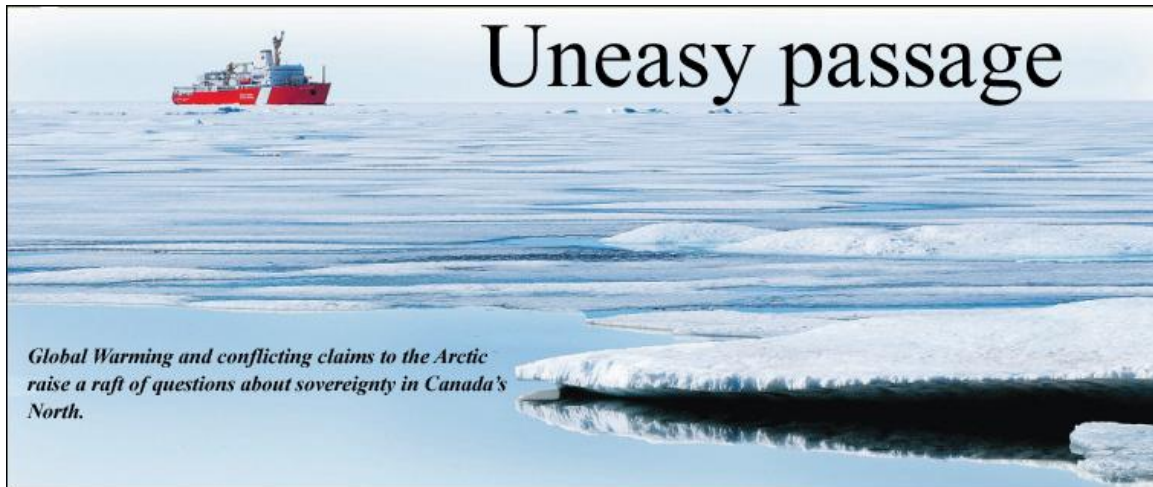


Arctic Sovereignty



The Northwest Passage is central to Canadian identity, yet its future remains uncertain - Ed Struzik, aboard the Louis St. Laurent, Peel Sound, Northwest Passage. Published: Edmonton Journal Sunday, June 06 2010

In the summer of 2009, a disparate group of individuals was aboard the Louis St. Laurent icebreaker sailing through the Northwest Passage. Among them were scientists from Canada, the United States and the European Union, a Dene senator from Fort Simpson in the Northwest Territories, an Inuk woman from northern Quebec, two young Rhodes scholars and the legal adviser for Canada's Department of Foreign Affairs and International Trade.

On the third day of the journey, Peter Harrison, the newly appointed director of Queen's University's School of Policy Studies, was talking about the Northwest Passage and what it meant to the people of southern Canada, to the trading world and to the Inuit we had left behind in Resolute Bay.

Harrison is a big bear of a man who hasn't lost his ability to tell a good story, even after having been in the upper echelons of the civil service for the past 30 years guiding the development of Canada's Arctic strategy and implementing the largest court-ordered, out-of court settlement of the Indian residential schools claims. When he has something to say, people generally listen.

But even he couldn't keep the attention of the audience when the chief officer on-board announced that the ship was approaching two polar bears on the sea ice.

A fire couldn't have cleared the room any faster. Up on the foredeck, all talk of science, sovereignty, the status of the Northwest Passage and the future of the Arctic gave way to rapt silence as the ship slowly sliced its way through the ice.

The bears - a mother and her cub - were blood-soaked after finishing off a seal they had just killed.



This was the fourth time we had been alerted to bears on the sea ice that day, and it wouldn't be the last. By the time dinner was served that night, we had spotted 16 bears in about eight hours.

For oceanographer Eddy Carmack, the architect of this weeklong Arctic boot camp, the day couldn't have been scripted any better. Now that changes in the climate and the inflow of ocean currents are warming the Arctic Ocean, the future of the region appears to be as uncertain as the longevity of the ice those polar bears walk on.

As head of Canada's Three Oceans (C3O) project, Carmack is leading a multidisciplinary scientific effort to figure out how the many channels that make up the Northwest Passage and the Arctic archipelago draw and flush out warm and cold, as well as fresh and salty sea water from the Atlantic and the Pacific. In time, the data should help public policy decision-makers find ways of adapting to and perhaps mitigating the many threats the region is facing.

What Carmack wanted to get from those he invited was advice on how to bridge the wide gap between Arctic science and public policy.

While most Canadians are well aware of what some of the threats to the Arctic are, what to do about them is largely unresolved. So far, the government of Canada has responded largely by making Arctic sovereignty a priority.

Prime Minister Stephen Harper laid it all on the table in the summer of 2007 when he announced plans for a new icebreaker, up to eight ice-capable patrol boats, a deepsea port at Nanisivik on Baffin Island and a world-class scientific research station to be located somewhere along the Northwest Passage.

The biggest threat to Canadian sovereignty in the Arctic, he seemed to suggest, were illegal aliens, terrorists and rogue ships that might try to make the voyage without asking for permission or complying with Canadian regulations.

"Canada has a choice when it comes to defending our sovereignty in the Arctic; either we use it or we lose it," Harper said. "And make no mistake, this government intends to use it, because Canada's Arctic is central to our identity as a northern nation. It is part of our history and it represents the tremendous potential of our future."

The remarks were curious in some ways. Legal experts have been pointing out for years that outside of Hans Island, a sliver of territory in the Lincoln Sea near Greenland, and an energy-rich triangle in the Beaufort Sea, no one is disputing Canada's sovereignty over the Arctic.

In legal terms, the dispute over the Northwest Passage is not really a sovereignty issue; it is a dispute over the extent of control that Canada has over these waters. Neither the United States nor any other country challenges Canada's ownership of resources in the water, on the sea floor or below it anywhere in the Arctic archipelago. The United States merely asserts that the Northwest Passage is an international strait, not the inland waters that Canada claims it to be.

Should the U.S. or some other country prevail in asserting that the passage is an international strait, then any ship planning to make the voyage would not need Canada's consent as long as the transits were continuous. Theoretically, these ships could harbour illegal aliens, terrorists or other undesirables.

So why is Harper proposing to defend sovereignty when it isn't being threatened?

Political scientist Franklyn Griffiths has been writing about Arctic sovereignty for 40 years. He suggests a ban on the phrase "use it or lose it." He believes that this government, like those before it, is exploiting public ignorance to push agendas that have little to do with sovereignty.

While Canada's sovereignty over the Arctic is fairly clear in law, the issue is fuzzy in the eyes of most Canadians.

Many people in Canada continue to be obsessed with the idea that control over the Northwest Passage lies at the heart of the Arctic sovereignty debate. They fear the U.S., or possibly some other country, will take away what rightfully belongs to Canadians.

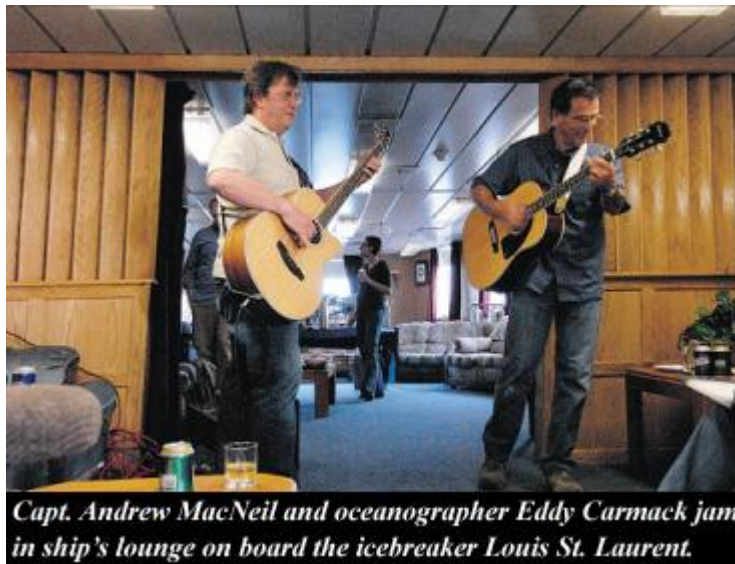
Few realize that the bigger threat to sovereignty and security in the region is climate change, energy development and shipping that has the potential to wipe out or seriously hurt Arctic fish, beluga, narwhal, walrus and polar bear populations, which, in turn, would devastate Inuit, Inuvialuit and Gwich'in cultures.

In the absence of environmental and cultural integrity, Canada's sovereignty over the Arctic would likely be more seriously compromised than it would be if it lost

the dispute over the Northwest Passage with the United States or some other country.

The idea that the Northwest Passage is central to the Canadian identity may seem strange to newcomers to the country, but it is not so far-fetched.

Those on board the *Louis St. Laurent* got a hint of that the night before when Carmack and Capt. Andrew MacNeil laid down their guitars in the ship's lounge and allowed one crew member to lead everyone in a rousing rendition of Stan Rogers' famous a cappella Northwest Passage.



The song recalls the story of early explorers searching for that "one warm line" that runs through the *Northwest Passage*. Even though the lyrics suggest that Stan Rogers had only a vague and somewhat mistaken idea of what that history was, the song has touched Canadians in every walk of life.

Harper once referred to it as Canada's great unofficial anthem. Former governor general Adrienne Clarkson publicly quoted the lyrics twice: once in her first official address and again when she opened the new Canadian museum in Berlin.

When CBC Radio asked listeners a few years ago what song they thought was the greatest Canadian classic, *Northwest Passage* came in fourth behind Neil Young's *Heart of Gold*, Ian and Sylvia's *Four Strong Winds* and *If I Had \$1,000,000* by the *Barenaked Ladies*.

That may be why Canadians are horrified at the thought of waking up some day and finding out that the silence of the pristine North has been broken by the sound of a gas well blowout or Coast Guard crews vacuuming up oil from a leaky tanker.

The Inuit, on the other hand, are more conflicted about what the Northwest Passage means to them. As Peter Harrison reminded us later that day, "They never needed to discover it because they always knew it was there."

Nevertheless, the Inuit in the community of Gjoa Haven on King William Island are proud of the fact that the Norwegian explorer Roald Amundsen overwintered on the island in 1903-04 when he was on his way to becoming the first person to sail through the Northwest Passage. A few aren't shy about sharing the fact that they are his illegitimate offspring.

Over in Resolute, on Cornwallis Island, where beluga whales and narwhal routinely migrate along the Northwest Passage in summer, the waterway has much different meaning to residents. Some of us found that out before the voyage while feasting with several of them.

The mayor of Resolute, for example, was so concerned about an oil spill in the Northwest Passage that she had asked Brig.-Gen. David Millar, commander of Joint Task Force North at the time, to go to Resolute the following year to conduct oil-spill cleanup experiments.

Intimately tied to the Northwest Passage as they are, many residents of Resolute are nevertheless resentful of being relocated from northern Quebec to Cornwallis Island in 1953.

Most of them were led to believe that they were transported there to lead a better life. But as John Amagoalik, one of 75 people who made the trip, told a parliamentary committee many years ago, the reality was something else.

In the 1980s, Amagoalik was one of the driving forces behind the creation of a new Nunavut government, which was eventually established in 1999. He was also a champion of Inuit rights, which had been compromised in the 1950s when the federal government forced Inuit to wear dog tags after they were relocated, and sent their children away to residential schools.

"We had been told that we would all be going to the same place," he said of the relocation. "But once we got past Pond Inlet (on Baffin Island), the RCMP came to us and said 'OK, half of you have to get off here and half of you get off over there.' I remember all the women started crying and all the dogs on the decks were howling. It was something I will always remember. The exercise has created quite a bit of bitterness because the government of Canada was not honest with us. They did not tell us the real reasons. Instead, they told us it was for better hunting and job opportunities. But the real reason was for Arctic sovereignty."

It was no coincidence that Amagoalik delivered his testimony in 1986. The year before, the issue of sovereignty over the Northwest Passage made front pages across the country after the U.S. Coast Guard cutter Polar Sea made the voyage.

It wasn't the first time that an American ship had done the trip. The U.S. Manhattan did it in 1969 to determine whether the passage could be used as a commercial transportation corridor. But in each case before 1985 and after, the Americans went to great pains to get Canada's permission.

This time, they deliberately decided not to do so.

Unable to resolve the issue diplomatically, the Canadian government expressed "deep regret" before giving the Polar Sea the permission it didn't ask for.

The Americans, however, refused to play along. When the Canadian government issued another statement explaining that the primary purpose of the voyage was to save time and money, Paul Robinson, the U.S. ambassador to Canada, snapped at journalists, insisting that the Americans were merely asserting their right of innocent passage through international waters.

In that one terse statement, Robinson put more than a century of political and legal manoeuvring in Canada to the test.

Until then, the strength of Canada's control over the Northwest Passage rested, in large part, on the historic title

Canada was granted to the region when Great Britain transferred the lands in 1880.

It was assumed that from then on, "effective occupation and control" was all that was required to demonstrate that sovereignty.

The voyage of the Polar Sea, however, once again put the fear of uncertainty in the Canadian government. Apart from the Arctic Waters Pollution Prevention Act, which was passed in 1970 in the wake of the voyage of the Manhattan, establishing a police presence in the Arctic archipelago and patrolling the Northwest Passage on occasion, Canada hadn't done a good job of asserting control over the area.

In fact, it had pretty much relied on the Americans to deal with military and security issues until then. When Canada gave up on its promise to build new icebreakers in the 1970s, it didn't help.

Just as worrisome was a clause in the 1982 United Nations Convention of the Law of the Sea that gives a country the right of passage through waterways that join two high seas.

Connecting as it does Davis Strait and Baffin Bay in the east to the Chukchi and Bering seas in the west, it would be hard to argue that the Northwest Passage does not fit this definition of an international strait.

The argument, however, becomes weaker when the legal precedent that better defines when foreign-flagged ships have the right to pass through such waters is applied.

That precedent was set in 1949, when the International Court of Justice ruled in favour of Great Britain in declaring the Strait of Corfu in the Ionian Sea to be an international waterway.

Most experts believe that the court ruled in favour of Great Britain on the basis that it and seven other countries had made more than 2,800 transits in an average year.

No such claim of prior use could be made about the Northwest Passage. By 1985, very few foreign vessels had made the full transit.

Canada would have likely won had the dispute over the status of the Northwest Passage gone to the international court back then.

Instead, Canada decided to strengthen its claim over the entire region in 1985 by following the generally accepted legal practice of drawing straight baselines from headland to headland around the Arctic Archipelago, just as the Norwegians had done in 1952 to maintain control over the fisheries around the islands that lie along its west coast.

Baselines such as these make it clear where internal waters end and where a 12-mile territorial sea begins.

"Canada's sovereignty in the Arctic is indivisible," external affairs minister Joe Clark told the House of Commons when he announced the drawing of the baselines in 1985. "It embraces land, sea and ice. It extends without interruption to the seaward-facing coasts of the Arctic islands. These lands are joined and not divided by the waters between them."

Initially, the United States and Great Britain protested. But in 1988, U.S. president Ronald Reagan and prime minister Brian Mulroney found some common ground when they signed the Arctic Co-operation Agreement.

In that case, the U.S. agreed to get the consent of Canada before undertaking voyages through the Northwest Passage. It also agreed to abide by regulations set out under the Arctic Waters Pollution Prevention Act. Both countries,

however, agreed to continue to disagree on whether the waterway was an international strait or the internal waters of Canada.

Since then, there has been some tinkering with legislation that applies to the sovereignty issue, but nothing that really changes the position of the two countries.

Don McRae, a University of Ottawa law professor, has written extensively on the subject of Arctic sovereignty and is widely cited by colleagues in the field. He believes that Canada has done pretty much all it can do to cement its claim over the Northwest Passage.

The threat now, he says, can only come from a state that decides to take the issue to the international court, or a state that decides to make a transit without seeking Canadian permission.

Ironically, the United States is the one country that won't be able to go to court.

That right was relinquished when it withdrew its acceptance of the compulsory jurisdiction of the international court following a case that was brought against it in 1984 for supporting the Contras. The Republic of Nicaragua had claimed that the U.S. violated international law by supporting Contra guerrillas in their rebellion against the government, and the courts agreed two years later.

If a country like Great Britain went to court to get the matter resolved, Canada's position would likely prevail, says McRae. And he is not alone in believing that. Still, he says there are no guarantees.

"Predicting the outcome of litigation is a hazardous business in international law, particularly when one is dealing with an area that is in a sense unique, with little in terms of prior authority to assist in the prediction," he says.

"The combination of the sheer size of the area involved, the fact that it is comprised of land and frozen sea, the fact that the Inuit have for centuries used the land and water as if they were interchangeable, all go to make examples of the use of straight baselines elsewhere useful, but not entirely to the point."

Two things could go against Canada if the matter went to the international court, according to McRae.

While Canada might rightly argue that there have been few commercial transits of the Northwest Passage, the same cannot be said about the passage of foreign submarines.

No one knows how many submarines have passed through Canadian Arctic waters, but it is clear that the United States, Russia, Great Britain and France have done so and are likely to continue to do so.

Canada's case might also be undermined if traffic in the Arctic increases.

While there is no legal case that defines how much traffic would be required to prove that the Northwest Passage is an international strait, it's clear that transits in the waterway have increased dramatically since 1998.

Between 2000 and 2004, there were 24 vessels that made the voyage, almost twice as many as in the same period a decade before. In 2007, 86 ships had entered the Arctic waters along the Northwest Passage. Eleven of those made the full transect.

The issue of whether the passage will ever become an important commercial waterway has been a matter of intense debate in recent years. So far, no one has got the upper hand.

Ten years ago, for example, ice experts were insisting that the Northwest Passage would not become a commercial waterway for a long time because it wouldn't be seasonally ice-free until the end of the century. Five years later, however, some of those same experts were acknowledging this could happen much sooner.

Now critics such as Franklyn Griffiths, international affairs journalist Gwynne Dyer and military historian Jack Granatstein are arguing the passage will never become a commercially viable waterway because the direct route over the North Pole is shorter, cheaper and less subject to shipping regulations.

This may be true, but the argument ignores the fact that oil and gas and mining companies have staked vast areas of real estate along the passage and in the archipelago. The best way of transporting those resources likely would be through part or all of the passage.

It also ignores the fact that the five coastal Arctic states are all staking out new territory in that vast region around the North Pole that is not now owned by anyone. While foreign-flagged ships should still have the right of innocent passage through these waters once the territory is carved up, they will likely be subject to some stringent shipping regulations.

Don McRae describes two possible scenarios for the fate of the Northwest Passage.

The first is that the issue of Canada's "sovereignty" over the passage will remain unresolved for many years as the interests of governments wax and wane.

The alternative is that Canada will be faced with more and more vessels making the voyage through the passage without asking permission or complying with Canadian regulations and standards.

"Canada will therefore be compelled to arrest any such vessel, provoking a legal challenge by the vessel's flag state," says McRae. "In short, Canada's claim to treat the waters of the Northwest Passage as the internal waters of Canada would be directly in question. In this way, the issue of 'Arctic sovereignty' could finally be resolved."

Griffiths doubts Canada will ever be able to mount an oceanic defence of the Arctic. Nor does he believe it would be desirable, since the Coast Guard has been doing a pretty good job patrolling the region.

He believes the United States no longer gains from a position that treats the passage as an international strait because that would provide easy entry to foreign vessels that may carry terrorists or weapons of mass destruction.

"Like nostalgia, sovereignty ain't what it used to be," he told me one night in Edmonton. "Like the sea ice, our sovereignty problem in the Northwest Passage is melting away."

Griffiths believes it's time for Canada to take the lead and extract "yes" for an answer from the United States.

"Perhaps we can continue to disagree over the status of the Northwest Passage," he said. "But in the meantime, I think we should be talking to the Americans about a co-ordinated approach to managing the Northwest Passage. In this case, Canada could undertake to govern the Northwest Passage as if they were internal waters without prejudice to the American position."

Fruitful as an initiative like this would be, it might not resolve the issue entirely. Another, more chilling scenario is described succinctly in a recent article by Canadian Maj. J. Sheahan and his colleagues for the *Canadian Army Journal*.

In this futuristic essay, a strategic analyst is writing about a security crisis unfolding along the Northwest Passage in 2040. The world is a very different place at this time.

Huge investments in alternative energy have not been enough to offset the decline in conventional oil and gas reserves. While there is no evidence of a serious energy crisis looming, prices are volatile. The focus is now on the reserves in the Arctic that have been identified by the U.S. and Canadian Geological Surveys. The \$100 million that the Canadian government invested in the search for Arctic oil and gas in 2009-14 has finally paid off.

In the meantime, climate change has taken its toll on the Arctic. Roads, airport runways and entire communities are collapsing as permafrost thaws. Engineering difficulties and the high cost of dealing with the problems make progress slow. Tensions are rising between Ottawa and the governments of Nunavut and the Northwest Territories.

After Canada's withdrawal from Afghanistan in 2011 and a decade-long economic slump that followed the recession in 2008-10, security requirements in the Arctic have been shortchanged.

The long-awaited icebreaker and patrol boats for the Canadian Coast Guard and the military have been finally delivered after many delays. But the focus on surveillance is mainly on electric surveillance. Military muscle in the North is weak.

Worse still is the deep port at Nanisivik, which has burned down. Plans to rebuild it have been delayed due to financial considerations.

All this could not come at a worse time for Canada's effort to maintain effective control and occupation in the Arctic.

Political tensions have been rising in the circumpolar world. All five coastal Arctic states have met their deadline for claiming territory around the North Pole under the United Nations Convention on the Law of the Sea. But the rulings have taken more than 10 years to be delivered. None of the Arctic countries is happy about the outcome. Nor are China and South Korea, which want a piece of the Arctic. The rulings have been under appeal for 20 years.

As diligent as the Circumpolar Arctic Treaty Organization is in working to resolve uncertainties over shipping regulations and resource exploitation, it hasn't got far, now that Russia has bowed out of the group. Even minor issues such as environmental protection become irritants in the protracted negotiations.

There is some good news. Canada has made progress over sovereignty issues by resolving the dispute over Hans Island and the Lincoln Sea. But Canadians are still outraged that the government gave the U. S sovereignty over 60 per cent of the contested area in the Beaufort. As it turns out, this area is four times as productive in producing oil and gas as the area that Canada was left with.

Canada, however, does get one concession from the United States for sacrificing so much: The U.S. gives up its claim that the Northwest Passage is an international waterway.

The bad news is that China and Russia have indicated that they will challenge this.

All this and more sets up a frightening scenario in which an East Asian energy giant owned by a company that had dabbled in black market activities such as firearms, narcotics and the sex trade, buys an oil and gas lease on Prince Patrick Island at the northwest end of the Northwest Passage.

The initial drilling goes much better than expected. When the company applies for early exploration rights on the rest of the island, the Canadian government declines, noting that the sale of those leases is still some years away.

Most everyone assumes that is the end of it. But in the coming months, remote surveillance data show that the company's foreign workforce at Prince Patrick Island has increased from 100 workers to 1,000. Ships and helicopters serving the operation are landing on parts of the island where they have no clearance to be.

In the weeks ahead, an Inuit Ranger patrol is greeted with men carrying semi-automatic weapons. Language barriers prevent them from communicating, but the message is clear. The Inuit are told to go away.

Realizing there might be a threat to national security, the attorney general of Canada asks the chief of the defence staff to be prepared to help if the RCMP is unable to deal with the situation. An hour later, the prime minister's chief of staff contacts the ministers of foreign affairs, defence, border services, fisheries and oceans, public safety and the attorney general. He explains to them that the prime minister wants a briefing at her residence tomorrow at 11 a.m. to identify options "to deal with an unauthorized foreign presence in Canada's North."

Far-fetched as this all might seem today, the authors remind critics that no one anticipated the voyages of the Manhattan or the Polar Sea. Nor did they imagine that a Russian cargo plane would land in Churchill in 1998 and take off with a newly built helicopter to territory controlled by black-market lords. Or that the Russians would resume Cold War trans-polar flights in 2008.

Sheahan and his colleagues might have also added that the promise of a new icebreaker, patrol boats and deepwater port at Nanisivik that the prime minister made nearly three years ago has still not got off the ground.

Whichever way one looks at the scenarios described by Sheahan and his colleagues, the fact is the future of the Arctic is as unpredictable as the current pace of thinning ice, melting glaciers and thawing permafrost.

That was brought home to me one night when I was on the foredeck of the Louis St. Laurent watching the midnight sun reflecting off the broken ice. Eddy Carmack was with me, talking about what the Arctic looked like in the past.

Just 12,000 years ago, he noted, sea levels were down more than 100 metres, revealing a land bridge between Siberia and Alaska that allowed Eurasians to follow mammoth, mastodon, giant bison and antelope into North America. Much as that bridge opened the door to the movement of people and animals, it also prevented warmer, nutrient-rich Pacific water and many marine animals from moving into the Arctic.

When sea levels rose, the back door of the Arctic started to leak. Warm Pacific water resumed its flow through Bering Strait and into the Canada Basin of the Beaufort Sea.

Several years ago, Carmack noted, he and his colleagues found a huge warm layer of this Pacific water sitting 60 metres below the surface of the Canada Basin beyond the west end of the Northwest Passage. It was a big surprise. Right now, it is too far down to have a catastrophic effect on the ice at the surface. If it did, it would dramatically accelerate the melting that is already occurring.

More recently, however, his colleagues found another thinner layer of warm Pacific water that is forming in the summer much higher in the water column. Small as it is in comparison, it has the potential to significantly affect the climate of the region.

"The point of all this is that when things change in the Arctic, they can change very fast and very dramatically, and when the physical world changes, the biological world is soon to follow," said Carmack. "Right now we just don't have the data we need to predict the future. And we won't be able to unless decision-makers fund the long-term scientific research that is required."

The following day we were sailing along the south end of Victoria Island in the Northwest Passage when the ship suddenly stopped. An explanation for the delay wasn't offered, but rumour had it that the prime minister was going to board the ship at some point on his annual tour of the Arctic.

Being a journalist, I tried to get confirmation. Everyone I talked to insisted that this was just a routine stop to deal with some on-board communication issues.

That night I was sitting at the dinner table with Senator Nick Sibbeston and scientists Buzz Holling and Bob Dickson, both world-renowned in their fields. Two well-groomed men appeared out of nowhere and sat down on the other side of the table.

It was surreal. Both men acted as if there was nothing strange about them suddenly showing up out of nowhere in the Northwest Passage. Although they were vague about what it was exactly that they were doing, neither one ducked our questions.

In the end, Harper never did get on board. But once the Louis St. Laurent arrived in Kugluktuk for a crew change several hours later, a team of Canadian scientists got on board. They were on their way to meet American colleagues on the U.S. Coast Guard Cutter Healy to determine who has limited sovereignty over the extended continental shelf in the Arctic Ocean.

In the end, none of those who had been invited on the journey had any definitive answers about what to do about the future, but most agreed that the Northwest Passage is that warm line that ties together the idea of the "true north, strong and free" and the unexploited "Everywhere / A huge nowhere" that poet Al Purdy wrote about many years ago.

That may well be the reason why no matter how often the government polls Canadians about what matters to them most, the Arctic is always near the top of the list.

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(Ed Struzik, aboard the Louis St. Laurent, Peel Sound, Northwest Passage.
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