.⁹⁴

In addition to Russia, the United States is challenging Canada's claim to the Northwest Passage. Canada maintains that the Northwest Passage is part of its internal waters.⁹⁵ The United States, on the other

⁸⁸ Smith, *supra* note 9, at 651.

⁸⁹ KENNETH J. BIRD ET AL., U.S. GEOLOGICAL SURVEY, CIRCUM-ARCTIC RESOURCE APPRAISAL; ESTIMATES OF UNDISCOVERED OIL AND GAS NORTH OF THE ARCTIC CIRCLE, *available at* <http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>.

⁹⁰ *Id.*

⁹¹ Alex Meehan, *Who Owns the Arctic?: The Golden Circle*, SUNDAY BUSINESS POST, Feb. 13, 2011, *available at* <http://alexmeehan.com/2011/02/15/article-who-owns-the-arctic/>.

⁹² *Russia Plants Flag Staking Claim to Arctic Region*, CBCNEWS, <http://www.cbc.ca/news/world/story/2007/08/02/russia-arctic.html> (last updated Aug. 7, 2007, 12:19 PM).

⁹³ *Russia Plants Flag on Arctic Floor*, CNN, <http://www.cnn.com/2007/WORLD/europe/08/02/arctic.sub.reut/> (last updated Aug. 4, 2007, 06:43 AM).

⁹⁴ *Id.*

⁹⁵ Arctic Waters Pollution Prevention Act, R.S.C., 1985, c. A-12, art. 2 (Can.) (defining "arctic waters" as "the internal waters of Canada and the waters of the territorial sea of Canada and the exclusive economic zone of Canada, within the area enclosed by the 60th parallel of north

hand, argues that it is an international strait that should be open for access.⁹⁶ In the background, the United States may also be concerned about the precedent that the Northwest Passage may set for the Strait of Hormuz. The Strait of Hormuz is a strategically important waterway between the Gulf of Oman and the Persian Gulf. In fact, it is the sole waterway leading out of the Persian Gulf.⁹⁷ If the Northwest Passage is deemed to be within Canada's internal waters, then this decision may affect the standing of this vitally important strait in the Persian Gulf.

The United States does not want the Northwest Passage to be designated as Canada's internal waters. If Canada can claim this passage as its own sovereign waterway, Iran may wish to claim the Strait of Hormuz as its own internal waters. The Strait of Hormuz is used for a third of the world's seaborne oil trade.⁹⁸ If Iran has sovereignty over this waterway, it assumes a great deal of control and leverage on the world stage.

Recent tensions involving Iran and its nuclear power initiatives heighten concerns among the world's powers. American and European countries are seeking to "tighten economic sanctions on Iran to deter its nuclear program."⁹⁹ In response, Iran threatened to close the Strait of Hormuz.¹⁰⁰ Iran can use speedboats, submarines, warships, and anti-cruise and ballistic missiles to cause difficulties in this waterway.¹⁰¹ A closure of the Strait of Hormuz "temporary or prolonged, will flame a regional conflict and would prove to be a great challenge to global energy markets."¹⁰² This potential blockade would create supply

latitude, the 141st meridian of west longitude and the outer limit of the exclusive economic zone").

⁹⁶ See generally U.S. DEP'T OF STATE, OFFICE OF THE HISTORIAN, FOREIGN RELATIONS OF THE UNITED STATES, 1969-1976, VOL. E-1, DOCUMENTS ON GLOBAL ISSUES, 1969-1972, at ch. 6, available at <http://history.state.gov/historicaldocuments/frus1969-76ve01/ch6> (last visited Jan. 11, 2013).

⁹⁷ Caitlin Talmadge, *Closing Time: Assessing the Iranian Threat to the Strait of Hormuz*, INT'L SECURITY, Summer 2008, at 82, 86.

⁹⁸ Tulay Karadeniz, *Iran Warns Region Against "Dangerous" Stance on Hormuz*, REUTERS (Jan. 19, 2012), <http://www.reuters.com/article/2012/01/19/us-iran-idUSTRE80H15Z20120119>.

⁹⁹ Peter Hirschberg, *Iran's UN Ambassador Says Closing Strait of Hormuz an Option*, BLOOMBERG BUSINESSWEEK (Jan. 20, 2012), <http://www.businessweek.com/news/2012-01-19/iran-s-un-ambassador-says-closing-strait-of-hormuz-an-option.html>.

¹⁰⁰ *Id.*

¹⁰¹ Sara Vakhshouri, *Closure of Hormuz Strait: An Actual Threat or Diplomacy?*, HUFFINGTON POST (Jan. 16 2012, 09:28 AM), http://www.huffingtonpost.com/sara-vakhshouri/iran-closure-hormuz-strait_b_1208589.html.

¹⁰² *Id.*

disruptions and would increase the price of oil by about \$3 a barrel.¹⁰³ Further, the threat of a blockade increases the risk of military action against Iran. Not surprisingly, the United States quickly moved to condemn any blockade action by Iran and threatened military force to ensure that the Strait remains open.¹⁰⁴ The Strait of Hormuz is an example of what the Northwest Passage may become in the near future.

However, allowing Canada to control the Northwest Passage by declaring it to be within its internal waters is unlikely to result in similar tensions. First, Canada does not have the history of political and military conflict that currently embroils the Middle East. Even if the Arctic does become the next oil and gas frontier, this region does not have the underlying tensions that dominate the Middle East.

Because of the value of the Arctic, claiming sovereignty over this region has prompted Arctic countries to include a military presence in the region. Each of the competing Arctic countries has focused on building up their respective military presence in this area.¹⁰⁵ Russia currently has the most extensive Arctic fleet, but other countries are investing to maintain equal presence.¹⁰⁶ Canada, in 2007, announced plans to construct two cold-weather training facilities in the Arctic to “boost Canada’s sovereign claim over the Northwest Passage and signal its long-term commitment to the North.”¹⁰⁷ Additionally, Canada vowed to increase its military presence in the Arctic region to 900 Rangers.¹⁰⁸

In July 2011, Canada undertook significant military exercises in the Arctic.¹⁰⁹ This military exercise, called Operation Nanook, was the largest military operation in recent Canadian history.¹¹⁰ The military operation lasted for one month and involved more than 1,000 Canadian

¹⁰³ Nathan Slaughter, *How Iran Could Push Oil Past \$150 a Barrel*, STREET AUTHORITY (Feb. 13, 2012, 11:30 AM), <http://www.streetauthority.com/energy-commodities/how-iran-could-push-oil-past-150-barrel-458884>.

¹⁰⁴ Jim Puzzanghera, *Leon Panetta Warns Iran to Keep Strait of Hormuz Open*, L.A. TIMES (Jan. 8, 2012, 12:08 PM), http://latimesblogs.latimes.com/world_now/2012/01/panetta-warning-iran-hormuz.html.

¹⁰⁵ Jordan Hellman, Note, *Racing for the Arctic? Better Bring a Flag*, 10 CARDOZO J. CONFLICT RESOL. 627, 632–33.

¹⁰⁶ *Id.*

¹⁰⁷ *Harper Announces Northern Deep-Sea Port, Training Site*, CBC NEWS CANADA (Aug. 11, 2007, 1:54 AM), <http://www.cbc.ca/news/canada/story/2007/08/10/port-north.html>.

¹⁰⁸ Hellman, *supra* note 105, at 633.

¹⁰⁹ Jeremy Torobin, *Military Plans a Show of Force in the High Arctic*, GLOBE AND MAIL (July 3, 2011), <http://www.theglobeandmail.com/news/politics/military-plans-a-show-of-force-in-high-arctic/article2085252/>.

¹¹⁰ *Id.*

troops.¹¹¹ Canada's Defense Minister, Peter MacKay, stated that the military operation was "about enlarging the footprint and the permanent and seasonal presence we have in the North."¹¹² Prime Minister Stephen Harper "has often hinted at potential military encroachment by Russia and stressed the need for beefed-up military hardware to defend the Canadian Arctic."¹¹³

The importance of the Canadian Arctic continues to create tension among the Arctic countries in the fight for this vital area. Some are even claiming that a Cold War mentality is returning to describe recent Canada-Russian relations.¹¹⁴ Recently, a Royal Canadian Navy intelligence officer has been suspected of espionage related to this ongoing territorial dispute in the Arctic.¹¹⁵ The intelligence officer is suspected of passing information to the Russians about Canada's ocean sensors, among other classified data.¹¹⁶ While the investigation is still ongoing, such reports will likely increase given the importance of information in Arctic countries' push to submit EEZ claims with the Convention.

V: UNCLOS

A. ORGANIZATION

The United Nations convened for its Third Conference on the Law of the Sea in New York in 1973.¹¹⁷ Arctic countries requested a meeting to create an "effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction."¹¹⁸ Due to increasing economic use of the world's water, the United Nations felt that an international agreement was necessary.¹¹⁹

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Jeff Davis, *Canada in 'Cold War Lite' with Russia: Experts*, GLOBAL RESEARCH (Jan. 22, 2012), <http://www.globalresearch.ca/canada-intensifies-new-cold-war-with-russia-in-arctic/28793>.

¹¹⁵ *Arctic Dispute may be Linked to Spy Arrest*, CANADA.COM (Jan. 19, 2012), <http://www2.canada.com/nanaimodailynews/news/story.html?id=31ca7816-df63-4831-863b-c6f6ce0f1a79>.

¹¹⁶ *Id.*

¹¹⁷ Keith F. Miller, *The Implications of UNCLOS for Canada's Regulatory Jurisdiction in the Offshore – the 200-Mile Limit and the Continental Shelf*, 30 DALHOUSIE L.J. 341, 351 (2007).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Nine years after this conference, the same Arctic countries adopted the United Nations Convention on the Law of the Seas ("UNCLOS").¹²⁰ On November 16, 1994, UNCLOS entered into force.¹²¹ UNCLOS represents a "consolidation of pre-existing conventions . . . widely adopted practices that had not necessarily become customary international law, and new concepts to address the expanding technical capabilities of coastal states to explore and exploit . . . resources . . . in the deep sea."¹²²

There are eight permanent member states of the Arctic Council. Of these eight states, five are competing to gain sovereign interest in parts or all of the Arctic Ocean. These five states are Norway, Russia, Canada, Denmark, and the United States. All of these countries, except the United States, have ratified UNCLOS.¹²³ Norway ratified UNCLOS in 1996,¹²⁴ with Russia,¹²⁵ Canada,¹²⁶ and Denmark¹²⁷ ratifying UNCLOS in 1997, 2003, and 2004, respectively.

Part II of UNCLOS describes the principles governing the outer limits of the territorial sea and its legal status.¹²⁸ The part states that the "sovereignty of a coastal State extends beyond its land territory and internal waters, and in the case of an archipelagic State, its archipelagic waters."¹²⁹ Each State "has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles."¹³⁰ The "outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 352.

¹²³ Gillis, *supra* note 12.

¹²⁴ U.N. Division for Ocean Affairs and the Law of the Sea, Declaration and Statements (July 12, 2011), http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm (follow "Norway" hyperlink).

¹²⁵ U.N. Division for Ocean Affairs and the Law of the Sea, Declaration and Statements (July 12, 2011), http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm (follow "Russian Federation" hyperlink).

¹²⁶ U.N. Division for Ocean Affairs and the Law of the Sea, Declaration and Statements (July 12, 2011), http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm (follow "Canada" hyperlink).

¹²⁷ U.N. Division for Ocean Affairs and the Law of the Sea, Declaration and Statements (July 12, 2011), http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm (follow "Denmark" hyperlink).

¹²⁸ UNCLOS, *supra* note 16, at art. 2.

¹²⁹ *Id.*

¹³⁰ *Id.* at art. 3.

territorial sea.”¹³¹ Thus, a coastal state has the right to establish its sovereignty up to a total of twelve nautical miles from its coast.¹³²

UNCLOS provides another provision that allows coastal States to extend their sovereignty through their continental shelves, subject to review. This provision allows a coastal State to establish an EEZ.¹³³

Part V of UNCLOS describes the EEZ.¹³⁴ The EEZ is “an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.”¹³⁵ In its EEZ, the coastal State has “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources . . . of the waters superjacent to the sea-bed.”¹³⁶

This economic zone extends to 200 nautical miles from the coast of the member nation.¹³⁷ But if the coastal nation has a continental shelf that surpasses 200 nautical miles, nations may claim jurisdiction up to “350 nautical miles from the baseline” or “100 nautical miles from the 2,500 meter depth.”¹³⁸ A continental shelf is defined as the “seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edges of the continental margin, or to a distance of 200 nautical miles.”¹³⁹ It is further defined as a “submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise.”¹⁴⁰

To establish the EEZ beyond the outer limits of the 200 nautical miles, a coastal state must comply with Annex II of the UNCLOS.¹⁴¹ This section stipulates that a country “shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of

¹³¹ *Id.* at art. 4.

¹³² *Id.* at arts. 3–4.

¹³³ *Id.* at art. 55.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at art. 56.

¹³⁷ *Id.* at art. 57.

¹³⁸ *Id.* at art. 76.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at Annex II, art. 1.

this Convention for that State.”¹⁴² Canada ratified UNCLOS in 2003,¹⁴³ but has yet to submit its claim to the Commission. Because of the ten-year rule, its deadline is fast approaching. Canada only has until December 2013 to submit a claim with the Commission on the Limits of the Continental Shelf to establish ownership of the Arctic waters beyond its continental shelf.¹⁴⁴

UNCLOS thus provides a coastal nation with two methods to establish its sovereignty over its coastal waters. First, a coastal nation can establish its twelve-mile territorial sea according to the guidelines set forth in UNCLOS.¹⁴⁵ Each coastal nation under UNCLOS has the right to establish this twelve-mile territorial sea to establish sovereignty over its coastal waters. This is not subject to review by a committee, so long as the coastal nation conforms to the requirements in that part.¹⁴⁶

Second, a coastal nation can submit an application for its EEZ. Unlike the twelve-mile territorial sea, each coastal nation does not have a right to an EEZ. Rather, each coastal nation must submit a claim to establish an EEZ.¹⁴⁷

The EEZ is a vital process in Canada's claim to the Arctic. Through the agreements in UNCLOS, each of the member countries has the right to submit an EEZ claim. Canada's deadline is quickly approaching. Thus, it must take full measures to ensure that its claim is successful.

VI: CANADA'S CLAIM FOR THE ARCTIC

A. UNCLOS

Canada can first establish its twelve-mile territorial sea to establish sovereignty over this part of its coastal waters. The EEZ is thus the more pressing claim regarding Canada's sovereignty in the Canadian Arctic. Pursuant to article 76 of UNCLOS, Canada can establish sovereignty of up to 200 nautical miles from its shoreline. But, Annex II of UNCLOS allows a coastal State to increase its sovereignty claim in

¹⁴² *Id.* at Annex II, art. 4.

¹⁴³ U.N. Division for Ocean Affairs and the Law of the Sea, *supra* note 126 (follow “Canada” hyperlink).

¹⁴⁴ *See* UNCLOS, *supra* note 16, at Annex II, art. 4.

¹⁴⁵ *See* Miller, *supra* note 117, at 351–54.

¹⁴⁶ *See* UNCLOS, *supra* note 16, at art. 2.

¹⁴⁷ *See id.* at art. 55.

the Arctic beyond this 200 nautical mile limit.¹⁴⁸ For Canada to make this claim, it must submit a claim to the Commission on the Limits of the Continental Shelf with sufficient data and evidence to prove that its continental shelf exceeds this 200 nautical mile guideline before December 2013.¹⁴⁹

Canada began its initiative in 2006 to identify the outer edge of the continental shelf beyond the 200–nautical-mile EEZ.¹⁵⁰ This mapping involves the collection of data for approximately 17,000 kilometers of seabed.¹⁵¹ Canadian scientists are continuing to research the Canadian Arctic to support Canada’s EEZ claim.¹⁵² In conjunction with a paper published in 2009, “on the bed-rock connections between the North American continent and Lomonosov Ridge . . . the new studies will help underpin Canada’s claims for ownership of huge areas of ocean floor beyond the country’s continental shelves.”¹⁵³ The studies hope to show that “continental bedrock extends underwater from existing territory—such as the northern mainland and Arctic islands for Canada.”¹⁵⁴ Currently, Canadian research “showcased in the newly published papers ‘goes in the right direction.’”¹⁵⁵

B. INTERNATIONAL COURT OF JUSTICE AND THE FISHERIES CASE

The ICJ does not follow the conventional notion of *stare decisis*.¹⁵⁶ Rather, the ICJ looks to recurring theories of territorial dispute resolution and customary international law to resolve disputes before the

¹⁴⁸ *Id.* at art. 4.

¹⁴⁹ *See id.*

¹⁵⁰ *See Canada’s New Government Moves Forward to Establish Limits of our Continental Shelf*, FISHERIES AND OCEANS CANADA (July 20, 2006, 08:00 AM), reprinted in CANADIAN GOVERNMENT PROGRAMS AND SERVICES REPORT 1, 1–2 (2006), available at <http://www.pch.gc.ca/cs-kc/cgpsr/cgov395.pdf>.

¹⁵¹ *Id.*

¹⁵² *See* Randy Boswell, *Battle for Sovereignty of the Arctic may be Fought in Scientific Journals*, VANCOUVER SUN, Jan. 21 2012, at B3, available at <http://www2.canada.com/vancouversun/news/archives/story.html?id=6339bb8b-3519-46fd-bdb8-e353aed13469>.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *See* Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, art. 59, T.S. No. 993, 3 Bevans 1179 [hereinafter ICJ Statute] (“[T]he decision of the Court has no binding force except between the parties and in respect of that particular case.”).

court.¹⁵⁷ Thus, the Court does look to its own precedent, and its “decisions can shed light on how future decisions might be adjudicated.”¹⁵⁸

The ICJ established the validity of a straight-baseline theory to establish waterway sovereignty in the *Anglo-Norwegian Fisheries Case* (the “*Fisheries Case*”).¹⁵⁹ The *Fisheries Case* involved a conflict between the United Kingdom and Norway over the Norwegian coastal waters.¹⁶⁰ British fishermen refrained from fishing in these waters as part of an agreement resulting from complaints from the King of Denmark and Norway at the beginning of the seventeenth century.¹⁶¹ But, in 1906, British fishing vessels started to appear in these waters, angering the local Norwegian population.¹⁶² In 1911, a British trawler was seized and condemned for violating this agreement. Further, in 1932, British trawlers continued to appear within the Norwegian coastline.¹⁶³ On July 12, 1935, Norway, by Royal Decree, delimited its Norwegian fisheries zone.¹⁶⁴ This zone is effectively Norway’s territorial sea.¹⁶⁵ British fisherman caught in these fisheries zones were condemned and arrested, and these events became more and more frequent.¹⁶⁶ Consequently, the United Kingdom instituted proceedings against Norway in the ICJ in 1949.¹⁶⁷

At the heart of the United Kingdom’s claim was the validity of the Norwegian Royal Decree, which delimited the country’s fisheries zones. The Decree stated that the fisheries zones would be established by drawing lines parallel with straight base lines drawn between fixed points on the mainland, on islands or rocks, starting from a final point of the boundary line.¹⁶⁸ The United Kingdom challenged the validity of these self-drawn lines under international law.¹⁶⁹ More specifically, the Royal

¹⁵⁷ See *id.* at art. 38.

¹⁵⁸ Jarashow et al., *supra* note 6, at 1632.

¹⁵⁹ See *Fisheries Case* (U.K. v. Nor.), 1951 I.C.J. 116, 116 (Dec. 18).

¹⁶⁰ See *id.* at 124.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 125.

¹⁶⁶ *Id.*

¹⁶⁷ See *id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

Decree was challenged as not being drawn in accordance with the applicable rules of international law.¹⁷⁰

The coastal zone concerned in the dispute was of considerable size.¹⁷¹ It was north of the Arctic Circle and included the coast of the mainland of Norway and the *skjærgaard*, “together with all the Norwegian internal and territorial waters.”¹⁷² The *skjærgaard* contains numerous islands, bays, straits, channels, and waterways, which serve “as a means of communication for the local population which inhabits the islands as it does the mainland.”¹⁷³

The court stated that “[t]he coast of the mainland does not constitute, as it does in practically all other countries, a clear dividing line between land and sea.”¹⁷⁴ Rather, “[w]hat matters, what really constitutes the Norwegian coast line, is the outer line of the *skjærgaard*.”¹⁷⁵

The ICJ held that the baseline method used by the Norwegian Government in its 1935 Royal Decree did not violate international law.¹⁷⁶ The court stated that the “delimitation of sea areas has always an international aspect” and “it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law.”¹⁷⁷ Further, while, the “act of delimitation is necessarily a unilateral act” the “validity of the delimitation with regard to other States depends upon international law.”¹⁷⁸

As mentioned prior, the ICJ is not obligated to follow its own precedent.¹⁷⁹ However, the ICJ does look to recurring theories of territorial dispute resolution and customary international law to resolve disputes before the court.¹⁸⁰ In this case, the court looked to recurring international territorial disputes to determine the validity of Norway’s delimitation. It rejected the United Kingdom’s claim that the delimitation is limited to ten miles.¹⁸¹ The court noted that certain states adopted the

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 127.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 132.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ See ICJ Statute, *supra* note 157, at art. 59.

¹⁸⁰ See *id.* at art. 38.

¹⁸¹ See Fisheries Case, 1951 I.C.J. at 131.

ten-mile rule in their national law and treaties and conventions.¹⁸² But other states adopted a different limit.¹⁸³ Thus, “the ten-mile rule has not acquired the authority of a general rule of international law.”¹⁸⁴

Having rejected the ten-mile rule because it was not a generally accepted standard in international law, the court sought to determine the appropriate standard for Norway's delimitation. Specifically, the ICJ sought to determine the appropriate “length of the baselines drawn across the waters lying between the various formations of the ‘*skjærgaard*.’”¹⁸⁵

The ICJ accepted Norway's delimitation, which included the *skjærgaard*. It first stated that “the coastal State would seem to be in the best position to appraise the local conditions dictating the selection.”¹⁸⁶ Second, the court held that the *skjærgaard* constitutes a whole with the Norwegian mainland.¹⁸⁷ “The waters between the base-lines of the belt of territorial waters and the mainland are internal waters.”¹⁸⁸ Third, the court rejected the United Kingdom's argument that a navigational, maritime strait known as Indreleia, found within the *skjærgaard*, is territorial waters rather than Norway's internal waters.¹⁸⁹ The ICJ held that the Indreleia does not have a “status different from that of the other waters included in the *skjærgaard*.”¹⁹⁰

The ICJ thus established the straight-baseline theory that allows a coastal state to delimit its coastal waters based on three requirements. These three requirements are necessary to establish a nation's valid claim for its coastal waters through the straight-baseline theory.¹⁹¹ First, the baselines must not “depart to any appreciable extent from the general direction of the coastline.”¹⁹² Second, the water within the baseline must be “closely linked to the coastal State's domain.”¹⁹³ And third, the waters must represent economic interests which are particular to the region and which have an “importance evidenced by a long history of use.”¹⁹⁴

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 132.

¹⁸⁸ *Id.*

¹⁸⁹ *See id.*

¹⁹⁰ *Id.*

¹⁹¹ *See id.* at 133.

¹⁹² *Id.*

¹⁹³ Jarashow et al., *supra* note 6, at 1599 (citing Fisheries Case, 1951 I.C.J. at 133).

¹⁹⁴ *Id.* (citing Fisheries Case, 1951 I.C.J. at 133).

Canada can apply the precedent set forth in this case because the Norwegian *skjærgaard* is very similar to the Canadian Arctic archipelagos. First, like the *skjærgaard*, the Canadian Arctic is also made of islands, bays, straits, channels, and waterways.¹⁹⁵ Moreover, the Indreleia, like the Northwest Passage in the Canadian Arctic, is a maritime strait found within a coastal body of water. Most importantly, the Canadian Arctic, including the Northwest Passage would not “depart to any appreciable extent from the general direction of the coastline.”¹⁹⁶

Second, the Arctic Archipelagos are “closely linked to the coastal State’s domain.”¹⁹⁷ The Canadian Arctic has been part of Canada’s culture ever since Senator Pascal Poirier proposed a resolution before the Canadian Senate making a formal declaration of possession of the lands and islands to the North Pole.¹⁹⁸ Since that time, this region has been engrained in Canada’s culture and national identity.

Third, the Canadian Arctic represents more than just economic interests to Canada, which has a long history of use in the Arctic. As mentioned previously, Canada’s claim to the Arctic dates back to the Canadian Confederation in 1867, when the United Kingdom transferred that land to Canada.¹⁹⁹ These Arctic lands include a sizeable portion of Canada’s population, with an estimated 113,000 Canadians living in the Canadian Arctic.²⁰⁰

By drawing these straight baselines, the Arctic archipelagos are thus enclosed as Canadian internal waters.²⁰¹ Canada meets all of these requirements. Thus, Canada can bring suit in the ICJ because of the *Fisheries Case*. The international trend established in that case, namely the straight-baseline theory, will allow Canada to draw straight baselines around its Arctic archipelago to establish sovereignty of the Canadian Arctic.

While the *Fisheries Case* presents Canada with a strong argument in favor of establishing its Arctic sovereignty, Canada will indeed have challenges to its application of the straight-baseline test. In particular, Canada will be challenged on its geographical definitions of

¹⁹⁵ See *Fisheries Case*, 1951 I.C.J. at 127.

¹⁹⁶ See *id.* at 133.

¹⁹⁷ See *id.*

¹⁹⁸ See Killaby, *supra* note 48, at 34.

¹⁹⁹ See *id.* at 33.

²⁰⁰ See SIMEONE, *supra* note 22, at 2.

²⁰¹ Kimberly C. Gordy, Note, *Dire Straits: The Necessity for Canadian Sovereignty in the Arctic Waterways*, 20 FORDHAM ENVTL. LAW REV. 551, 554 (2010).

the archipelagos in the Arctic.²⁰² Other interested countries may also challenge Canada on the grounds that its archipelagos are not sufficiently similar to the *skjærgaard* of Norway.²⁰³

However, Canada can counter these challenges. First, Canada can further support its claim that the Arctic Archipelago's are "closely linked to the coastal State's domain"²⁰⁴ because of Canada's small sea-to-land ratio. "The sea-to-land ratio in the Canadian Arctic Archipelago is 0.82 to 1, while the ratio for the Norwegian *skjærgaard* is 3.5 to 1."²⁰⁵ Thus, the sea-to-land ratio is smaller when compared to the ratio of Norway in the *Fisheries Case*,²⁰⁶ which further supports Canada's argument that the *Fisheries Case* and its straight-baselines method should apply. Moreover, the "permanent presence of ice in many of the passages supports the notion that in practical terms, the ice is an extension of the land and is used as such by the local populations."²⁰⁷

Second, and perhaps most important, Canada can counter these challenges to its straight baseline method by arguing the cultural significance of the Arctic region. There are approximately 113,000 Canadians living in the Arctic.²⁰⁸ Canada's population "reinforces the concept of the Arctic Archipelago as a single cohesive unit."²⁰⁹ In addition, the "use by the Inuit of the land, sea, and ice for hunting and fishing is analogous to the economic activity that the court recognized in the *Fisheries Case*."²¹⁰ The Inuit, "by identifying themselves as Canadian citizens, helps to further strengthen Canada's claim that these waters are internal."²¹¹

CONCLUSION

The Canadian Arctic is part of Canada. It is part of its long tradition as a northern country. It is part of its culture, as a large portion

²⁰² See Nathan Read, Note & Comment, *Claiming the Strait: How U.S. Accession to the United Nations Law of the Sea Convention Will Impact the Dispute between Canada and the United States over the Northwest Passage*, 21 TEMP. INT'L & COMP. L.J. 413, 433 (2007).

²⁰³ *Id.*

²⁰⁴ See *Fisheries Case* (U.K. v. Nor.), 1951 I.C.J. 116, 133 (Dec. 18).

²⁰⁵ Read, *supra* note 203, at 435.

²⁰⁶ See *id.*

²⁰⁷ *Id.*

²⁰⁸ See SIMEONE, *supra* note 22, at 2.

²⁰⁹ Read, *supra* note 202, at 435.

²¹⁰ *Id.* at 435–36.

²¹¹ *Id.* at 436.

of its population resides in this vast land. While Canada has the right to establish its twelve-mile territorial sea, this is not enough. The importance of this land, economically, politically, and culturally, requires Canada to take a strong stance in preserving the Canadian Arctic. Canada must make strong efforts to submit its claim to establish its exclusive economic zone.

By establishing this exclusive economic zone, Canada can effectively claim sovereignty over the majority of the Canadian Arctic. Establishing sovereignty will preserve Canada's cultural ties to this area, and more importantly, preserve the livelihood and culture of Canada's Arctic people. Further, establishing its EEZ will provide Canada control of the Northwest Passage. While it is still mostly frozen and inaccessible today, global warming trends may open this passageway to clear water transport in the near future. Controlling this potentially vital waterway will allow Canada to effectively govern water traffic in its own backyard. Regulating volume and environmental guidelines will ensure that Canada's interests in the Arctic are preserved.

In the alternative, if Canada's EEZ claim fails, Canada can bring suit in the International Court of Justice to establish sovereignty over the Canadian Arctic. The ICJ looks to recurring theories of international law to govern future disputes. While ICJ does not necessarily follow its own precedent, the fact that it relies on recurring theories of international law provides Canada the opportunity to establish its Arctic sovereignty by relying on the *Anglo-Norwegian Fisheries Case*.

The *Anglo-Norwegian Fisheries Case* is very useful for Canada because the ICJ held that Norway's self-drawn, straight baselines that included its *skjærgaard* was a valid exercise in its sovereign powers. Canada's Arctic Archipelagos, like Norway's *skjærgaard*, are very similar in its geographical features. Thus, this theory of international law will allow Canada to use the straight-baseline theory established by the ICJ in this case to establish sovereignty in the Arctic.

The importance of the Canadian Arctic requires that the Canadian government take a strong stance on the issue. If Canada fails, it will not only lose a significant economic stake in perhaps the next oil frontier, it will lose a part of its cultural heritage.