

**BILL C-3: AN ACT TO AMEND THE ARCTIC
WATERS POLLUTION PREVENTION ACT**

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LEGISLATIVE HISTORY OF BILL C-3

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 3 December 2008

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

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Royal Assent:

Statutes of Canada

This bill did not become law before the 1st Session of the 40th Parliament ended on 4 December 2008.

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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BILL C-3: AN ACT TO AMEND THE ARCTIC
WATERS POLLUTION PREVENTION ACT*

BACKGROUND

Bill C-3, An Act to amend the Arctic Waters Pollution Prevention Act, was introduced in the House of Commons by the Minister of Transport, Infrastructure and Communities and received first reading on 3 December 2008. It consists of an amendment to the definition of “arctic waters” in the *Arctic Waters Pollution Prevention Act*⁽¹⁾ to extend the geographic application of the Act from 100 to 200 nautical miles offshore Canadian land north of the 60th parallel of north latitude. Bill C-3 died on the *Order Paper* on 4 December 2008 when Parliament was prorogued.

A. International Interest in the Arctic

Bill C-3 was introduced during a time of increased international attention to arctic issues, including arctic sovereignty.

Coastal states that border the Arctic Ocean have been mapping the arctic seabed in order to support claims for exclusive sovereign rights, including mineral rights, to the continental shelf based on the *United Nations Convention on the Law of the Sea* (UNCLOS).⁽²⁾

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) *Arctic Waters Pollution Prevention Act*, R.S.C. 1985, c. A-12, <http://laws.justice.gc.ca/en/showtdm/cs/A-12>.

(2) Under Article 76 of the *United Nations Convention on the Law of the Sea* (UNCLOS, 10 December 1982, http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm), as well as under general international law, coastal states can generally claim a continental shelf extending up to 200 nautical miles seawards from the baseline marking the end of their territory and the beginning of their maritime zones. But under Annex II, Article 4 of UNCLOS, coastal states can also claim an extended continental shelf stretching beyond the 200-mile line. States that are party to UNCLOS have 10 years, from the time they ratify the Convention, to submit particulars, including scientific and technical data supporting their claims to an extended continental shelf. Canada ratified the Convention in 2003, and seabed mapping is underway to meet the 2013 deadline for Canada’s claim.

In 2005, when the present Norwegian government took office, it declared the High North a top national priority. In December 2006, it presented a comprehensive High North Strategy.⁽³⁾ Around the same time, Russia concluded a six-year study “covering all possible aspects of the future use of the Northern Sea Route.”⁽⁴⁾ Russia now has “the infrastructure in place and the capacity to control future navigation, including 12 nuclear-powered icebreakers.”⁽⁵⁾ In August 2007, the Russians planted their flag at the bottom of the ocean under the North Pole.

March 2007 to March 2009 was declared International Polar Year. Thousands of scientists from tens of countries have been participating in scientific research and activities focused on the polar regions.⁽⁶⁾

The Arctic is also a matter of particular interest to the Canadian government. In the Speech from the Throne opening the 2nd Session of the 39th Parliament in October 2007, the government signalled its intention to “bring forward an integrated northern strategy focused on strengthening Canada’s sovereignty, protecting our environmental heritage, promoting economic and social development, and improving and devolving governance, so that northerners have greater control over their destinies.”⁽⁷⁾

B. Canada’s Interests in the Arctic

The change proposed by Bill C-3 is just one aspect of the government’s integrated Northern Strategy to assert and strengthen Canada’s claims to the Arctic.⁽⁸⁾ Bill C-3, with its implications for pollution reduction in the face of expected increased shipping and resource development and their concomitant environmental threats, is considered part of the strategy.

(3) Jonas Gahr Støre, “Norway, Canada: Natural Partners in the North,” *Embassy*, 6 November 2008, p. 19.

(4) Standing Senate Committee on Fisheries and Oceans [Senate Committee], *The Coast Guard in Canada’s Arctic: Interim Report*, Report 4, 2nd Session, 39th Parliament, June 2008, p. 9, <http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/fish-e/rep-e/rep04jun08-e.pdf>. The Northern Sea Route, formerly called the Northeast Passage, is a shipping route that follows the northern and eastern coasts of Eurasia.

(5) Ibid.

(6) See the Government of Canada’s International Polar Year website: <http://www.ipy-api.gc.ca>.

(7) Senate, *Debates*, 2nd Session, 39th Parliament, 16 October 2007, p. 2, (Speech from the Throne opening the 2nd Session of the 39th Parliament), http://www.parl.gc.ca/39/2/parlbus/chambus/senate/deb-e/001db_2007-10-16-E.htm?Language=E&Parl=39&Ses=2#7.

(8) Indian and Northern Affairs Canada, “Fact Sheet: Northern Strategy,” 2008, <http://www.ainc-inac.gc.ca/ai/mr/is/n-strat-eng.asp>.

1. Increased Shipping in the Arctic

The melting of arctic sea ice due to climate change is expected to lead to more shipping in the Arctic in the coming years.

In 2005, the Arctic Climate Impact Assessment scientific report⁽⁹⁾ was published, projecting “major large-scale environmental changes in the Arctic” which are predicted to be “many and dramatic.”⁽¹⁰⁾ An update published three years later quantified the extent of sea ice loss:

The decreasing trend in extent of summer arctic sea ice has massively accelerated... with the two lowest years on record occurring in 2005 and 2007. In September 2007, the sea ice reached a low extent of 4.3 million km², or 39% less than its 1979–2000 mean, the lowest since satellite monitoring began in 1979 and also the lowest for the entire 20th century based on monitoring from ships and aircraft.⁽¹¹⁾

Shrinking polar ice cover is making the Northwest Passage more navigable. The Northwest Passage collectively refers to several alternative sea routes through the Canadian Arctic Archipelago between the Atlantic and Pacific Oceans. Until recently, ice cover has made the Northwest Passage practically impassable. However, due to rising temperatures, many scientists now predict that the Northwest Passage could open up to traffic. In September 2008, the Canadian Ice Service is reported to have declared the Northwest Passage navigable for the second time in recorded history – and for the second year in a row.⁽¹²⁾

A navigable Northwest Passage would represent a significant shortcut for shipping between Asia and eastern North America and Europe. The distance between Shanghai and New Jersey would be 7,000 km shorter through the Northwest Passage than through the Panama Canal.⁽¹³⁾ Time and cost savings associated with the shortcut could greatly increase traffic through the Arctic Archipelago.

(9) ACIA, *Arctic Climate Impact Assessment*, (scientific report), Cambridge University Press, 2005, <http://www.acia.uaf.edu/>. The assessment was prepared over a period of five years by an international team of more than 300 scientists and other experts. Lead authors were selected from open nominations provided by various national and international organizations, including the Arctic Monitoring and Assessment Program, the Conservation of Arctic Flora and Fauna and the International Arctic Science Committee.

(10) Ibid., Chapter 18, p. 990.

(11) Martin Sommerkorn and Neil Hamilton, “Arctic Climate Impact Science: An update since ACIA,” WWF International Arctic Programme, Oslo, Norway, April 2008, p. 7.

(12) Randy Boswell, “Northwest Passage northern route opens,” *Canwest News Service*, 4 September 2008.

(13) Senate Committee (2008), p. 7.

Canada claims sovereignty over the Northwest Passage. The country's position is that the waters around the Arctic Archipelago are internal Canadian waters.⁽¹⁴⁾ On this basis, Canada claims the right to unilaterally regulate matters relating to the Northwest Passage, such as shipping and the environment. Canada does not oppose international navigation in the Northwest Passage.⁽¹⁵⁾ Rather, Canada seeks recognition of its claim that the Northwest Passage is an internal waterway in order to impose and enforce safety and marine standards that protect Canadian interests, including those relating to the environment and Inuit. Absent Canadian regulation, the waters would be subject to less stringent standards under international law.

Various countries have rejected Canada's claim and view the Northwest Passage as an international strait. According to the Head of the Delegation of the European Commission to Canada, the European Union sees the Arctic as "an open ocean."⁽¹⁶⁾ A recent European Commission policy communication states that "Member States and the Community should defend the principle of freedom of navigation and the right of innocent passage in the newly opened routes and areas."⁽¹⁷⁾ The United States also takes the position that the Northwest Passage is an international strait and therefore that non-coastal states have navigation rights through the strait.⁽¹⁸⁾

In the fall of 2008, it was reported that the first commercial ship was able to sail from Montreal through the Northwest Passage to deliver supplies to communities in western Nunavut.⁽¹⁹⁾ Marine ecotourism cruise ships are already operating off the west coast of

(14) This claim is made on the basis of straight baselines drawn around the Arctic Archipelago in 1985. Baselines represent the edge of a country's territory and the beginning of its maritime extension. By drawing the baselines around all the islands north of the Canadian mainland, Canada claimed the waters on the landward side of the baseline as internal waters. See *Oceans Act*, S.C. 1996, c. 31, s. 6, <http://laws.justice.gc.ca/en/showtdm/cs/O-2.4>, and *Territorial Sea Geographical Coordinates (Area 7) Order*, S.O.R./85-872, <http://laws.justice.gc.ca/en/ShowFullDoc/cr/SOR-85-872/en>.

(15) Senate Committee (2008), p. 18.

(16) Dorian Prince, Head of the Delegation of the European Commission to Canada, quoted by Mark Iype, "EU's Arctic Intentions Worry Canadians," *Embassy*, 10 December 2008.

(17) Commission of the European Communities, "Communication from the Commission to the European Parliament and the Council: The European Union and the Arctic Region," 20 November 2008, p. 8, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0763:FIN:EN:PDF>.

(18) Robert Dufresne, *Canada's Legal Claims Over Arctic Territory and Waters*, PRB 07-39E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 December 2007. See also Jeff Davis, "Securing the Northwest Passage Essential," *Embassy*, 6 November 2008, p. 24.

(19) See CBCnews.ca, "1st commercial ship sales through Northwest Passage," 28 November 2008, <http://www.cbc.ca/canada/north/story/2008/11/28/nwest-vessel.html?ref=rss>.

Greenland.⁽²⁰⁾ The issue of Canadian sovereignty over the Northwest Passage is likely to become increasingly relevant as the Passage becomes more open to traffic. The change proposed in Bill C-3 is one part of the government's strategy to assert that sovereignty.

2. Increased Resource Development in the Arctic

Resource development in the Arctic is also expected to increase in the coming years. Recently, increasing world demand for energy and other resources resulted in record and near-record high oil and gas prices, respectively. Other commodity prices were also very high. Accordingly, energy and mining companies have turned their attention to new frontiers, such as the Arctic, where resource potential has yet to be fully explored and exploited. Climate change and shrinking sea ice cover are also contributing to greater interest in arctic resources.⁽²¹⁾

In fact, “[m]ineral resources, and hydrocarbons in particular, are abundant throughout the Arctic. The region contains proven reserves of oil and gas, diamonds, gold, tin and platinum, to name a few key commodities. Of these, given their size and value, oil and gas reserves, along with diamond deposits, are garnering the most sustained interest in Canada.”⁽²²⁾

Rights to resources in some areas of the Arctic are a matter of dispute. For example, because Canada and the United States do not agree on where the international maritime boundary between Yukon and Alaska lies, rights to any resources existing in the western Beaufort Sea are at stake.

As a second example, rights to the Lomonosov Ridge, which Russian scientists believe accounts for two thirds of the Arctic's total hydrocarbon resources, are also in dispute. Russia asserts that the Ridge is an extension of the Siberian continental shelf and therefore belongs to Russia.⁽²³⁾ Canada has undertaken seabed mapping activities and other scientific studies to support a counterclaim.⁽²⁴⁾

(20) K. Joseph Spears, “The Maritime Domain: Arctic Awareness,” *FrontLine Defence*, July/August 2008, p. 32.

(21) Melting sea ice could both facilitate access to arctic resources and allow shipments through arctic waters to world markets. However, melting permafrost on land is expected to complicate the construction of oil and gas infrastructure, such as roads and pipelines. According to a recent study by the Arctic Council, it is not yet clear whether climate change will have a net positive or negative impact on oil and gas activities in the Arctic: AMAP Working Group, *Arctic Oil and Gas 2007*, Arctic Monitoring and Assessment Programme, Oslo, Norway, 2007.

(22) Frédéric Beauregard-Tellier, *The Arctic: Hydrocarbon Resources*, PRB 08-07E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 24 October 2008.

(23) In 2001, Russia was the first country to officially make a submission to the United Nations Commission on the Limits of the Continental Shelf (CLCS), claiming the Lomonosov Ridge, which extends under the North Pole, as a natural prolongation of the Eurasian landmass. The CLCS responded to Russia's claim with a recommendation that additional scientific data be gathered and that the claim be resubmitted by 2009.

(24) Beauregard-Tellier (2008).

The predicted rise of commodity prices in the coming years might be expected to increase pressures to finally settle international arctic sovereignty issues. The jurisdiction the government seeks to exercise over arctic waters pursuant to Bill C-3 may be viewed in the context of the government's larger strategy to obtain international recognition of Canada's claims to ownership of arctic resources.

3. Increased Activity and the Arctic Environment

The expected proliferation of activities such as shipping and resource development in the Arctic raises the potential for problems such as smuggling, illegal immigration, shipwrecks, poaching and even threats to national security.⁽²⁵⁾ For some, however, the most ominous threat associated with increased activity is the risk of pollution and environmental degradation, which threaten sensitive arctic ecosystems as well as the traditional way of life for the people of the North. The Arctic and its cryosphere contain some of the world's most fragile environments,⁽²⁶⁾ and "[a]n oil spill would significantly damage the arctic ecosystem [notably because of the increased environmental persistence of petroleum hydrocarbons and the difficulty of clean-up in remote areas] ... On land, arctic landscapes are said to recover slowly from physical disturbances associated with oil and gas activity."⁽²⁷⁾

The declared purpose of the *Arctic Waters Pollution Prevention Act* is "to see that the natural resources of the Canadian arctic are developed and exploited and the arctic waters adjacent to the mainland and islands of the Canadian arctic are navigated only in a manner that takes cognizance of Canada's responsibility for the welfare of the Inuit and other inhabitants of the Canadian arctic and the preservation of the peculiar ecological balance that now exists in the water, ice and land areas of the Canadian arctic."⁽²⁸⁾ The amended definition of "arctic waters" in Bill C-3 extends the application of the Act to a much vaster expanse of the Arctic Ocean, thereby enlarging the area to which pollution prevention measures may be applied.

(25) Stephen Harper, "Prime Minister Harper announces measures to strengthen Canada's Arctic sovereignty and protection of the northern environment," Address, Tuktoyaktuk, 27 August 2008.

(26) James Hemsath, *Interim Report on the Arctic Energy Summit*, International Polar Year Project No. 299, Institute of the North, Anchorage, Alaska, October 2008, p. 7.

(27) Beauregard-Tellier (2008). See also François Côté and Tim Williams, *The Arctic: Environmental Issues*, PRB 08-04E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 24 October 2008.

(28) *Arctic Waters Pollution Prevention Act*, preamble.

A secondary benefit of Bill C-3 may be support for Canada's sovereignty claims. By taking responsibility for enacting and enforcing anti-pollution and shipping safety laws applicable to a larger area of arctic waters, Canada is asserting rights to the area.

C. The Proposed Amendment to the *Arctic Waters Pollution Prevention Act*

The change to the *Arctic Waters Pollution Prevention Act* (AWPPA) proposed by Bill C-3 is one aspect of the government's integrated Northern Strategy.

1. History of the Act

The AWPPA was enacted in 1970 after a US icebreaking oil tanker, the *Manhattan*, completed a crossing through the Northwest Passage in 1969 without asking for Canada's permission.⁽²⁹⁾ American officials took the position that the *Manhattan* had navigated through high seas in the Passage because it had not traversed Canadian territorial waters, which at the time were defined in the *Territorial Sea and Fishing Zones Act*⁽³⁰⁾ as extending for three miles from the islands of the Arctic Archipelago.

The *Manhattan*'s voyage was portrayed, by some, as a "direct threat to Canadian sovereignty which required an immediate Canadian response."⁽³¹⁾ Within a year, Parliament had enacted the AWPPA, which imposed anti-pollution and marine safety standards for waters up to 100 nautical miles offshore. The preamble to the AWPPA justified the assertion of jurisdiction by citing Canada's responsibilities for the welfare of Inuit and other arctic inhabitants, as well as the preservation of the ecological balance. The United States and some other countries denounced the AWPPA as contrary to international law.⁽³²⁾

(29) Canada did grant unsolicited permission and provided an escort icebreaker.

(30) *Territorial Sea and Fishing Zones Act*, S.C. 1964-65, c. 22.

(31) Donald R. Rothwell, "The Canadian-U.S. Northwest Passage Dispute: A Reassessment," *Cornell International Law Journal*, Vol. 26, 1993, p. 331. Also see Suzanne Lalonde, "Increased Traffic through Canadian Arctic Waters: Canada's State of Readiness," *Revue judiciaire Thémis*, Vol. 38, No. 1, 2004, p. 60.

(32) Canada implicitly conceded to this possibility when it subsequently modified its acceptance of the compulsory jurisdiction of the International Court of Justice to deny the Court's jurisdiction on issues arising out of Canada's anti-pollution measures. This act "effectively shielded Canada from any claims regarding the validity of the AWPPA": Lalonde (2004), p. 62 and note 43. See also *Canadian Declaration Concerning the Compulsory Jurisdiction of the International Court of Justice*, 7 April 1970, reprinted in *International Legal Materials*, Vol. 9, 1970, p. 598.

However, this potential legal issue was subsequently resolved with the adoption of Article 234 of the UNCLOS, the “arctic exception,” which was included at Canada’s insistence.⁽³³⁾ It states:

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.⁽³⁴⁾

The jurisdiction Article 234 provides to enact anti-pollution measures applying in ice-covered areas within the exclusive economic zone (200 nautical miles offshore) validated the AWPPA’s original 100-mile application. Article 234 also permits Bill C-3’s proposed extension of that application to 200 nautical miles, which reconciles the definition of “arctic waters” and “exclusive economic zone.”

2. Summary of the AWPPA

The AWPPA provides for regulating the deposit of waste of any type (such as garbage or oily water) in arctic waters or on land where the waste may enter arctic waters. A system of civil liability is provided to enforce the anti-pollution regulations.

The AWPPA also provides a power to the Governor in Council to require any person who proposes to construct, alter or extend any work in the Arctic that may result in waste entering arctic waters to submit work plans in advance for review and possible modification or rejection.

In relation to arctic shipping, the AWPPA provides for the prescription of “shipping safety control zones” and regulations applicable to ships that seek to navigate within these zones. These regulations are intended to ensure that ships and crews operating in the Arctic are suitable and safe for the conditions.

(33) Senate Committee (2008), p. 19.

(34) UNCLOS, Article 234.

Finally, the AWPPA includes enforcement provisions allowing pollution prevention officers to be designated to enforce the Act. Punishments for offences committed under the Act include fines as well as forfeiture of a ship and its cargo.

3. Application of the AWPPA and Bill C-3

The provisions of the AWPPA apply to “arctic waters,” which is defined in section 2 of the Act. Bill C-3 amends the definition of “arctic waters” to extend the boundary from 100 to 200 nautical miles offshore, that is, to the full extent of the exclusive economic zone. According to the Prime Minister, “[t]his will give us jurisdiction over an additional half million square kilometres of our waters, roughly equivalent to the land mass of one of our prairie provinces.”⁽³⁵⁾

The extended definition of arctic waters is consistent with pre-existing provisions in the *Oceans Act*,⁽³⁶⁾ which create Canada’s exclusive economic zone, as well as the definition of the “sea” used in the *Canadian Environmental Protection Act, 1999*,⁽³⁷⁾ which includes “any exclusive economic zone that may be created by Canada”⁽³⁸⁾ for the purposes of provisions relating to disposal at sea. It also provides an extended area of waters with respect to which the Governor in Council may establish Vessel Traffic Services Zones (VTS Zones) under section 136 of the *Canada Shipping Act, 2001*.⁽³⁹⁾

D. Other Aspects of the Integrated Northern Strategy

1. A Related Proposed Change to NORDREG

When the Prime Minister announced the change proposed in Bill C-3, he also announced a proposed regulatory change affecting the NORDREG reporting system.⁽⁴⁰⁾

(35) Harper (2008).

(36) *Oceans Act* (S.C. 1996), ss. 13–14.

(37) *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, s. 122(2), <http://laws.justice.gc.ca/en/ShowFullDoc/cs/C-15.31///en>.

(38) The definition of “sea” also includes arctic waters within the meaning provided in section 2 of the *Arctic Waters Pollution Prevention Act*.

(39) *Canada Shipping Act, 2001*, S.C. 2001, c. 26, s. 136, <http://laws.justice.gc.ca/en/showtdm/cs/C-10.15>.

(40) Harper (2008).

NORDREG is the arctic marine traffic system that the Canadian Coast Guard uses to keep track of marine traffic north of 60° north latitude, as well as within Ungava Bay, Hudson Bay and James Bay.⁽⁴¹⁾ North of 60° north latitude, the NORDREG zone overlaps with the area to which the AWPPA applies.

NORDREG provides information regarding ice conditions and recommended routes. It can arrange for ice operations support, such as icebreaking assistance, and search and rescue. Marine pollution accidents and incidents must be reported through NORDREG.

All vessels over 300 tonnes, both Canadian and foreign, are encouraged to report under the NORDREG system when operating in the Arctic. However, unlike the situation on Canada's east and west coasts, it is not mandatory that foreign vessels entering Canada's arctic waters report under NORDREG.⁽⁴²⁾

A regulatory change announced on 27 August 2008 would see the NORDREG reporting zone extended to 200 nautical miles offshore. Accordingly, the zone would mirror the area to which the AWPPA applies after the change proposed in Bill C-3 is implemented. In addition, the proposed change would make it mandatory for incoming ships to report under the NORDREG system. This latter proposed change is consistent with the recommendation of a recent Senate committee that NORDREG be made compulsory.⁽⁴³⁾

Some experts believe that making it mandatory for foreign vessels to notify NORDREG before entering Canadian waters would increase security, deter pollution and augment perceived Canadian sovereignty in the North.⁽⁴⁴⁾

2. Other Initiatives

Bill C-3 and the proposed related changes to NORDREG are aspects of a larger integrated Northern Strategy recently launched by the Canadian government. According to the Department of Indian and Northern Affairs, the purpose of the strategy is to “strengthen Canada's sovereignty, protect our environmental heritage, promote economic and social development and improve Northern governance.”⁽⁴⁵⁾

(41) Marine Safety Directorate, Transport Canada, “Guidelines for the Operation of Passenger Vessels in Canadian Arctic Waters,” TP 13670 E, Ottawa, 2006, section 5.1. Also see Transport Canada, “Annual Notices to Mariners 2008,” Section 6, <http://www.notmar.gc.ca/go.php?doc=eng/services/2008-annual/section-a/notice-6>.

(42) Senate Committee (2008), p. 19.

(43) Ibid., p. 40.

(44) Davis (2008), p. 24.

(45) Indian and Northern Affairs Canada (2008).

The following lists other government initiatives that are part of the integrated Northern Strategy, as presented on the website of the Department of Indian and Northern Affairs:⁽⁴⁶⁾

In support of sovereignty, the government has announced that it would:

- expand the Canadian Rangers program;
- order new arctic/offshore patrol vessels;
- commit to building a deepwater arctic docking and refuelling facility in Nanisivik, Nunavut;
- launch RADARSAT-2;⁽⁴⁷⁾
- construct a Canadian Forces Arctic Training Centre in Resolute, Nunavut;
- complete mapping of the underwater continental shelf; and
- purchase a polar class icebreaker.

In support of environmental protection, the government has stated it would:

- set aside land for the expansion of conservation areas, national parks and marine protected areas;
- support International Polar Year research;
- establish an arctic research station; and
- establish northern research as a priority of university granting councils.

Other aspects of the integrated Northern Strategy relate to economic and social development of the North, as well as improved governance.⁽⁴⁸⁾

(46) Ibid.

(47) RADARSAT-2 is a satellite designed for applications such as environmental monitoring, ice mapping, resource mapping, disaster management, and marine surveillance. See the RADARSAT-2 website at <http://www.radarsat2.info/about/index.asp>.

(48) Indian and Northern Affairs Canada (2008).

DESCRIPTION AND ANALYSIS

Bill C-3's sole substantive provision, clause 1, replaces the definition of "arctic waters" in section 2 of the AWPPA. Under the new definition, arctic waters means waters situated within an area bound:

- at the west by the 141st meridian of west longitude, which also defines the terrestrial border between Alaska and the Yukon Territory;
- at the south by the 60th parallel of north latitude, which also defines the southern border of the territories with British Columbia, Alberta, Saskatchewan and Manitoba,⁽⁴⁹⁾ and
- at the east and north by the outer limit of Canada's exclusive economic zone, which is generally 200 nautical miles offshore Canadian land.⁽⁵⁰⁾ The old definition of "arctic waters" meant waters extending to 100 nautical miles offshore.

In certain narrow sections of the straits between Canada and Greenland, the international boundary is less than 200 nautical miles offshore Canadian land. In those areas, the boundary for the definition of "arctic waters" is the international boundary.

The bill will come into force on a day to be fixed by order of the Governor in Council (clause 2).

COMMENTARY

Bill C-3 had little time to attract commentary before it died on the *Order Paper* the day following its introduction. Should it be re-introduced in the future, one might expect it not to be overly controversial, at least within Canada. The change proposed by Bill C-3 is permitted under Article 234 of the UNCLOS, the "arctic exception," as discussed earlier in this legislative summary.

(49) Note that the Arctic Circle lies somewhat north of the 60th parallel of north latitude, at 66° 33' 39" N.

(50) Canada claims the Arctic Archipelago as Canadian land. The baseline (or shoreline) that is used to measure the outer limit of the exclusive economic zone surrounds the entire Arctic Archipelago. Waters within the baseline (that is, waters between the arctic islands) are considered internal waters.

Currently, Russia is the only other arctic state that applies and enforces marine shipping regulations that are more stringent than international standards in the Arctic on the basis of Article 234.⁽⁵¹⁾ Accordingly, other arctic coastal states may take note of Canada's proposal under Bill C-3 and evaluate whether to enact similar regulations in relation to their arctic maritime regions.

The United States is the only coastal arctic state that has not ratified UNCLOS. This fact, along with its belief that the Northwest Passage is an international strait, may make the US sensitive to the extension of Canadian jurisdiction proposed under Bill C-3. Canada's assertion, reinforced in Bill C-3, that the maritime border between Alaska and Yukon is a straight-line extension of the land border along the 141st meridian may also irritate the US. That country maintains that the maritime border follows the path that is equidistant from the coasts of the two countries.

Canada's perceived inability to adequately enforce legislation in the Arctic could become the source of domestic criticism of Bill C-3. According to Senator William Rompkey, Chairman of the Standing Senate Committee on Fisheries and Oceans, "the key word is control... We can prove that water is Canada's, but what people care about is control."⁽⁵²⁾

According to a recent report of the Standing Senate Committee on Fisheries and Oceans, "Canada's icebreaking fleet will not be adequate once shipping increases."⁽⁵³⁾ In February 2007, the Auditor General of Canada reported that, "although the estimated useful life of an icebreaker is 30 years, the current plan shows the Coast Guard will replace icebreakers when they are between 40 and 48 years old."⁽⁵⁴⁾ Appearing before that Senate committee, former Canadian Coast Guard Deputy Commissioner Michael Turner testified that Canada's

(51) See Senate Committee (2008), p. 19; Transport Canada, "Canada moves to further protect its sovereignty and safeguard arctic waters from pollution," News release, Ottawa, 3 December 2008, <http://www.tc.gc.ca/mediaroom/releases/nat/2008/08-h233e.htm>; and *Governance of Arctic Marine Shipping*, Marine and Environmental Law Institute, Dalhousie University, Halifax, 1 August 2008, <http://arcticportal.org/uploads/bC/JU/bCJUaKAo52XTtHDZ359QNA/5.novAMSA-Governance-of-Arctic-Marine-Shipping-Final-Report-1-Aug.pdf>.

(52) Senator William Rompkey, Chairman of the Standing Senate Committee on Fisheries and Oceans, quoted in Mark Iype, "EU's Arctic Intentions Worry Canadians," *Embassy*, 10 December 2008.

(53) Senate Committee (2008), p. 25.

(54) Auditor General of Canada, *A Status Report of the Auditor General of Canada to the House of Commons*, Chapter 4, "Managing the Coast Guard Fleet and Marine Navigational Services – Fisheries and Oceans Canada," February 2007, p. 22, http://www.oag-bvg.gc.ca/internet/English/parl_oag_200702_04_e_17470.html.

vessels are less powerful than the three icebreakers operated by the US Coast Guard.⁽⁵⁵⁾ Russia has the best icebreaking equipment in the world,⁽⁵⁶⁾ and according to the Senate Committee report, “Russia’s icebreaking capability is what empowers it to make a claim for a large part of the Arctic Ocean.”⁽⁵⁷⁾

In the February 2008 budget plan, the Canadian government announced funding of \$720 million to buy a new icebreaker to replace the country’s aging flagship, *CCGS Louis St-Laurent*, which is scheduled to be decommissioned in 2017.⁽⁵⁸⁾ However, some believe that Canada needs more than one new icebreaker.⁽⁵⁹⁾

(55) Senate Committee (2008), p. 25.

(56) Ibid.

(57) Ibid.

(58) Department of Finance Canada, *The Budget Plan 2008*, Chapter 4, 26 February 2008, <http://www.budget.gc.ca/2008/plan/chap4a-eng.asp>.

(59) Senate Committee (2008), pp. 26–27.