

INUIT AND THE NUNAVUT LAND CLAIMS AGREEMENT: SUPPORTING CANADA'S ARCTIC SOVEREIGNTY

Terry Fenge

Although the ice-strengthened navy patrol vessels to be deployed from Ikpiarjuk on Baffin Island are an important component of Canada's Arctic sovereignty strategy, there is more than one way to skin a cat, says Terry Fenge, formerly with the Inuit Circumpolar Conference Canada. The federal government should involve the Inuit in Canada's Arctic sovereignty, as supported by provisions in the 1993 Nunavut Land Claims Agreement dealing with monitoring and offshore management, he says. Yet, these have not been implemented, and Ottawa seems to have forfeited the opportunity to use them to shore up sovereignty. "[E]ngaging the region's Inuit with a view to jointly ensuring that the obligations, duties, and objectives of the Nunavut, Inuvialuit, Nunavik and Nunatsiavut Land Claims Agreement are fulfilled," he says, is key to the Integrated Northern Strategy, promised in the recent Throne Speech.

Parmi les éléments clés de la souveraineté du Canada dans l'Arctique figure le déploiement dans cette région de navires à coque renforcée. Mais il y a plus d'une façon de parvenir à ses fins, estime Terry Fenge, ex-directeur de la recherche du Conseil circumpolaire inuit du Canada. Le gouvernement fédéral devrait ainsi intégrer les Inuits à la défense de notre souveraineté dans l'Arctique, d'autant plus que les dispositions touchant la surveillance et la gestion en mer de l'Accord sur les revendications territoriales du Nunavut de 1993 donnent corps à nos prétentions. Mais ces clauses n'ont toujours pas été mises en application, et Ottawa semble avoir renoncé à les utiliser à des fins d'affirmation de sa souveraineté. La participation active des Inuits « à l'application conjointe des obligations, devoirs et objectifs de l'Accord sur les revendications territoriales du Nunavut, de l'Inuvialuit, du Nunavik et du Nunatsiavut », est pourtant indispensable à la Stratégie intégrée pour le Nord promise dans le récent discours du Trône, conclut-il.

Who would have predicted as recently as 12 months ago that Arctic sovereignty would be the lead theme in the recent Speech from the Throne? But perhaps we should not be too surprised.

Following the last federal election campaign Prime Minister designate Stephen Harper pounced on comments by David Wilkins, the US ambassador to Canada, reaffirming Washington's long-standing view that the Northwest Passage is an international strait through which international shipping has the right of passage. Harper admonished the ambassador and the United States for failing to recognize Canada's Arctic sovereignty, saying: "We have significant plans for national defence and for defence of our sovereignty, including Arctic sovereignty...It is the Canadian people we get our mandate from, not the ambassador from the United States."

Prime Minister Harper toured the three territories in summer 2006 and again in summer 2007, delivering policy speeches in which Arctic sovereignty featured prominently. Deploying newly promised ice-strengthened navy patrol boats operating out of a yet-to-be-constructed deepwater port at Arctic Bay to assert sovereignty was a natural fit for a government that came to power with a mandate to rebuild and reinvest in the military.

It seems ironic, however, that current efforts to assert Arctic sovereignty are driven by melting sea ice opening the Northwest Passage. Until very recently, the Prime Minister was in the camp of the climate change deniers. His government has yet to bring forward a policy on adaptation to the unavoidable impacts of climate change. Nor does the Government of Canada yet appreciate the opportunity to use the 1993

Nunavut Land Claims Agreement (NLCA) — the only modern treaty to specifically mention Arctic sovereignty — to bolster Canada's Arctic sovereignty.

Canada has a tradition of asserting Arctic sovereignty primarily in reaction to assumed and real challenges: The unwelcome voyages through the

Far from being a wilderness untrammled by people, the Arctic is known, named and used by Inuit — Canadian citizens — and by a small but growing number of arrivals from the south. Inuit trace their use of this region back thousands of years through Thule, Dorset and Pre-Dorset peoples.

Northwest Passage of SS *Manhattan* in 1969 and 1970, and the US Coast Guard icebreaker *Polar Sea* in 1985 readily come to mind. Promises made in the heat of sovereignty challenges to build a Polar Class 8 icebreaker and deploy a subsurface surveillance system across the passage from Cornwallis Island to Somerset Island were abandoned as too expensive when the media and public interest moved on to other issues.

In August 2007 two Russian mini-submarines planted a titanium Russian flag on the floor of the Arctic Ocean at the North Pole, symbolically claiming sovereignty over the seabed northward of Russia's 200-nautical-mile exclusive economic zone. Responding to vivid images on the television, Peter MacKay, then minister of foreign affairs and international trade, dismissed this as "just a show." Perhaps it was, but when responding he confused two issues: international shipping rights, if any, in the Northwest Passage, and extension by rim states of their continental shelf rights deep in the Arctic Ocean through a process defined in the United Nations Convention on the Law of the Sea (UNCLOS). His over-the-top characterization of Russia's action as reminiscent of how states acted in the 15th century was not balanced by an announcement on an alternative Canadian approach.

More embarrassment followed. It was revealed in *The Globe and Mail* in August 2007 that Canada was relying upon a Russian icebreaker as the plat-

form from which to collect data to support its own Arctic Ocean continental shelf submission. In response, Rob Huebert of the University of Calgary pithily commented, "If you're building a court case, do you depend on the opposing side for the sources of your argument?"

Jacob Verhoef, the head of Canada's scientific data collection effort, warned that Canada's submission, due by 2013, 10 years after Canada ratified UNCLOS, might be lacking. It seemed that Canada was now paying the price for failing to build the Polar Class 8 icebreaker and for delays in starting data collection to support its claim. Had Canada thought ahead when, in the mid-1990s, decisions were taken to ratify UNCLOS at some time in the future? Apparently not.

Generally there has been a warm response in the North as well as nationally to the Prime Minister's commitment to assert Canada's Arctic sovereignty, although what's at stake is poorly understood, and some worry that sovereignty assertion through navy patrol vessels signals the remilitarization of the North.

Numerous commentators have pressed the Government of Canada to modernize and expand Canada's fleet of icebreakers and to use the coast guard rather than the navy for Arctic sovereignty assertion. But it was the Prime Minister himself who revealed the reasoning as well as the intent of the Government of Canada in July 2007 when he announced the Arctic patrol ships and deepwater port: "Canada has a choice when it comes to defending our sovereignty over the Arctic. We either use it or lose it. And make no mistake, this Government intends to use it."

But this is simply wrong. Far from being a wilderness unoccupied by people, the Arctic is known, named and used by Inuit — Canadian citizens — and by a small but growing number of arrivals from the south. Inuit trace their use of this region back thousands of years through Thule, Dorset and Pre-Dorset peoples.

Canadian Inuit and Canada's Arctic sovereignty have invariably been linked. In the 1950s Inuit families from northern Quebec were relocated to Resolute on Cornwallis Island and Grise Fiord on Ellesmere Island. While the reasons for this relocation have been hotly debated, sovereignty assertion is thought by many to be one reason for the move. In 1970 a Canadian Inuit hunter and dog team from Resolute stood boldly in front of SS *Manhattan* as it plowed through pack ice on its historic voyage — it stopped. A point had been made.

The *Arctic Waters Pollution Prevention Act* — Canada's prime response to the *Manhattan* incident — invoked the need to protect the environment upon which Inuit depended out to 100 miles from the coast. In 1985 Inuvialuit as well as Canadian nationalists from the south were on board a small plane that buzzed the *Polar Sea* dropping politically charged notes from the sky politely but firmly reminding the crew of Canada's Arctic sovereignty. In the aftermath of the *Polar Sea* incident the late Mark R. Gordon, an Inuit leader from northern Quebec, said Inuit would hold up the Canadian flag in the Arctic. And still today Inuit leaders remain fully supportive of Canada's Arctic sovereignty. Mary Simon, President of Inuit Tapiriit Kanatami, the national Inuit organization, conducted a Canada-wide tour late in 2007 to engage and inform Canadians on Arctic sovereignty and to gain public support for Inuit involvement in this issue.

The geographical extent of Inuit land and resource use in the Arctic has been well known for many years. In 1973

the Government of Canada announced the resumption of modern treaty negotiations with Aboriginal peoples whose right to land has not been extinguished by earlier treaties or superseded by law. Inuit of the Northwest Territories were first in line. Before commencing negotia-

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tions the Government of Canada demanded evidence of the extent, intensity and frequency of land and resource use in order to define the area subject to negotiation. This was duly provided in the three-volume report of the Inuit Land Use and Occupancy Project, published in 1977 by the Minister of Supply and Services Canada.

A classic in the field and still frequently quoted, this study drew upon interviews with more than 80 percent of Inuit hunters and definitively illustrated use and occupancy by Inuit in the Northwest Territories and a small portion of northern Yukon of 3.8 million square kilometres of land and ocean, used interchangeably. For Inuit, sea ice is a platform used for travel between communities and to favoured hunting sites, often at the floe edge. Separate studies addressed Inuit land use and occupancy in northern Quebec and Labrador. The 1977 Inuit Land Use and Occupancy Project demonstrated Inuit use and occupancy of Lancaster Sound and Barrow Strait — the eastern end of the Northwest Passage — the very area characterized by the United States and some European countries as an international strait.

In response to the *Polar Sea* voyage, Canada drew straight baselines from the outer edge of the coast and fringing islands enclosing the Arctic Archipelago and declared waters with-

in the baselines to be internal waters over which Canada has full rights to regulate and potentially to exclude shipping. The results of the Inuit Land Use and Occupancy Project provided support for this legal move by helping Canada to claim historic title

to the area. Lawyers from the Department of Justice knew all about the Inuit Land Use and Occupancy Project. Speaking on the floor of the House of Commons in 1985, Joe Clark, Minister of External Relations, waxed eloquent: "Canada's sovereignty in the Arctic is indivisible. It embraces land, sea and ice. It extends without interruption to the seaward facing coasts of the Arctic Islands. These islands are joined and not divided by the waters between them."

Considerable and ongoing political support has been provided by Inuit to Canada's Arctic sovereignty over many years. Many Canadian Inuit leaders are well known and well respected internationally. Their voices carry moral weight that complements efforts by Canadian diplomats to persuade other countries to our view. Notwithstanding, the Government of Canada has yet to effectively engage Inuit in Arctic sovereignty assertion and by failing to fully implement the Nunavut Land Claims Agreement is forsaking a potential trump card in this complex international game

Following more than 20 years of negotiation, the Inuit of Nunavut and Her Majesty the Queen in Right of Canada ratified in 1993 the NCLA — a modern treaty within the meaning of

section 35 of the *Constitution Act, 1982*. Promises made in this agreement are guaranteed in Canada's constitution and enforceable in the courts. Through the agreement Inuit ceded, released and surrendered to the Crown their Aboriginal title, rights, claims and interests to lands and waters within Canada and received in return a wide range of rights applicable throughout the Nunavut Settlement Area, including wildlife harvesting and representation on institutions of public government to manage and regulate the use of land, water, oceans, wildlife and natural resources. The Government of Nunavut was established in 1999 as a result of a promise in the NCLA.

The parties agreed to exchange Aboriginal title for defined rights and benefits "in recognition of the contributions of Inuit to Canada's history, identity and sovereignty in the Arctic." Article 15 dealing with marine areas adds: "Canada's sovereignty over the waters of the Arctic Archipelago is supported by Inuit use and occupancy." Inuit have negotiated four comprehensive land claims agreements covering northern Quebec (1975), the Beaufort Sea region (1984), Nunavut (1993) and northern Labrador (2004). All support Canada's Arctic sovereignty generally, but only the NCLA explicitly addresses Arctic sovereignty.

Implementation of this agreement is an ongoing expression of a negotiated partnership between the Government of Canada and the Inuit of Nunavut and could be an important component of a strategy to assert, affirm and express Canada's Arctic sovereignty. But at present this is not the case.

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Courtesy of Nunavut Tunngavik Inc.

Paul Quassa, President of the Tungavik Federation of Nunavut, and Prime Minister Brian Mulroney sign the Nunavut Land Claims Agreement in Iqaluit in 1993. According to Terry Fenge, implementation of this agreement “could be an important component of a strategy to assert, affirm and express Canada’s Arctic sovereignty.”

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Since the nightmare of many Inuit is to see a rusty, convenience-flagged, single-hulled, inadequately crewed oil tanker laboriously navigating the Northwest Passage, full Canadian sovereignty and jurisdiction over the waters of the Canadian Arctic Archipelago and full implementation of the Nunavut Land Claims Agreement would go a long way to reassuring Inuit that the most stringent environmental and safety procedures will be applied to shipping in the Northwest Passage, which is projected to significantly increase in years ahead.

Arguably, implementing the agreement in total, particularly its volumi-

nous environmental and resource management provisions, and using it to “encourage self-reliance and the cultural and social well-being of Inuit” as specified in the preamble would illustrate to all that Nunavut and the Inuit of Nunavut are part and parcel of Canada, and give substance and on-the-ground meaning to Joe Clark’s stirring words on the floor of the House of Commons in the aftermath of the *Polar Sea* incident.

The Prime Minister did not reply, and the obvious sovereignty-supporting provisions of the agreement remain unimplemented. All Aboriginal peoples with modern treaties report that the Government of Canada fails to carry out various treaty obligations. Evaluations by the Auditor General of Canada into implementation of the Gwich’in, Nunavut and Inuvialuit comprehensive land claims agreements

support this contention. In 2003 all modern treaty organizations representing Aboriginal peoples in northern British Columbia, Yukon, Northwest Territories, Nunavut, northern Quebec and Labrador formed a coalition to persuade the Government of Canada to adopt a policy to live up to its modern treaty obligations.

With implementation problems mounting, NTI took the unprecedented step in December 2006 of launching a court case to force the Government of Canada to live up to its many responsibilities in the NCLA. While the grounds of complaint in the statement of claim are many and varied (see www.tunngavik.com), they include articles that, if implemented, would effectively support Canada’s contention that the waters of the Arctic Archipelago are internal to Canada.

We seem now to be in a bizarre situation. NTI is in court attempting to force the Government of Canada to implement the NCLA, including articles that support Canada's Arctic sovereignty — a political priority of the Prime Minister and his government — yet the Crown's statement of defence denies NTI's statement of claim and effectively ignores or perhaps even forfeits the opportunity to use the agreement for sovereignty support purposes. What does this situation

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look like to diplomats in the US Department of State or the European Union who continue to question Canada's Arctic sovereignty?

Prime Minister Harper deserves applause for his attention to the Arctic and focus on sovereignty. While past legal pronouncements and current plans to deploy the military in the Arctic should be part of Canada's Arctic sovereignty strategy, they should not be the whole strategy. What else should we do? Don McRae of the University of Ottawa, a member of the UN's International Law Commission, suggests Canada should:

- uphold its position that the waters of the Northwest Passage are the internal waters of Canada by defending any legal challenge and seizing opportunities to negotiate acceptance of our position if there is a reasonable chance of success;
- act seriously and be seen to be taking seriously our claim that the waters of the Arctic Archipelago are the internal waters of Canada; and
- work internationally to ensure that internationally accepted stan-

dards and regulations for shipping and environmental management conform to what Canada regards as desirable for the regulation of Arctic waters.

Nobody suggests that the object of Canada's Arctic sovereignty should be to wall off the region and prevent or exclude access by others. Rather, the opposite is the case. We should encourage and welcome others into our portion of the Arctic and ensure that they acknowledge and operate

under Canadian rules and regulations. So, within the context of McRae's general advice, I add the following specific recommendations to the Government of Canada:

- Effectively engage the region's Inuit with a view to jointly ensuring that the obligations, duties and objectives of the Nunavut, Inuvialuit, Nunavik and Nunatsiavut land claims agreements are fulfilled;
- Work with the Government of Nunavut to devolve to it authority to manage and regulate use of internal waters;
- Expand and renew the 2000 Northern Dimension of Canada's Foreign Policy initiative as a platform from which to engage the United States, Russia, Norway and Denmark/Greenland in the circumpolar Arctic with a view to promoting a long-term, legally binding Arctic environmental management agreement for the period following resolution through UNCLOS of seabed claims by Arctic Ocean rim states;
- Draw a lesson from the Norwegians who have constructed research facilities on the Svalbard Islands, used by researchers from

many countries, to bolster and express their Arctic sovereignty; and carry through with the commitment in the Speech from the Throne to construct a world-class research station in the Arctic open to researchers from around the globe as a legacy of the current International Polar Year; and

- Incorporate the above points in the Integrated Northern Strategy promised in the Speech from the Throne.

There is little doubt that the circumpolar Arctic is on the cusp of very significant economic, social and environmental change. In response, and in partnership with Inuit, other northerners and their governments, the Government of Canada should seek global acceptance of Canada's

Arctic sovereignty, significant national rights in the offshore northward of our exclusive economic zone and a legally binding treaty between Arctic states to protect this fragile and vulnerable region by ensuring that principles of environmental and social sustainability lie at the heart of future industrial development.

As change unfolds in this no-longer-peripheral region, let us remember that Canada claims sovereignty over a significant portion of the Arctic for a national purpose. It is time to jettison our treatment of the Arctic as a boutique, "add-on" issue and to bring Arctic considerations into the heart of our domestic and foreign policy.

Terry Fenge is an Ottawa-based consultant specializing in environmental, Aboriginal and northern issues. From 1985 to 1993 he was director of research and a senior negotiator for the Tunngavik Federation of Nunavut, the Inuit organization that negotiated the Nunavut Land Claims Agreement; and from 1996 to 2006 he was first director of research of the Inuit Circumpolar Conference (ICC) Canada and then strategic counsel to the chair of ICC.