

**THE NORTHWEST PASSAGE: SOVEREIGN SEA
WAY OR INTERNATIONAL STRAIT?
A REASSESSMENT OF THE LEGAL STATUS**

Gillian MacNeil

ABSTRACT

The status of the Northwest Passage has been the subject of disagreement for at least 30 years. The debate has gained new urgency recently as evidence suggests that the warming trends associated with climate change are causing a reduction in Arctic sea ice. The practical consequence of those physical changes is that the formerly ice choked waters of the Northwest Passage might become an attractive route to commercial shippers as early as 2050.

The debate surrounding the status of the Passage is relatively narrow. At issue is the degree of control which the coastal state, Canada, has over the waters of the seaway. The Canadian position is that the Northwest Passage forms part of its historical internal waters and, as such, Canada has the right to exercise full sovereignty over the Passage. These sovereign rights mean that Canada is the only country with the automatic right to use the Passage. By contrast, potential user states, including the United States, have argued that the Northwest Passage is an international strait and that foreign ships enjoy navigational rights in those waters.

The debate between the coastal states and potential user states has been framed as a legal question and is therefore suited to a legal examination. An analysis of the dispute, placing the positions of the parties against customary law of the sea and the provisions of the United Nations Convention on the Law of the Sea, indicates that both

arguments suffer weaknesses.

While the parties' words indicate that they may be at potentially irreconcilable odds, a review of state practice suggests the development of an Arctic regime, which is responsive to the needs of the coastal state and the requirements of user states, is currently underway.
