CANADIAN GLOBAL AFFAIRS INSTITUTE
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POLICY PERSPECTIVE

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Inevitably, Canadian foreign policy scholars are either asked, or feel compelled, to write about the Arctic.[1] More often than not, their writings include the nebulous topic of Arctic sovereignty and it is usually assumed to be under threat. Yet, foreign policy scholars from other Arctic states are not fixated on sovereignty. They are concerned about their ability to defend their homelands from a variety of (especially) state-based threats. Indeed, analysts from other Arctic states are simultaneously fascinated and confused as to why Canadian foreign policy scholars and Canadian political discourse writ large spend so much time narrowly focused on Arctic sovereignty rather than homeland governance and defence. The answer revolves around a misunderstanding of today's concept of sovereignty and a reluctance to talk about threats to the homeland. The former is a legacy of a Canadian need to navigate great powers and allegiances (read the U.K. and U.S.) and the long and difficult history of securing title to the territory.[2] The latter is to avoid U.S.-type language and the (false) assumption that Canada is still "fire-proof". The result, however, is debates in Canada, which use outdated arguments to simultaneously address and avoid conversations about potential, real threats to Canada, which have nothing to do with the Arctic and wider issues about governance. This article returns to the basics to define sovereignty and then applies it in the Arctic context. We finish with a few thoughts on what might be a way forward.

## Sovereignty

Never underestimate the ability of academics to take a relatively straightforward concept and unnecessarily complicate it with intended and unintended consequences. Add political agendas and one can quickly lose focus and obfuscate issues. Certainly, international relations enthusiasts are used to wrestling with the multi-faceted conceptual treatments of sovereignty.[3] As the fundamental organizing principle of the modern state system, sovereignty refers to the absence of any higher authority. In other words, a sovereign state, or more accurately its government, regardless of political nature or stripe, recognizes no higher authority to make decisions about the state. Certainly, a state may cede some of its authority through formal international agreements, such as treaties, but these almost always contain provisions for a state to withdraw, and such decisions do not erode a state's sovereignty.

The scope of a sovereign state's authority, in turn, applies to all of its territory, which includes the land, the maritime approaches, the airspace above both, and to its continental shelves. Today, this scope is the product of *de jure* recognition primarily through full membership in the United Nations (i.e., a seat and vote in the General Assembly), and as embodied in international law. Historically, however, the acquisition of sovereignty in the process of the evolution of the modern state system also entailed the state's ability to control its territory – *de facto*

[1] The authors would like to thank Dr. Ted McDorman for his useful input. All errors and omissions remain the fault of the authors.
[2] Janice Cavell's history of the process is the best for ready access to the primary sources, *Documents on Canadian External Relations: The Arctic, 1874–1949*. (Ottawa: Global Affairs Canada, 2016); and Janice Cavell, "The Sector Theory and the Canadian Arctic, 1897–1970," *The International History Review*, 2018: 1-26.
[3] Stephen Krasner, *Sovereignty as Organized Hypocrisy*, (Princeton: Princeton University Press, 1999).

sovereignty. This normally meant the ability to defend physically, hence control, one's territory by military might from armed state invaders (war), or armed internal forces contesting government authority (rebellion/revolution).

Thus, sovereign states face two distinct threats to sovereignty: the possible withdrawal of (*de jure)* recognition, and the loss of (*de facto)* control over part or all of its territory, which was not agreed to or arranged via treaty/act of Parliament. For most sovereign states, *de jure* and *de facto* sovereignty go hand in glove. There have been rare occasions in recent times when this has not been the case. For example, Ukraine is still recognized by the overwhelming majority of the community of sovereign states as possessing *de jure* sovereignty over Crimea, even though Russia now possesses *de facto* sovereignty of this territory. How this anomaly will be ultimately resolved remains to be seen.


**Figure 1:** A map used by Canada's official NATO Twitter account (left) to contest Russia's annexation of Ukraine's sovereign territory of Crimea. Russia's official NATO Twitter account tweeted the map on the right in reply. As the authors note, this annexation is a rare example of de jure sovereignty being unaligned with de facto sovereignty. (Source: Canada at NATO/Russia at NATO)

Nonetheless, this situation is the exception in today's world – the result of two world wars and the evolution of international law. Moreover, it is also extremely rare in the modern system that control over territory is contested through the threat or use of force by other sovereign states. Rather, the use of force between states is about governance of the state – either by whom or how. For example, the objective of the United States-led coalition that invaded Iraq in 2003 was to overthrow Saddam Hussein's dictatorship and replace it with a liberal, democratic government. *De jure* sovereignty remained with Iraq within its recognized territorial borders; it maintained, for example, its seat on the UN General Assembly. The civil war that followed was an internal contest for control of the government. Elements within the Kurdish population sought to obtain recognition of part of the Iraqi northern territory as a separate, independent Kurdish state with *de facto* control of northern Iraq (which was also desired by Kurds in parts of Syria). However, they have found little to no support from the sovereign states of the region, or the larger international community of sovereign states. In effect, the principle of territorial integrity or the sanctity of sovereign borders is largely uncontested by the international community.

This support for the "rigidity" of borders can be traced back to the period of de-colonization following the Second World War. (Canada can trace it back a little earlier to 1931, with the passing of the Statute of Westminster when Canada had full foreign and defence policy decision-making ability separate from the U.K.) The newly independent sovereign states tacitly agreed that existing boundaries would be maintained inviolate, even though they transcended historical ethnic and tribal lines. To do otherwise would open a Pandora's Box and more world wars. Of course, there have also been rare cases when a sovereign state has ceded *de jure (*or recognized*)* sovereignty over part of its territory as a function of civil war, creating a new sovereign state, which the international community has in turn recognized. This has been the case for Indonesia

with the creation of Timor Leste and most recently, Sudan and South Sudan. Even so, their territorial area of authority or control has been established within existing boundaries of the former state. In each case, the UN General Assembly, after being blessed by the UN Security Council, voted to accept their applications as full members of the UN.

In effect, the extant relationship between *de jure* and *de facto* sovereignty has changed significantly over time. In the formative centuries of the modern sovereign state system, *de facto* sovereignty (or a state's ability to repel would-be foreign invaders and the need, for example, for massive standing armies) has been more significant than *de jure* sovereignty, reflecting the contested nature of state borders in the evolution of states. Over the last century, this relationship has been reversed with *de jure* (recognition) now dominant and *de facto* sovereignty assumed and enforced via measures short of force or via international courts of law. This reversal is vital to understanding why no Arctic sovereignty problem confronts Canada, even if one applies older ideas about the primacy of *de facto* sovereignty and assumes this is best shown by military projection.

## Canada's Arctic Sovereignty

This brief exposition of the sovereignty question provides the backdrop for understanding the Canadian Arctic sovereignty preoccupation. While one might contest the legality of the transfer of *de jure* sovereignty of Arctic territory from the United Kingdom to Canada in 1880 by Order in Council,[4] no one in the international community has contested or challenged Canada's legal sovereign status over the area. Nor has any sovereign state provided a *de facto* challenge (i.e., seized control of part of the territory) to Canadian sovereignty over its Arctic territory.[5]

Of course, the status of the Northwest Passage (NWP) is regularly portrayed as a threat to Canadian *de jure* and *de facto* sovereignty. While one may debate whether the passage should be legally treated as an international strait, this debate is not about Canadian sovereignty *per se*, no more than other recognized international straits are about the sovereignty of the adjacent states. In fact, ironically, the *de jure* principle of recognition reinforces Canadian sovereignty relative to the NWP. If the Canadian government decided to act outside of this principle, and, for example, unilaterally close the passage, this would create the conditions for a sovereignty challenge. Similarly, the issue of the Canadian *de jure* status is in dispute with the United States over the Beaufort Sea and into the Arctic Ocean relative to its exclusive economic zone. However, it is not a threat to its sovereignty, simply because the status of both has not been decided through international recognition. In other words, Canada's sovereignty in these cases cannot be threatened because it doesn't possess *de jure* sovereignty over these areas.[6] The process is similar for all Arctic states. Until the international community through the UN Convention on the Law of the Sea (UNCLOS), or the United States and Canada in the case of the Beaufort Sea, reach a negotiated agreement – recognized by the international community and embedded in international law – no one has sovereignty, and thus it cannot be threatened.

[4] "… From and after September 1, 1880, all British territories and possessions in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions, shall (with the exception of the Colony of Newfoundland and its dependencies) become and be annexed to and form part of the said Dominion of Canada; and become and be subject to the laws for the time being in force in the said Dominion, in so far as such laws may be applicable thereto. (sgd) C. L. Peel." Imperial Order in Council (July 31, 1880). See in C.O. 42, vol. 764, p. 329; also *The Canada Gazette*, vol. XIV, no. 15 (Oct. 9,1880), p. 389.

[5] And of course this sidesteps the *de facto* and *de jure* seizure of (now) Canadian territory from Indigenous peoples.

[6] The problem with ocean space is that states may have "shared jurisdiction/sovereignty" – the NWP, for example, is unquestionably under Canadian sovereign authority but perhaps not for all purposes (if the NWP is an international strait, then other states have a passage right). The *de jure/de facto* terminology does not truly capture this nuance but the main argument remains.

This, of course, raises the question of *de facto* challenges, and underpinning this question in Canada is the lack of capabilities to control the vast expanses of the Canadian Arctic. Canada, in reality, does not need to control the territory, because there are no challenges to its *de jure* sovereignty. While many point to Russian Arctic military capabilities, their simple existence does not translate into a *de facto* threat to Canadian sovereignty. Russian aggression is evident across the world but we have yet to see Russian designs to take over and control Canadian Arctic territory. Even with the resumption of Russian military flights over the Arctic Ocean approaching Canadian territory, Russian pilots have been cautious to respect Canadian airspace knowing the potential consequences of a significant, lingering breach. Canadian Arctic sovereignty is not at stake. Rather, bona fide threats to Western states as a function of Russian designs on territory in Eastern Europe and former Soviet republics must be discussed in the context of homeland protection. The Canadian Arctic remains a pathway to key potential targets in the south (especially in the U.S.).

The idea that Russia, or other states, would invade and seize Canadian Arctic territory, which would result in a loss of sovereignty, is not the concern. It could happen by stealth if we are not vigilant about the amount of territory purchased by foreign state-based companies, but that would be entirely Canada's fault. The issue is the rapid pace of technology and denial-of-access tactics Russia and China use in key areas in other parts of the world that requires a serious conversation about how Canada can defend itself and its allies but which Canadians are reluctant to have. As evidence is testimony that former deputy commander of NORAD, Canadian Lt.-Gen. Pierre St. Amand, gave to the House of Commons' Standing Committee on Defence. Observers gaped when he stated frankly the (public and stated) limits of the U.S.'s Combatant Command USNORTHCOM protection of Canadian territory from a North Korean ballistic missile.[7] Canadians are not in the habit of talking about threats to the homeland but we are very practiced at suggesting there are threats to sovereignty. A ballistic missile attack, however, is not a sovereignty threat; it is the quintessential homeland security threat. Canada would carry on if a missile were to strike, but the devastation to Canada's people, infrastructure, environment and economy would be catastrophic.

Despite legitimate concerns about the reach and potential destruction of cruise missiles, hypersonic weapons and insufficient defences for both, when Canadians write about sovereignty it is usually with reference to the Arctic and a perceived, nebulous loss of "sovereignty". For example, when China's Xuelong ship transited the NWP in 2017, it did so with the Canadian government's express permission, which, in reality, was actually a courtesy (along with practical considerations), rather than a de jure requirement. We are skeptical that China's voyage was only for scientific research, but China is not the only country that has stated and hidden agendas – some would call this diplomacy – and the NWP is no more or less Canadian than it was before and after the Chinese transit.

Similarly, when NORAD fighters (Canadian and American) rise to meet Russian bombers approaching Canadian airspace, they are portrayed as protecting Canadian sovereignty. In a narrow sense, this is correct; we do not want any foreign state to seize territory by coercion and take control of the country. NORAD's mission, in this regard, is about much larger deterrence and defence considerations within the overarching strategic political relationship between

[7] Lt.-Gen. St. Amand, "Evidence on 14 September 2017 to the Standing Committee on National Defence" found at http://www.ourcommons.ca/DocumentViewer/en/42-1/NDDN/meeting-58/evidence. St. Amand's statement was: "We're being told in Colorado Springs that the extant U.S. policy is not to defend Canada. That's the policy that's stated to us, so that's the fact that I can bring to the table."

Moscow, Ottawa and Washington. In other words, the Russian flights and NORAD response have little to do with Arctic sovereignty.

At the same time, the dispatch of Canadian military forces into the Arctic on training exercises is also portrayed as a sovereignty mission but is more accurately called interoperability exercises (both between other Canadian agencies and among invited allies). Referencing sovereignty might make for good domestic politics; after all, it is a motherhood-and-apple-pie statement that one wouldn't dare denounce or analyze critically. Canadian Arctic territory, however, is not contested by the U.S. or any foreign power, save managed disputes with close allies in the Beaufort Sea, Lincoln Sea and Hans Island. In other words, Canadian military activity in its Arctic territory is not about sovereignty; it is about homeland defence as part and parcel of NORAD commitments, regular surveillance, search and rescue, aid to the civil powers and a ready solution to an unforgiving and vast territory which few other agencies have the equipment and liability to reach.

The misuse of the concept of sovereignty in the Arctic context hinders progress on relations with Indigenous communities. The Inuit Circumpolar Council's definition of sovereignty identifies threats not from foreign elements outside the state, but inside the state: "issues of sovereignty and sovereign rights must be examined and assessed in the context of our long history of struggle to gain recognition and respect as an Arctic indigenous people having the right to exercise self-determination over our lives, territories, cultures and language".[8] Reflecting this, the Nunavut Youth Council circulated a poster at the height of Arctic sovereignty concerns in the 2000s. The poster featured a picture of an Inuk youth in traditional clothing, with the caption "Sovereignty includes me". This is not, of course, a challenge to Canadian Arctic sovereignty. Rather, self-determination is a call for greater political autonomy and political inclusion in decisions governments make over direction and management in the Arctic. These are indeed the most important issues facing the governments of Arctic states, especially for Canada. In this regard, one should conclude that Canada's Arctic sovereignty preoccupation about suspect external threats detracts attention from these more important political issues.


***Figure 2:*** *A poster commissioned by an indigenous youth group in Nunavut with the goal of promoting inclusive views of sovereignty throughout Canada. (Source: Nunavut Youth Council)*

## Conclusion

Referencing "Arctic" and "sovereignty" in the same sentence is generally a recipe for alarmist and precipitous action. It is usually translated into a demand for a more military presence, which, while a ready answer for the Canadian government, ignores the fact that sovereignty issues today are settled in courtrooms. There are no de jure or de facto threats to Canadian Arctic sovereignty. If Russia is a real threat, it is to Canada and its allies as a whole. Indeed, the Arctic is the one issue area in which Russian co-operation has been tremendously helpful.

[8] Inuit Circumpolar Council "Sovereignty", http://www.inuitcircumpolar.com/sovereignty-in-the-arctic.html 2.1

Certainly, as the balance between de facto and de jure sovereignty has changed over time, one cannot predict how it might change in the future. For now, however, Canadians should replace Arctic sovereignty with homeland defence and devote attention to issues which relate to how the federal government exercises its sovereign authority over the people who live in its Arctic territory and how it will work with allies now and in the future to defend Canada.

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