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Chair

Mr. Merv Tweed

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Standing Committee on Transport, Infrastructure and Communities

Tuesday, March 31, 2009

• (1530)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Thank you and good afternoon, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 10.

Pursuant to the order of reference of Wednesday, February 25, 2009, we are dealing with Bill C-3, an act to amend the Arctic Waters Pollution Prevention Act.

Joining us today as witnesses in the first hour are Mr. William Adams, Professor Émilien Pelletier, and Chester Reimer. Welcome, and thank you.

Joining us from the University of Calgary is Robert Huebert. Mr. Huebert, because we don't have your notes, I would just ask that when you're making your presentation you speak slowly to give our interpreters a fair chance.

Dr. Robert Huebert (Associate Professor, Department of Political Science, University of Calgary): Okay.

The Chair: All right. Thank you.

Basically, the formal routine is presentations and then questions from the members at the table. I don't know if there's an order or if you guys have had any discussion.

Mr. Adams, do you want to start us off?

Mr. William Adams (As an Individual): Thank you very much, Mr. Chair.

Good afternoon, members of the committee and others.

I'd like to thank the committee for offering me this opportunity to present this brief concerning Bill C-3 and to support the passage of Bill C-3. I think it will have a very important influence on how Canada handles environmental issues in the Arctic in the years to come.

In the 1970s, as a research scientist with Environment Canada I was involved in the series of studies called the Beaufort Sea project, which included extensive research on the potential impact of oil pollution in the Arctic. It seems that again, almost 40 years later, there is a high probability that greatly increased oil and gas exploration will be undertaken in the high Arctic. There is also an increase in shipping due to reduced ice cover, so it appears there is a growing probability of a major oil spill or even of an oil or gas blowout occurring, which would release oil into this Arctic ice and water regime.

I would like to offer a short summary of these very important earlier Canadian studies.

In July 1973, cabinet granted approval in principle for exploratory drilling using drill ships in the Beaufort Sea. However, the drilling authority was subject to two riders in the cabinet decision. These were that the actual drilling would not take place before the summer of 1976, and that the authority would be issued conditionally on constraints that would be determined by the Beaufort Sea project, which was the name given to the group of studies from which the assessment would be made.

A unique feature of this project was its joint government and petroleum industry nature, whereby industry contributed \$4.1 million—in 1970 dollars—to support the Beaufort Sea project. By the time the project was completed in late 1976, the total cost was estimated at \$12 million.

Included in the project were studies on wildlife, marine life, oceanography, meteorology, sea ice, and oil spill countermeasures. These studies provided ecological baselines for a better understanding of the physical and biological environments and the knowledge related to the consequences of a possible oil spill and methods of oil spill cleanup in ice-infested waters.

Reports on these studies—some 45 detailed technical reports—were published. As well as this technical report series, the reports have been synthesized into six books, which appeared somewhat later. This is an example of one of the books that appeared in the early 1980s. These are very good resources on this massive undertaking.

This particular report was not an impact statement. Its purpose was to present information, not arguments for or against the development of petroleum or other resources in the Arctic. That is, I think, important. It was a baseline study, and it's been a critical Canadian contribution to this very important area of Arctic oil resource exploitation.

The studies undertaken on oil spill countermeasures were the ones that I took part in as an expert on the air, ice, and water interface and what happens to oil when it's released into this regime. We were concerned about the impact of oil on the melting of sea ice in the spring, as well as on the organisms living in, under, and within the ice.

Another major area of concern, which is very interesting in the present day, when we're talking about climate change, was related to the impact of oil on the reflectivity of the ice—in other words, on the albedo of the oil-contaminated sea ice. The concern was whether oil-polluted sea ice from a major blowout could impact the climate by influencing the degree of ice cover from year to year.

The field experiments were conducted by releasing hot crude oil under the two-metre-thick ice in mid-winter near Cape Parry. I can tell the committee from my own experience that should a well blowout occur or a ship release oil under the conditions found in the ice-covered Arctic Ocean, there are very few options even now for the cleanup of such a major environmental disaster.

• (1535)

I've come before the committee to urge them to consider the need for additional and sustainable funding to extend our knowledge of the impact of oil spills and oil cleanup methods in ice-covered waters. It's my great disappointment that after the tremendous efforts by Canada and industry in the 1970s, this excellent work by many diverse scientists across the Arctic in the Beaufort Sea project was not vigorously continued in the following years.

I would also like to suggest that, as in the case of the Beaufort Sea project that was co-funded by the petroleum industry and the federal government, a new long-term project of Arctic research on the impact of oil on sea ice should be undertaken. We now obtain significant data from satellites, including from our own Radarsat system, and more capabilities are being planned. But ground truth is often lacking with regard to sea ice, especially with regard to tracking where the oil goes once it's released into the ice environment.

Finally, I would like to make the point that extending Canadian jurisdiction to 200 nautical miles offshore greatly increases the area requiring monitoring and will greatly increase the cost and difficulty of any remedial action in the case of oil spills.

I am presently chair of the Defence Science Advisory Board that reports to the deputy minister and the Chief of Defence Staff, and we are currently working on a study, sponsored by DND, on infrastructure requirements for increased activity by the Canadian Forces in the Arctic. In fact, we are meeting today, just across the street.

We are also looking at an all-of-government approach, and we are trying to assess the potential for collaborative infrastructure initiatives with the northern communities. I suggest that in the case of environmental disasters in the Arctic, an all-of-government approach will be essential.

Therefore, I hope that Bill C-3 will be just the beginning of a series of actions by the federal government to increase Canadian Arctic research efforts in the critical area of sea ice and oil interactions. If future economic developments occur in the Arctic as projected, then I believe this money would be very well spent.

I have three recommendations. First, provide additional and sustainable funding to extend our knowledge of the impact of oil spills and oil cleanup methods in ice-covered waters. Second, such a new long-term project of Arctic research on the impact of oil on sea ice should be co-funded by the petroleum industry and the federal

government. Third is that a proposed Arctic research program such as this should be an all-of-government initiative and must include the residents of the Arctic.

I'd like to thank the committee again for their attention to my brief, and I'm willing to entertain any questions.

Thank you.

• (1540)

The Chair: Thank you.

We'll go to Monsieur Pelletier.

[*Translation*]

Mr. Émilien Pelletier (Professor, Institut des sciences de la mer de Rimouski, Université du Québec à Rimouski): I would first like to thank the committee for kindly inviting me to appear today.

The Arctic environment is extremely important. We have long known that it is a fragile environment, as is evident from programs such as AMOP that have been mentioned and the many studies carried out at the other end of the world, in the Arctic.

We acquired our experience as chemists and toxicologists largely by studying environmental problems in the Antarctic. That is why we have some knowledge of how hydrocarbons behave in the soils, sediments and waters of the Antarctic. Obviously, the environment there is very similar to the Arctic environment.

It is hard to imagine a major spill of 5,000 tonnes or more of crude oil or refined hydrocarbons in Canada's Arctic waters, including the extended zone proposed by Bill C-3. Weather conditions in the whole southern part of these waters up to the M'Clure Strait, with the Beaufort Sea to the west and the Baffin Sea to the east, are increasingly like the conditions in Prince William Sound, where the *Exxon Valdez* accident occurred. It is reasonable to think that if an accident were to occur in the summer, when there is no ice along the coast, thousands of kilometres of shoreline would be severely contaminated, depending on the location and the prevailing atmospheric conditions in the days following the accident.

Given the area's immense size, low population density and relative inaccessibility, it is unlikely that a rescue and mitigation plan could be implemented within a few days. In cold water, after just 48 to 56 hours, oil turns into a sort of pudding that is difficult to pick up. It then becomes impossible to recover. We believe that the consequences of a spill in the southern zone would be devastating and almost unimaginable. The same is true of the northern zone, where there is a lot of ice. It is virtually impossible to recover oil through and under the ice.

In summary, I would like to make a number of recommendations that I believe could help not only protect the Arctic environment, but also, I hope, support Canada's sovereignty in its Arctic waters and the extended zone proposed by Bill C-3.

We feel that this bill is a small step forward, but an absolutely essential first step. We believe that, as soon as possible, Canada must acquire vessels to enforce its environmental legislation. The environmental impact of an oil spill in Arctic waters is such that Canada must adopt an approach that calls for absolute or extreme protection of its Arctic waters. To develop such an approach, Canada must take the initiative of organizing an international conference to negotiate a protocol to protect Arctic environments and ecosystems.

The protocol could be modelled, for example, on the Madrid Protocol, which protects the Antarctic waters. To protect certain especially fragile marine areas, Canada must develop an environmental zoning plan that identifies restricted zones or sectors where no access for tourism, commercial or industrial purposes is allowed. Lastly, federal departments and agencies should work together to protect the Arctic environment through a formal structure created for that specific purpose, rather than through interdepartmental committees, which are often heavy and too likely to lead to jurisdictional disputes.

Thank you.

[English]

The Chair: Merci.

Mr. Reimer.

[Translation]

Mr. Chester Reimer (Senior Strategic Advisor, Inuit Circumpolar Council): Thank you, Mr. Chair.

I thank the committee members for giving me the opportunity to appear.

• (1545)

[English]

Mr. Chair, your very helpful staff suggested that we keep our comments to five or ten minutes.

I had asked the chair if I played hockey with him way back in my teenage years in Manitoba. He said no, we probably didn't, but we should maybe talk later. I played for the Selkirk Steelers, and we were really lenient with him.

Thank you, Mr. Chair, for the invitation to appear here.

I am appearing here on behalf of Duane Smith, the president of the Inuit Circumpolar Council Canada office, who sends his regrets from Inuvik, in the Beaufort Sea area. He would definitely be willing to respond to any questions that you may have shortly after this intervention on my behalf.

I'm an adviser to the ICC, not only here, but also in Greenland, Canada, and Russia. He asked me to stress the fact that the Inuit don't only live in Canada. Some of the concerns we're presenting here are also the concerns of the one people living across four countries, from Greenland right to Russia.

Let me begin by saying that ICC Canada welcomes the general intent of Bill C-3, which is to protect the Arctic environment. There will be several recommendations that you'll find embedded in my intervention. But as Mr. Adams said in one of his recommendations, it's important to involve the residents of the Arctic.

I would add that it's especially important to involve the Inuit, given the land claim settlements and obligations and the international commitments that the Canadian government has, not only in the implementation and in giving us the opportunity to speak here, but if the bill is passed, in analyzing it and monitoring it to see how it works in the future.

One year ago, as part of an Arctic Council project under the Arctic marine shipping assessment, ICC Canada interviewed Inuit hunters and elders from numerous communities across the Canadian Arctic. In a sense, for some of you who know of the 1970s land use and occupancy studies, these were comprehensive studies that were done across the then-called Northwest Territories and parts of Labrador, which laid the foundation for a lot of things, including the land claim settlements. There were a lot of interviews then. We and the ICC updated those interviews.

We found that despite the effects of climate change and changes that occurred in the Inuit communities within the past years, the Inuit continue to rely heavily on a traditional diet. Some call it "country food". The diet in large part consists of sea mammals and fish, as you are well aware. This traditional diet is based on extensive travel over sea and ice in order to harvest the resources required for subsistence. We'd be happy to supply our report, which is entitled "The Sea Ice is Our Highway", to those who want it.

Inuit continue to rely heavily on the subsistence economy because it is central to who they are as a people. As you know, the store-bought food that ends up in many parts of the Arctic has leap-frogged through airports along the way and a freeze-thaw cycle. The cash that's required and the nutritional value are often not that great when it gets there.

At its core, Inuit life in Canada and across the circumpolar Arctic is connected to what we still call the pristine Arctic ecosystem. As you know, it's perhaps the most fragile ecosystem on the planet. Therefore, any effort to protect the Arctic ecosystem, as this bill intends to do, is a step in the right direction.

As the committee considers this bill to enlarge the area defined as Arctic waters, at the same time, ICC urges you to strengthen the regulations that are enforced within Canada's Arctic waters. ICC Canada also urges the Government of Canada to apply more stringent pollution prevention standards prior to approving any further resource exploitation and development under the current national and international standards, which the Inuit consider to be highly inadequate.

As Mr. Adams said earlier, because there is currently no way to properly clean up pollution in the Arctic waters, the penalties for pollution must be high. There should also be a lot of cooperation with the local people on identifying spots where pollution may be especially problematic for the community. We also have to convince the exploration and development companies that they cannot afford to be careless or allow for any mistakes.

•(1550)

ICC Canada urges the Department of Transport, together with other departments responsible for environmental protection and economic development in the Arctic, to take a coordinated approach, and to do this in cooperation with Inuit in order to ensure the highest possible standards of environmental protection.

Finally, Mr. Chair, we also urge the government to look at all matters in the Arctic from a position of circumpolar and international cooperation, and this bill should do the same. ICC is itself a model in this regard, as Inuit got together in 1977 across what they sometimes look at as artificial boundaries back in Alaska, when they were facing the oil companies moving up and coming in without consultation. That's what happened. Again, I keep referring to Mr. Adams, but he talked about the Beaufort Sea project as well. It's important to include the federal government and the petroleum industry, but if you include the Inuit people, you will also have greater success.

I'd like to take that a step further, though, to make sure we look at the international cooperation that the Canadian government is part of. As all of you know, the Arctic Council is another model that doesn't only include Inuit, but also states. Then there are other international instruments that provide guidance in developing and monitoring this bill.

Arctic sovereignty is a hot topic these days. ICC Canada would caution that the focus on this bill should be on environmental protection, yet it should be located in the larger discussion of international cooperation, sovereignty talks, and the like, which are taking place beyond this bill. These include rights of free, prior, and informed consent of Inuit.

Thank you, Mr. Chairman.

The Chair: Thank you very much.

We'll now go out to Calgary and welcome Robert Huebert.

Dr. Robert Huebert: Thank you very much. I almost feel like there's a little bit of an old Manitoba mafia here, finding out you're from Selkirk and Brandon, being a good Birds Hill boy myself.

In the context of my comments overall, I have four comments in regard to the bill. But let me begin, first of all, by clearly expressing my support. This is an action that we've needed to take for a long time. I'm very happy to see that it is being brought forward, and particularly in conjunction with the mandatory element of the NORDREG reporting aspect. This is something that is of critical importance to our sovereignty concerns in the Arctic and our environmental protection of the Arctic. Having said that, I have four comments that I want to focus on. They deal with the institutions of the protection of our sovereignty, the enforcement that we need for our sovereignty, the surveillance that will flow from this particular act, and, lastly, the diplomatic effort that in my view will be necessary.

Now let me start talking about institutions. As several of the preceding speakers have made clear, Arctic sovereignty is indeed a hot topic, but it has of course been an issue that has been with us since the 1940s, picking up steam in the late 1960s and into 1970s. One of the things I think this bill illustrates is that we need better

institutional formats to coordinate our overall Arctic policy. If we look at the history leading up to the creation of this law, we've already had two periods of time that in my view were lost opportunities when we could have strengthened our claims of Arctic sovereignty even more so. Both the Conservative and Liberal preceding governments have missed opportunities, and once again it comes back to the fact that I don't think we have the proper institutional oversight that addresses it as a pan-Canadian issue.

In 1986 the Conservative government of Brian Mulroney brought in the very strong act closing the Arctic with straight base lines. In my view, and in the view of others, there was the opportunity to have extended the Arctic Waters Pollution Prevention Act at that point. Then in 1996, under the government of Jean Chrétien, the Canada Oceans Act was brought forward. Once again we did not see people quite thinking of extending the Arctic Waters Pollution Prevention Act. I don't offer these comments as criticisms, but rather to suggest that as a result of the lack of an overall pan-Canadian bipartisan approach to the needs of Arctic sovereignty we often have found ourselves historically creating legislation such as Bill C-3 that is absolutely necessary but something that probably should have been and could have been done at least 20 years earlier.

Moving on to the bill itself, there are three major follow-throughs that absolutely have to be monitored and prepared for. The first one is the diplomatic requirement. There will, in all probability, be push-back from both the Americans and the Europeans. The Americans, in January this year, released an Arctic policy where they clearly stated that they view the Northwest Passage as an international strait, and ultimately, when push comes to shove, what we are doing with this act and it do not fit together. By the same token, in the fall of 2008 the European Commission issued a policy paper that also restated their position that the Northwest Passage is an international strait.

Now, we have, on the other hand, the fact that the Russian government is about to release a law very similar to what Bill C-3 is actually doing. We do have a country, Russia in this particular instance, that in fact is very much copying our efforts to increase our control of Arctic shipping. What this ultimately means, in my view, is that we need to launch a diplomatic effort to address those countries that may see this particular act as confrontational to their particular policies. I think it's necessary to push the environmental side to make it clear that perhaps under article 234 of the Law of the Sea we are in fact not going against their interests in this context. But that requires a very strong diplomatic effort.

•(1555)

We also should be looking, with our Russian neighbours, to coordinate the policy so that the world does not necessarily see this as a land grab, as it may be portrayed, but rather as proper environmental stewardship.

The two other aspects I'd just like to briefly touch on, which I note that some of the other commenters have raised already, are the issues of surveillance and enforcement. There is no question in my mind that this act, as necessary as it is, will require significantly more surveillance capabilities.

Once again, the coordination, I would argue, needs to be strengthened. When we're getting ready to put in such things as Radarsat-2, we may be looking at ways of having ship identification systems. There is already comment about the DND project to improve our surveillance, specifically Northern Watch. It is imperative when we have this type of legislation coming forward that efforts such as Northern Watch be strengthened and actually applied.

The last issue I'd like to raise is enforcement. I've taken the time to go through the Hansard comments in terms of the speeches made when this bill was introduced and also to see the comments of some of the other witnesses. I think the one theme the committee is probably very aware of is that if we are indeed serious about this legislation, we do need to be prepared to ensure that everybody is in fact following it. Also, when we indeed do face a country, company, or ship that may wish to challenge this particular legislation, we need to have the ability to ensure that the particular actor follows our legislation. That requires an enforcement capability that at this point in time we probably do not have in full.

We see this among the Russians, the Norwegians, and the Danes. In fact, they are thinking very similarly in terms of improving their enforcement. The promise of the Arctic offshore patrol vessels and the new large icebreaker will all be essential. I suspect we will find that when shipping comes forward, we will need even more than those particular infrastructures.

Ultimately, we need a pan-Canadian approach to ensure that we are taking action such as Bill C-3 in a timely fashion. We need to prepare for the diplomatic push-back that will be coming. We need to improve our surveillance and enforcement.

Thank you very much.

The Chair: Thank you very much.

Mr. Volpe.

Just for the committee's sake, I know that Mr. Volpe has an issue at the end of this hour, so I am going to keep this tight to the seven minutes.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you, Mr. Chairman.

The point I wanted to raise at the end of the hour is really one that has been raised by every one of the witnesses. I'm torn between supporting the bill, as all witnesses have said they want to, and looking closely at how the bill is going to actually be implemented. Mr. Huebert talked about an environmental bill. This is a transport bill. Those of us on this side of the table are looking for some sense of accountability. That accountability has to be shouldered by at least one representative of the government.

Last week I read in Hansard that a representative from INAC suggested that the minister responsible for INAC is the one in charge of what will happen in this area. Recently, we had the Minister of Foreign Affairs and the Minister of National Defence issue statements that suggest they are going to take the measures necessary to do what Mr. Huebert, Mr. Pelletier, Mr. Reimer, and Mr. Adams have proposed in respect of the question of surveillance and enforcement. Every one of you has said, directly or indirectly,

that we need more diplomatic efforts in order to impose our will in an area that's already being contested.

One of the issues not raised in this bill is how much it will cost to conduct this surveillance and ensure enforcement. I'm wondering whether any of you are prepared to say what that amount will be. Will it be the cost of icebreakers, patrol boats, cruisers? I don't want to say Dash-8s, because I suspect that they probably wouldn't be sufficient in monitoring a territory the size of Manitoba. I'm wondering, Mr. Reimer and Mr. Huebert, in particular, what you think would be required to have sufficient enforcement and surveillance.

• (1600)

Mr. Chester Reimer: You're asking for an actual figure, and I didn't come prepared to answer that question. I would say to take a look at the budget of the Inuit Rangers. They are already helping Canada monitor the north. That could be a starting point for what the Inuit could contribute. The Inuit would like to have adequate funding to help Canada monitor and train. There could be funds for training that the Inuit would welcome. This could be used in a partnership manner. But I can't give you any exact figures.

Hon. Joseph Volpe: Both Mr. Adams and Mr. Pelletier talked about the environmental and economic impact. They addressed the environmental impact of increased economic activity, commerce going back and forth through the passage.

Nobody mentioned the Chinese, although they're the biggest exporters of product in the world. Monsieur Pelletier's brief points out that for the Chinese there is a 7,000 kilometre gain to be had by using the Northwest Passage to get from Shanghai to New Jersey. Others have suggested that there is a net benefit of an additional 4,000 kilometres, going from Shanghai to the European market. That would tell me that the Chinese would be a major factor. Apparently, they are already better equipped than we are to patrol or lead their ships through.

Last week one of my colleagues, maybe Monsieur Laframboise or Monsieur Gaudet, asked for an indication of how many vessels are actually in those waters today. If we can't keep track of them today, what are we going to do when they actually start coming in numbers that we won't be able to control?

I don't know whether Mr. Adams or Monsieur Pelletier has thought that one through.

• (1605)

[*Translation*]

Mr. Émilien Pelletier: First, concerning vessels such as icebreakers, Canada is certainly not able to navigate all of its own internal waters at present because it does not have icebreakers that are large enough and powerful enough to, for example, follow the dividing line that Bill C-3 will draw in the north. That line runs nearly as far north as the polar ice cap, where the ice is so thick that none of our icebreakers can get through it, at least not in winter. They might be able to get through some if it in summer.

Therefore, Canada will certainly have to think about a large icebreaker that will cost hundreds of millions of dollars. I do not have any exact figures, but we are talking about quite a lot of money.

But how can we exercise our sovereignty over an area we cannot even get to ourselves? It makes no sense if we cannot even get around our own territory. Sovereignty and the environment are closely linked. As a result, we need vessels, first to operate the Northwest Passage and keep it open, once we decide it is open. Then, we have to be able to get around our territory, which will obviously cost hundreds of millions of dollars.

[English]

The Chair: Mr. Adams, would you like a brief comment, or would anyone else?

Mr. William Adams: I'd like to make a brief comment on the surveillance issue.

We're actually tasked at the Defence Science Advisory Board right now to look at the all-of-government issues associated with Arctic surveillance or Canadian surveillance. I believe there are committees in place now among the different government departments that have an interest in knowing what's going on throughout Canada. The environment department is one, as are the coast guard and DND, of course.

I believe that what is emerging is a rather complex and layered surveillance system that will involve satellites, unmanned vehicles, manned aircraft patrolling, and a response capability. This is actually being planned out now, and the assets are in some cases already being procured. The required infrastructure is in the planning stage and should probably be in place within the next three or four years.

I think that in some ways the issue is more related to how one cleans up an environmental disaster, should it occur, than to how one locates it. If you can't locate it, obviously you can't even start. As well, we have to think about what we're going to do when we find a problem. What we're already doing is, I think, along the right tracks, though, in terms of surveillance.

The Chair: Go ahead, Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chair.

My question is for you, Mr. Pelletier.

You would like to see an international protocol to protect the environment and ecosystems. You would like Canada to take the lead on this, because it is the country with the most to lose because it has so much shoreline. How do you see that?

Mr. Émilien Pelletier: Canada should really take the initiative on an international protocol. In my opinion, it is the only country that can take the initiative, because it is directly affected when the European Union, Asian countries and the United States use the Northwest Passage.

If Canada wants to defend its sovereignty in that passage, if it wants to protect its environment up to 200 nautical miles, as Bill C-3 proposes, then an international protocol to protect the environment is absolutely essential. This sort of protocol already exists to protect the Antarctic. It was negotiated at length and ratified. The Madrid Protocol protects the Antarctic ecosystems extremely effectively, and nearly all the countries in the world signed this protocol, after much hesitating and lengthy negotiations. If there is a protocol to protect

the Antarctic that is called the Madrid Protocol, why could there not be a protocol to protect the Arctic that would be known as the Ottawa Protocol or something like that.

I do not see what country other than Canada could take the lead on this, because Canada is the country that would suffer the most in the event of an oil spill. As the other witnesses mentioned, an oil spill is hard to imagine, just as a nuclear accident is hard to imagine, and so we must do everything we can to prevent it from happening.

We have to find ways to prevent a major spill from happening, because we do not have the means to protect ourselves or clean up after such a spill.

• (1610)

Mr. Mario Laframboise: My next question is for Mr. Huebert.

Obviously, it would be ideal to have an agreement on environmental protection and ecosystems, but you, Mr. Huebert, seem to be saying that other more political negotiations have to take place with the Russians, the Americans...

Am I correct in saying that we are far from ready to discuss an environmental protocol, because other more complicated situations are arising at the international level?

[English]

Dr. Robert Huebert: Unfortunately, you're absolutely right. If you look back to the history of the creation of the Arctic Council, which was a Canadian initiative, our hope was that we could create the council as a means of having a political body that would deal with all these issues on a circumpolar basis. The focus was environmental protection. This was very specific. Because of the Americans' concern in terms of their disagreements with us and their disagreements with the Russians, at the time, on the Bering Strait, which continues to be a boundary issue for them, the Americans refused to participate on anything that would give political power to creating the type of cooperative effort that we were going to be seeing.

We're now having new actors. One of your colleagues made reference to China. The Chinese recently have made several statements that they see the Arctic as a common heritage, and in fact, they are starting to give signs that they will, in fact, be taking the American and European position on the status of the Northwest Passage.

We talk about the requirement for surveillance. Another issue that no one has brought up is that we also have to have surveillance of where the industry, particularly the shipping industry, is now going. Most Canadians will be very surprised to find out that it is the South Koreans, Samsung and Daewoo in particular, that have become the world leaders in commercial vessels in Arctic waters. We need to ensure that we are also negotiating with these countries so that as they are building both the oil and liquefied natural gas carriers that are being designed for Arctic operation, they are, in fact, building them to standards that fit our requirements. This is also a means of forward surveillance, in my view.

We are doing what is necessary with the passage of this law, but I think the committee needs to be very aware that we will be creating a series of political issues. Hopefully they can be kept relatively low key, but my suspicions are that we probably will not be able to contain each and every one of them. But we should be prepared and not let that veer us from this course.

[*Translation*]

Mr. Mario Laframboise: My next question is for Mr. Adams.

You seem to be saying that we need money and resources to conduct research and consolidate all this work.

[*English*]

Mr. William Adams: Yes, the Beaufort Sea project cost \$12 million and took a couple of years. I believe that efforts, in 2009 dollars, of the same order of magnitude have to be undertaken. But even more important, I think there has to be a commitment to long-term support of some level of effort, which can lead to real results.

I mean, there are a number of meetings that have taken place, some of them regularly, every year, on oil pollution and so on. But what I see in reviewing the documentation, since I actively worked in this field, is that there are really no solutions except burning, and burning has to be done very quickly or else the oil is in a state that you can't burn, and then it just enters the environment. So I think we do need to have that level of research activity, and I believe that it should be co-funded by industry, probably, like the Beaufort Sea project.

[*Translation*]

Mr. Mario Laframboise: My last question is for Mr. Reimer.

Surveillance seems to be important. Do we need equipment? What do we have to do to guarantee overall security?

•(1615)

[*English*]

Mr. Chester Reimer: Maybe you misunderstood me. I'm not an expert in security. What I was aiming at was that with any kind of security system or any kind of surveillance, please involve the Inuit.

Secondly, I think you have to involve.... Again, back to the diplomacy argument, China was mentioned, and the Arctic Council was mentioned. Whether it's security or an environmental bill—and as Mr. Volpe said, it's a transport bill, but it's still an environment bill, in a sense—you need to have Inuit involved, and you need to have other countries involved. Sovereignty, even though it may sound like an oxymoron, involves other countries. You can't do it on your own.

Coming back to surveillance, you need to work with other countries. They are not our enemies. Inuit, for example, have cousins and friends and others living in Greenland. Greenland is becoming more and more sovereign. On June 21 of this year, they will have negotiated what you might say is a sovereignty association with Denmark. It's another step towards home rule. Build upon the Inuit having these ancient ties to the other people, and build on Canada's diplomacy also.

If Canada wants to strengthen the surveillance, stand up at the Arctic Council and make it something that has more teeth.

Incidentally, China, as Mr. Huebert said, is becoming more involved. China has applied to be an observer at the Arctic Council, and that could be a place where we could involve them more.

But coming back to your specific question, I'm not an expert in surveillance techniques; I'm talking more about the process and involving Inuit.

Thank you.

The Chair: Ms. Crowder. Welcome.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Chair.

And thank you to the witnesses for appearing before the committee today.

I have a couple of points I want to touch on. In some of the background documents prepared for the committee, it says that this extension will give us jurisdiction over an additional half a million square kilometres of our water, which is roughly equivalent to the land mass of one of our prairie provinces. It also cited Senator Rompkey, in terms of the key word being “control”. We can prove that the water is Canada's, but what people care about is control.

There are two points there. One is that simply because we have legislation that extends the boundaries, without adequate resources to actually look at environmental protection, it's a fine statement to the international community about extending our boundaries, but the mechanisms to actually enforce it simply aren't there.

A number of you have touched on surveillance and enforcement. I'm more interested in the environmental aspects, so I'll direct my question to Mr. Adams.

It's very troubling in your statement that you indicated there are very few options for cleanup available. Given that, what do you see that needs to happen immediately in conjunction with this piece of legislation?

Mr. William Adams: I'd like to answer that.

I just want to mention that this is the last day of the International Polar Year. The funding that flowed into that research activity is winding down, so there's an opportunity there to continue some of that incredibly good work. Some of it involves surveillance, and some of it also involves the potential for enforcement that you're talking about.

In terms of what you can actually do, I agree with my co-witness. There is very little you can do once oil gets into ice-covered waters in massive quantities. You have to treat it like a very major human catastrophe, like a nuclear bomb going off or something. There is very little you can do about that.

Ms. Jean Crowder: In that light, what we really need to be doing then is preventing those accidents from happening.

Mr. William Adams: That's exactly right. We have to do everything we can for prevention.

Ms. Jean Crowder: So surveillance and enforcement are fine, but what do we actually need to put in place to prevent those accidents from happening?

Mr. William Adams: If you can surveil the environment and see ships coming that you know are not appropriately constructed for the ice conditions, you can prevent them from entering the zones where you feel there's a risk. That's one thing.

Ms. Jean Crowder: Okay, so that goes back to the comment around surveillance and enforcement, then.

Mr. William Adams: Yes.

Ms. Jean Crowder: So you need a gatekeeper on either end.

Mr. William Adams: Basically, you need to try to keep the risks from entering that particular zone.

Ms. Jean Crowder: Are there things besides surveillance and enforcement that would be required in terms of that gatekeeping function?

Mr. William Adams: For smaller oil spills, it is possible to do some cleanup.

To my knowledge, and from my reading of the literature, it's very interesting that Canada and Norway are the only two countries that have ever conducted real oil spills in ice-covered waters. The Americans don't allow it; they always use simulators for their tests. I believe that's correct.

•(1620)

Ms. Jean Crowder: I come from the west coast of British Columbia. People are probably familiar with the B.C. Ferries vessel that went down at Hartley Bay. Of course, that vessel is still under water, and there is a slow diesel leak from it, which is causing all kinds of problems. We can't even deal with it in a more benign environment, so it's very troubling to hear that we're opening up the Arctic to potential economic and environmental disasters, which is what it would amount to.

I want to turn to Mr. Reimer for a minute. You referenced the importance of Inuit consultations. I happen to be the aboriginal affairs critic for the NDP, and consultation is a constant battle that comes up at the aboriginal affairs committee. Could you comment on what you see as key elements of that consultative process?

I also want to comment on country food. I saw some statistics recently that suggest that in many parts of the north, country food still comprises 70% to 80% of people's diets.

Could you talk about what needs to be included in that consultation?

Mr. Chester Reimer: Canada has signed on to many international instruments. Unfortunately, it has not yet signed on to the Declaration on the Rights of Indigenous Peoples. We're very confident it will. Australia just has, and there are only three countries remaining that haven't.

Ms. Jean Crowder: President Obama has apparently signalled that he intends to, so that will leave two.

Mr. Chester Reimer: Exactly. Other international protocols that Canada has signed on to include the terms "free, prior, and informed consent". If you focus on those three words, you can develop a really strong policy around them. As the aboriginal affairs critic, you know that Canada has obligations under the land claims settlements; they're set out very clearly. We have obligations, and it's important to

follow them in how we consult on various issues. That's more of a domestic approach that I won't get into detail on.

Ms. Jean Crowder: The challenge with it is that what we've seen is substantial inaction in land claims implementation. If we're talking about using land claims as the process for setting out consultation, it doesn't necessarily mean it's going to happen. You may know about the McCrank report that came out in 2008, which talked about changing some of the regulatory processes in the north. One of the options is actually to use less of the consultation process that was put in place around the land claims implementation.

You probably can't comment on this, but I think what would be really important is that consultation processes be developed in conjunction with the Inuit so that they reflect what they see as being important in consultation.

Mr. Chester Reimer: Oh, absolutely, I agree with you. There are woeful inadequacies in the implementation of the land claims. As you know, some of them are before the courts. Of course there has to be political will. Unfortunately, as Mr. Adams said, if there's a major oil spill, you can't do a lot. If you have a government that is not willing to implement the land claims and the consultation procedures properly, what can you do? We have to work, we have to have confidence that our system will change.

The land claims issue is just one element of it. We have to look internationally, under Canada's obligations, and have some political will about it.

You mentioned country food. Yes, it's 70% to 80%, and in some cases more than that. As our study *The Sea Ice is Our Highway* indicated, despite having to go much further across sea ice and therefore coming in contact more and more with the increased shipping lanes, the Inuit have unequivocally said they will not give up their traditional food and they will go further for it. As you know, there are many nutritional and important dietary components of it. I wanted to respond to your comment about that.

The Chair: Thank you.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair. I'll be splitting my time with Ms. Hoepfner.

We've heard a lot of information today, and although changes to this act are very insignificant and some would say minimal, it has far-reaching effects: for Natural Resources Canada, Environment Canada, the Department of Foreign Affairs, the Department of Indian Affairs—very significant ramifications indeed.

Although we don't know what's going on behind the scenes involving Canada and other governments, I'm interested to know, Mr. Huebert, whether this is the right first step for Canada.

Dr. Robert Huebert: I believe we should have taken this first step back in 1986, to be honest, when we enclosed the Arctic with straight baselines. My view is, better late than never. The Russians are moving toward enclosure; the Americans and Europeans are moving towards openness in the context of this waterway.

I think this is a completely necessary first step at this point, but we absolutely—let me restate what all my colleagues have said—have to get serious with enforcement. The one department no one has mentioned is the Department of National Defence. The reality is that there is going to be a nationally owned vessel—not commercial, since we can probably deal with commercial shipping through the IMO and in other ways, if we are proactive....

• (1625)

Mr. Brian Jean: I understand.

Dr. Robert Huebert: But we are going to have to deal with countries coming in, and that's going to require DND also.

Mr. Brian Jean: But my point is that this is the right first step. At this stage we can't go back in time, but is this the right first step, as far as you gentlemen are all concerned?

Dr. Robert Huebert: Absolutely.

Mr. Brian Jean: Thank you.

The Chair: Ms. Hoepfner.

Ms. Candice Hoepfner (Portage—Lisgar, CPC): Thank you very much.

I want to say, Mr. Huebert, that I appreciate your Manitoba connection. I as well have a Manitoba connection. I represent a riding in southern Manitoba and was born and raised in Morden, Manitoba. It's good to have some family around the table.

I want to build on something you mentioned. You said this should have been done 20 years ago. I think we can see that it's very easy for governments to stall on momentum. There are a lot of issues that are included in this bill and in Arctic strategy, and I think that governments have to have a lot of fortitude to move forward on these issues. Some would say that maybe this is politically advantageous. I don't see that, necessarily. I see that this is the right thing to do for Canada and for the Arctic region.

But what I'm wondering is, can you tell this committee how we can avoid getting bogged down with some of these issues and some of these components? How do we keep the momentum going while still addressing and working with the challenges we have? How do we keep this momentum going and not get bogged down?

Dr. Robert Huebert: I would argue that the Arctic is as important to us as our response to 9/11. If you recall, the events of 9/11 caused a fundamental reorganization of the cabinet structures and the very way that cabinet itself approached the issues of internal security.

I believe the time has come that we treat the Arctic the same way, because what my research has told me is that we respond to crises. Well, we are past the point of crisis, because the Arctic is transforming.

The only way I see that we can keep the momentum is that, literally at the prime ministerial level, we need to have the commitment that one of the first things he or she gets briefed on in the future is the Arctic. That has to be in a cabinet format and it has to have a bipartisan buy-in. I think the time has come for it, in terms of the institutional structure by which we approach it, and this is the only way we're going to be ready.

Ms. Candice Hoepfner: Then what you're saying is that this committee has to be committed to moving forward on first steps.

This bill is a first step, and so we need to be committed to moving forward, finding solutions, but again, not getting bogged down, not getting stalled and putting it on the back burner once again, because of the challenges that are being faced. Is that correct?

Dr. Robert Huebert: Absolutely.

Ms. Candice Hoepfner: Thank you very much.

I also want to ask Mr. Reimer something about the people who live in the north. Can you tell us a little bit about how some of the natural resource exploration and development will help the people in the north? You've talked a little about their traditional ways and food, but I'm wondering about economic development: jobs, how development applies to young people, moving forward for the people of the north.

Mr. Chester Reimer: Thank you very much for that question.

A population pyramid, if you know what one looks like, is very different for the Arctic from what it is for down south. Some Inuit have children or marry at a young age, and they'll be having children soon, so people in their twenties need jobs; you're right.

How do you take economic development and juxtapose it with the need to have a safe and clean environment? If you look back 20 or 30 years to when Justice Berger did his quite well-known study on the Mackenzie pipeline and at other studies since, you see that economic development won't work if you don't include the Inuit; it just won't work. And if you include Inuit at the free and prior consent levels, you're going to have a much better outcome in terms of protecting both the environment and promoting jobs.

Inuit are not at all against economic development that is promoted in a safe and sustainable manner. The important thing they stress—again, this is through consultation and being part of the plan—is to make sure that you don't have what I think is called “the Dutch disease”, wherein you have people come from the outside and there's an economic boom and they leave. It's really important; there are conditions on economic development.

I'll refer to Greenland. Just last week there was a uranium mining seminar in south Greenland. It could have happened in Canada too. People there said they don't want economic development if it means bad health for them or means that they have problems.

So there's a trade-off, but absolutely the Inuit are in favour of economic development. Coming back to my Justice Berger example, now, 20 or 30 years later, the Inuvialuit and others are part of the Aboriginal Pipeline Group. There's communication, and if it's done in a sound manner, it's important and it's necessary. Jobs are necessary.

Thank you.

• (1630)

Ms. Candice Hoepfner: Great. Thank you very much.

The Chair: As I stated earlier, Mr. Volpe has an issue, so I'll thank our guests for joining us today. We appreciate your input. I know we have a new group that is going to move forward in the next hour, but thank you again for your contribution today. We appreciate your time.

We have guests coming forward from the Department of Foreign Affairs and International Development. They can move in, but Mr. Volpe had an issue that I think we should just address and then we can move forward.

Hon. Joseph Volpe: Thank you, Mr. Chair. I want to do it in the spirit of moving along.

I realize that what's happened is that Ms. Hoepfner has said this is a good first step and nobody wants to stand in the way of a good first step. As you know, you've received notice from me of a notice of a motion. I've given the 48 hours' notice and it will be dealt with, I guess, on Thursday.

In anticipation of that, the context that we've been provided by all four witnesses is as follows. First, there appears to be a lack of coordination or a requirement for greater coordination by several departments of government in order to do the job right. Secondly, there are implications for each of those departments that need to be addressed, and they have some diplomatic consequences that will impact on whether this bill will actually accomplish what it was intended to accomplish. Thirdly, there are financial implications for this that need to at least be aired so that we have the appropriate ministers come forward and say "This is what we are prepared to do as part of our planning for this legislation".

I suggest—and you will find it in the motion before you when we come to it—that we have the Ministers of Foreign Affairs and International Development, National Defence, Environment, and Indian Affairs and Northern Development come before this committee to at least give us an indication of where they are.

I know, Mr. Chairman, that you wrote to each and every one of them, because I asked you to do this a week ago, and only one of them has responded. I think if we want to proceed with this legislation, despite the fact that it's only one paragraph in length, you can see from the witnesses we have before us today that the implications for us to consider are a lot more serious than what we initially thought would be the case.

Some of the questions that I read in the Hansard, as I acknowledged earlier on from a couple of my colleagues from the Bloc, suggest that they are also viewing these things with the same kind of—I don't want to say profound consideration, because I don't want to attribute anything other than good—serious parliamentary work on the part of everybody. I think it's important for us, Mr. Chairman, to make that one last effort to get these ministers or their representatives.

I see you have some DFA officials coming up in a few moments. There's no reason that we can't get some of the others at the table so that we know exactly what it is they are doing in this and that it wasn't just a piece of legislation that came forward because the Minister of Transport wanted to do something. I think the Minister of Transport, judging from the transcripts, indicated last week that it's not his jurisdiction here and that this one would be better equipped to answer the question. I don't mean to be critical. I take him at his word. Let's get those other ministers before us. Let's get their senior officials in the event that those ministers can't come forward and let's at least put the issue out on the table before we go into the one clause-by-clause that we were going to have to consider.

I think the committee would be well served—and I'm hoping all colleagues will see this—by having the appropriate departments through their ministers or senior officials give us an indication that they've gone through some of the thinking that these witnesses, who are actually in the private sector or in academia or as private individuals, suggest should take place, ought to be taking place, or is taking place. I haven't heard that from the government's side yet, so I'd like to do that before we proceed.

• (1635)

The Chair: Before I take any representation, I will advise the committee that we agreed at the last meeting that if we couldn't get the minister, particularly for the Ministry of Foreign Affairs and International Trade, we would ask a representative. We have that today for the second hour. As the chair, I am certainly prepared—and I suspect that most of the departments are listening to the conversation, or at least will follow it up—to provide a very strong recommendation both verbally and in writing that we would have a representative from the Department of Environment, the Department of National Defence, and the Department of Fisheries and Oceans for one hour on Thursday.

I'll throw that out there. I think that's what Mr. Volpe's asking for. I think it's what we've kicked around here before. We did contact two of the three that I mentioned. We have not contacted the Department of Fisheries and Oceans, and I would be prepared to do that.

Mr. Jean, I have you on my list.

Mr. Brian Jean: From the government's perspective, I don't think that's an issue to be able to hear from all sides.

Mr. Volpe, you mentioned four items the witnesses brought forward. They actually brought forward a fifth, that this particular step the government is taking is the right thing to do and it's the right first step to take. And I think that's very clear and very important.

Hon. Joseph Volpe: And I indicated that in my preamble.

Mr. Brian Jean: I would suggest that we set aside, as a committee, the first hour on Thursday and deal with them at that time. I certainly would have no difficulty with written submissions, if we received them from the departments, depending on time and schedule, as far as how it would impact them in that particular department. I think that would be appropriate, given the circumstances. But certainly the government would support you in that, Mr. Volpe.

The Chair: Mr. Kennedy.

[Translation]

Mr. Gerard Kennedy (Parkdale—High Park, Lib.): As Mr. Pelletier already said, it is a very small step.

[English]

I think the main benefit we can add, as this committee, is to put this in context. The DIAND representatives weren't able to do that for us. They say they take a coordinating role.

For the benefit of witnesses who haven't gone, we want to know how this fits into a plan. And there are some very firm recommendations there that maybe we can try out with the different departments. An international conference—do we have enough of an integrated position, where the pieces fit together, that we can hold an international conference, which is what we're being recommended to do by a number of the intervenors, and make sense? Talk about all government efforts, talk about bipartisan—I think you mean multipartisan, which is the nature of our particular Parliament—and I think this is what has struck us as we look at extending a 100-mile limit over what isn't very much activity right now, but it does bring all these other questions.

Mr. Volpe, if we can extend some of our outlook to maybe push some of that forward, I think that's the kind of theme we're getting. I'm not sure we're going to be capable of doing it justice in the time we've got, but I think you can't take this bill simply as an isolated measure, because it frankly isn't that consequential by itself. It has meaning. Its meaning is, does it fit; do we have it as a piece of a puzzle that we understand and are prepared to get coherent on? And that's the curiosity I'd like to see, how far we are and how far away we are from having that.

[*Translation*]

Mr. Mario Laframboise: I cannot disagree with what Mr. Volpe says. This is probably the shortest bill there is—it has only one clause—but it will have a very great impact on other countries. I understand what the government wants to do. It wants to make a point.

But we do not even have the equipment to get around our own territory, as Mr. Pelletier says. That means that we cannot provide the protection this bill is intended to provide. Consequently, I agree with Mr. Volpe to a certain extent.

I understand that we want to go to 200 nautical miles and mark our territory. That is fine. However, that has an impact on other communities. That is more or less what we discussed the last time.

Have you communicated with the other countries? Have discussions been held? We are far from where we want to be. We would like to have an environmental agreement, but there have not even been any diplomatic talks. We will see with the representatives of the Department of Foreign Affairs and International Trade. I hope some talks have taken place.

That means that we just want to mark our territory and stand up to our neighbours. I have no problem with that. I am used to doing that in politics. But we need to be very aware of what we are doing. That is what Mr. Volpe means.

• (1640)

[*English*]

The Chair: Okay.

Ms. Crowder.

Ms. Jean Crowder: I just want to make one comment. I apologize, because I haven't been a regular committee member, but I think, from what we've heard from the witnesses today about the number of different departments involved, it's critical that we do hear from the ministers on what their role will be in this new initiative.

I think it's absolutely essential that there is this coordinated approach, and that the people who can actually answer the questions about the potential impact are here at the table. Whether it's fisheries or the environment, those are all important aspects of this bill. So I would argue that the committee needs to hear from them.

The Chair: Mr. Watson, be very brief.

Mr. Jeff Watson (Essex, CPC): I think my colleague Mr. Jean is far more generous than I would be. While I find the policy discussion of the integrated northern strategy fascinating, and certainly worth looking into far more deeply, I wouldn't want it to hang up this particular action. I don't think anybody disagrees with this particular action.

If we want to study the northern strategy, I would submit that the proper committee to do that is the lead committee, the Standing Committee on Aboriginal Affairs and Northern Development, rather than the transport committee. I think we have a number of things to get on to, and that would be my preference; but we'll see how the committee addresses this one.

The Chair: Well, I know we do want to hear from the Department of Foreign Affairs. They have been waiting patiently.

I will send a request to those three departments, asking them to appear before this committee on Thursday for one hour.

Thank you, witnesses and guests. We appreciate it.

• (1640)

_____ (Pause) _____

• (1645)

The Chair: I know that there are documents to be circulated, but in order to move forward I just want to remind the committee that if you have amendments on this bill, I would really appreciate it if you could have them submitted to the clerk by noon tomorrow. We are still hoping on the last hour of Thursday to do clause-by-clause...just one clause.

Anyway, joining us for the second hour, from the Department of Foreign Affairs and International Trade, we have Alan Kessel, Caterina Ventura, and John Burnett.

Welcome. I know you have a brief presentation, and I'm sure the committee members have some questions for you.

Mr. Kessel, I would ask you to start.

[*Translation*]

Mr. Alan H. Kessel (Legal Adviser, Department of Foreign Affairs and International Trade): Thank you, Mr. Chair.

Mr. Chair, members of the Standing Committee on Transport, Infrastructure and Communities, thank you for inviting me to appear before you today to talk about Bill C-3, which proposes to amend the Arctic Waters Pollution Prevention Act.

My name is Alan Kessel, and I am a legal adviser with the Department of Foreign Affairs and International Trade. I am also pleased to introduce my colleagues from the legal branch of Foreign Affairs: Caterina Ventura, deputy director of the Oceans and Environmental Law Division, and John Burnett of the same division.

[English]

Mr. Chairman, by way of introduction, DFAIT assists the Minister of Foreign Affairs in fulfilling his statutory duty to foster the development of international law and its application in Canada's external relations. Within DFAIT, the legal branch is the principal source of legal service and advice to the Government of Canada on an increasingly wide and complex range of public international law issues, including the establishment of Canadian maritime zones and their boundaries in conformity with international law.

For this reason, I am appearing before this committee today to discuss the important sovereignty aspects of Bill C-3. In particular, I will address the extension of the Arctic Waters Pollution Prevention Act, fondly known, as you may know, as the AWPPA, from the current 100 nautical miles from shore to the full 200 nautical miles permitted by the United Nations Convention on the Law of the Sea and how this will further demonstrate Canada's sovereignty over the full extent of its Arctic waters.

I will briefly address the origins of the AWPPA, in part as a demonstration of Canadian sovereignty over its Arctic waters. I will then discuss the consistency of the proposed amendments with international law. Finally, I will briefly address additional international aspects of the proposed legislation.

The AWPPA, as you know, was enacted in 1970 following the 1969 voyage of the ice-strengthened U.S. oil tanker SS *Manhattan* through the Northwest Passage. The *Manhattan* represented the first commercial attempt to navigate the Northwest Passage and marked the arrival of technological advances that permitted the construction of ice-reinforced oil supertankers. At that time, commercial interests were assessing the feasibility of year-round transport of oil by sea from fields in Alaska to facilities on the northeast U.S. coast. The *Manhattan's* voyage was primarily viewed as a trial run to see if transport of oil through the Northwest Passage was a feasible alternative to constructing a pipeline or transporting oil by sea to facilities on the U.S. west coast.

The voyage of the *Manhattan* occurred with the concurrence of Canada and with the assistance of Canadian icebreakers and demonstrated that ice conditions, even at their annual minimum extent in September, still posed significant challenges to vessels navigating these Canadian waters. Nevertheless the *Manhattan* demonstrated the potential for growth of commercial transportation through the Northwest Passage due to technological developments and focused attention on the growing risk and potential consequences of a major oil spill occurring in ice-covered waters.

As one response to the *Manhattan* voyage, Parliament passed the AWPPA to stress Canada's commitment to protecting the Arctic environment and to demonstrate Canada's resolve to exercise its sovereignty over Canadian Arctic waters.

At the time of enactment in 1970 the AWPPA was an important development in international law. It signified Canada's commitment as a coastal state to protecting the sensitive Arctic environment by creating a unique environmental protection zone out to 100 nautical miles from Canadian land. As part of this innovative action, Canada announced a reservation for compulsory jurisdiction of the International Court of Justice in The Hague with respect to this

legislation, thereby preventing other states from challenging Canada's position at international law.

Prior to the conclusion of the third United Nations Convention on the Law of the Sea, or UNCLOS, in 1982, international law did not recognize the concept of a 200-nautical-mile exclusive economic zone, as it does now. Today the exclusive economic zone provides coastal states such as Canada with the legal authority to exercise sovereign rights and jurisdiction over living and non-living resources up to 200 nautical miles from shore, including important rights with respect to the prevention of marine pollution.

UNCLOS also included an additional provision further recognizing the legality of the AWPPA under international law.

• (1650)

Canadian negotiators were successful in including article 234 within UNCLOS, permitting additional rights for Arctic coastal states such as Canada within ice-covered waters. Article 234 is commonly referred to as the "Arctic exception", and was the product of negotiations between Canada, the United States, and the then Soviet Union.

To briefly summarize, article 234 provides coastal states with the authority "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". The inclusion of article 234 in UNCLOS validated the then-current 100-nautical-mile application of the AWPPA under international law, but it would also permit its extension to the full 200-nautical-mile limit of the exclusive economic zone.

Canada's confidence in its strengthened legal position with respect to the AWPPA following the conclusion of UNCLOS resulted in our withdrawing the previous reservation with the International Court of Justice in 1985. Finally, Canada's ratification of UNCLOS in 2003 provided an additional international legal basis for the proposed amendment in Bill C-3.

I will now briefly discuss some additional international legal considerations of the proposed amendment.

Some states have differing interpretations with respect to the international legal status of the various waterways known as the Northwest Passage. However, these disagreements are well managed. For example, in 1988 Canada and the United States concluded a bilateral international cooperation treaty concerning the transit of U.S. government icebreakers through the Northwest Passage.

This agreement, resulting from an initiative of President Reagan and Prime Minister Mulroney, allows Canada and the United States to continue to maintain differences in interpretation over the international legal status of the Northwest Passage by in essence agreeing to disagree, while on a practical basis allowing movement of icebreakers through the Northwest Passage on a basis of its being within the best interests of both states. The legislation under consideration would not affect provisions of this agreement.

• (1655)

[*Translation*]

Mr. Chair, before concluding my opening remarks, I would like to point out that Bill C-3 is another way for Canada to exercise its sovereignty over its Arctic waters. By applying the Arctic Waters Pollution Prevention Act for 200 nautical miles from shore rather than 100 nautical miles as before, Canada will fully assert its sovereign rights, as permitted by the United Nations Convention on the Law of the Sea. Those rights were obtained in large measure by Canadian negotiators, and the fact that they are included in UNCLOS is proof that the international community recognizes the validity of Canada's domestic law regarding its Arctic waters, the AWPPA.

Now, I would be happy to answer any questions you may have.

Thank you, Mr. Chair.

[*English*]

The Chair: Thank you very much.

Mr. Jean, on a point of order.

Mr. Brian Jean: I just wanted to advise the members of the opposition that we have no questions for the witnesses, so if they want to take our time as well and distribute it among themselves, that's fine.

The Chair: Thank you very much.

Go ahead, Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Mr. Jean, I appreciate that. It's very helpful.

I have just two questions. One is from the previous minutes. The reason we have you here is that the transport department officials said that you had consulted with other countries or had informed them of this legislation. I'd like to know what response we had, either as a result of that consultation or just independently, as input from other countries to your department or to any part of the Canadian government.

Mr. Alan H. Kessel: Part of our outreach and diplomacy, especially with respect to Arctic matters, is to consult with our neighbours, our friends, and others who are like-minded in other countries in general. In connection with our extension of the additional 100 miles, we did speak to a number of our counterparts abroad, and generally found very warm receptivity, certainly among the eight Arctic nations, and among others as well, particularly for the environmental aspect of it. In fact, as I'm sure many have told you, and I'll repeat it again, the AWPPA was far-reaching in 1970. It was visionary in its scope, and it was prescient in terms of its content. No one else had done that before, and few of them had really done it since, until very recently. In fact, since we have brought our extension to the notice of some of our Arctic partners as well, they are now looking at having the very same legislation at home, and they've asked us for copies of our legislation in order to proceed with this.

Mention has been made of our Russian colleagues, and clearly there's a precedent here that Canada created—we have broken the ground, or broken the ice, so to speak—in terms of moving this

particular thing forward. Generally, we've received high marks from our Arctic friends. Clearly there are some who for geo-strategic reasons may question some of these things. They did back in 1970, and they continue to do so today.

Hon. Larry Bagnell: Within the last six months, have you heard any concerns from our Arctic neighbours on this particular bill?

Mr. Alan H. Kessel: From our Arctic neighbours, no one has specifically said anything about the bill as such. We got some response when the Prime Minister announced this extension in August. Our American friends did want some more information on this. They are aware, clearly, of the 100-nautical-mile zone. We are in touch with our American friends. We will certainly remain in touch with them with the new administration. We've also received overtures to continue to work on this area and others with them under the new Obama administration already.

Hon. Larry Bagnell: As you mentioned, the Russians in the last couple of weeks have announced policy papers. That's been in the press, so I assume you're aware of that. I understand they're basically using our article 234 and putting conditions and fees, etc., on ships going through their region. In fact, I think they have a policy on foreign warships, if I'm correct.

• (1700)

Mr. Alan H. Kessel: The Russians in fact are playing catch-up. We were there ahead of everybody. Article 234 was a visionary article that we saw as necessary to protecting our interests. Others who weren't as active did not use it at that time. Clearly, the Russians have determined that their Northeast Passage is a much more viable commercial route than our Northwest Passage, and it's quite clear that they intend to maximize their interests commercially in that passage. They have done very similar things to what we have done. They have put baselines around their archipelago. As you know, there are 12 million Russians living in their Arctic, and we have about 130,000 people in ours, so the Russians are quite keen to create a viable industry and income in that area.

Now, it's not our article 234; it's the world's article 234. We were merely the midwife.

Hon. Larry Bagnell: I have one other quick question.

I understand that we could challenge and stop and seize and everything a commercial boat or a private boat from Canada or another country that was polluting in these waters. I'm not sure of the legal regime in respect of military boats, defence boats, especially from non-NATO countries, if we catch them polluting in these particular waters.

Mr. Alan H. Kessel: Clearly, you may do that once, but you'd never do it again if you're a military vessel. There is a provision for exclusion of military vessels in an exemption in the act. I don't think we've ever had a problem with any kind of pollution with any military vessels in the life of the current AWPPA.

Hon. Larry Bagnell: Is that my time?

The Chair: That's your time.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: I agree about the bill, which is designed to prevent pollution. But I wonder whether we will be able to enforce it. You say you have advised our Arctic neighbours. Is that correct?

[English]

Mr. Alan H. Kessel: Certainly this has been public knowledge. You haven't passed this act yet, but it certainly has been announced by the Prime Minister, and the minute you do pass this, then it will be the law of Canada and then it will be up to us to make it much clearer.

[Translation]

Mr. Mario Laframboise: That means that you have not discussed it with our neighbours. You are going to wait until the bill is passed before telling them about it.

[English]

Mr. Alan H. Kessel: We have had discussions with neighbours.

[Translation]

Mr. Mario Laframboise: Professor Pelletier said it would be a good idea to have a protocol to protect the environment. There is a treaty for the Antarctic, and it would be good to have one for the Arctic. I agree with him, but we are not there yet. Canada is not discussing environmental protection in the Arctic, but trying to mark its territory.

[English]

Mr. Alan H. Kessel: Well, you've raised about a seminar's worth of questions here, and I'll try to reduce it to bite-size chunks.

First of all, there's a mythology out there that somehow because there's snow and ice in the Arctic—the Canadian and all the other Arctics—it's similar to the Antarctic. The Antarctic and the Arctic are polar opposites, if one could use the phrase. First of all, the Antarctic is a land mass covered by ice. It was *terra nullius*, and it has been fought over in terms of its territory by a number of countries. They've staked it out, and they've come to an accommodation, through a number of international instruments, to govern it.

That's not the case with the Arctic. There is no question as to who owns the land in the Arctic and there's no question as to who owns the sea in the Arctic. Not only that, but we have an international regime, the Law of the Sea Convention, which governs the functioning of all of us throughout the world, including the Arctic.

So to compare the Arctic with the Antarctic is really a bit misleading. The sovereign territories in the Arctic—which is clearly around the Arctic Ocean—Canada, the U.S., Russia, Norway, and Denmark, have domestic legislation to govern their territories. Not only that, but we have a 200-mile EEZ. We have authority to extend our continental shelf, and we will be doing that. This is not a claim; this is what we have. There is no such thing as a claim to what we are entitled to, and we're doing that. So this is very different from Antarctica.

The other thing we have, of course, is the Arctic Council, which is a combination of the eight Arctic states. The reason the other three, which are Finland, Sweden, and Iceland, are not included in the five Arctic Ocean states is that they do not have the legal right to

delineate their continental shelves in the Arctic Ocean. They don't have a continental shelf in the Arctic Ocean. But except for that, we work very closely with them, together with Inuit and other NGOs and non-state actors.

So we do have a regime. To say there isn't one I think would be misleading. To say they aren't dealing with environmental, social, and economic issues would be misleading. I think we're doing pretty well.

• (1705)

[Translation]

Mr. Mario Laframboise: In the event a pollutant such as oil were spilled, Canada would be most affected. Am I wrong?

[English]

Mr. Alan H. Kessel: If the oil spill happens in Canada, in the Canadian Arctic, surely. But if the oil spill happens in the Russian Arctic, it may be confined there.

It will be in our interest, as states around the Arctic Ocean, to cooperate together to develop the methods to contain oil. In fact, this is part of the discussion that's going on, not only within the Arctic Council but in other organizations, such as the International Maritime Organization.

For instance, you may be interested to know that the private sector is well ahead of governments, except of course ours, in terms of developing interest in the protection of the Arctic. We started in 1970 with determining that vessels had to be double-hulled and have certain protections. That's 1970. Only recently are we seeing, for instance, the shipping companies of the world taking a look seriously at how to develop vessels that would resemble the very provisions that we've put in place for the past close to 40 years.

I was at a recent conference in Montreal run by Lloyd's insurance. This is very key, because the insurance companies will be the ones who determine which vessels actually go there. Don't make any mistake, a vessel's not going to go anywhere without adequate insurance, and insurance is not going to be given unless those vessels are adequate, and those vessels aren't adequate unless they conform to Canadian specifications.

We have been working very closely and with a very keen eye to making sure that our Arctic is protected. Clearly, what we do have to continue to do... We're not keeping vessels out. We want trade. We want transit. And we want it done on our conditions, meaning that we want to work with other states in the area to ensure that things like pollution protection, search and rescue, and assistance to vessels in distress are coordinated. And we are working on that, too.

[Translation]

Mr. Mario Laframboise: What you are saying is fine, but once the bill is passed, will you be able to stop ships within the 200-nautical-mile limit to check whether they have the necessary insurance, or have you not yet finished negotiating?

[English]

Mr. Alan H. Kessel: No. The AWPPA has been a law of Canada since 1970. So by definition, that has been in place. But if my colleagues from the Department of Transport haven't done it, I will run through this for you.

For instance, for domestic vessels, enforcement largely consists of annual inspections for compliance with the AWPPA, and the issuance of a safety certificate is mandatory. That may include the voluntary Arctic Waters Pollution Prevention Act certificate, as well. Classification societies are authorized to inspect foreign ships for compliance with the AWPPA provisions when those vessels are outside of Canadian waters and also issue the AWPPA certificate prior to those vessels entering into our waters.

Under the port state control inspection program, Transport Canada inspectors frequently board and inspect foreign ships calling in northern ports such as Churchill. A portion of the voyage to Churchill is in Arctic waters, and certainly the Churchill-Murmansk issue is something that maybe you have discussed here as a potential future expansion of trade with Russia. Transport Canada inspectors and other officers can be given authority as designated pollution prevention officers, entitling them to direct or divert traffic, board vessels, and provide other authorities. These pollution protection officers may be aboard aerial surveillance aircraft, as well; and maybe some of our Transport Canada colleagues have indicated that we do have patrols up our coast, including military patrols, and aircraft and satellites are used to monitor vessel traffic. This is experience that we have gained over the close to 40 years of the AWPPA. We'll simply use that extra 100 miles to benefit ourselves in the future. So we're confident that we have certainly this capacity.

Clearly, the Department of Foreign Affairs and International Trade is not the department involved with this, but I'm glad to have been able to clarify that. Certainly if you wish further questions, you may direct them to Transport Canada and the military.

•(1710)

The Chair: Ms. Crowder.

Ms. Jean Crowder: I want to thank the witnesses from the department for coming.

I've actually got a couple of questions around resources. I just thought it was interesting that you were reading all of the ways by which we're going to be protecting the north. I think the unfortunate reality is you can have all the legislation and regulations you want in place, but if you don't actually put resources into it, they are meaningless.

I know that there have been a couple of cases where.... For example, in Cambridge Bay two years ago, there was a derelict vessel there for over a year—and for all I know it may still be there—and there was no mechanism to deal with it effectively. And I believe that there was a Chinese vessel that ended up in Tuktoyaktuk, a couple of decades ago, mind you.

I think the key concern—and you've heard it before—is enforcement. So I wonder if you could comment on whether, in your opinion, the resources were in place to actually enforce the legislation and regulations that we already have.

Mr. Alan H. Kessel: Thank you for that.

Clearly, my caveat before I answer this question is that this is not really in the purview or the mandate of the Minister of Foreign Affairs; therefore, I would bow to other ministers and other departments. But in case it hasn't been answered—and I haven't seen all the transcripts from your discussion—certainly Mr. Borbey or others from Transport Canada and the Department of Indian Affairs and Northern Development would have indicated to you that this government has committed itself strongly over a number of Speeches from the Throne to a northern strategy, and they've probably spoken to you about the four pillars. You've probably heard them a million times; I will not repeat them. But clearly, this government has indicated not only a commitment of resources, but also a commitment to dealing with some of the serious issues within Canada in the north. Not only that, but it has reached out—and that's why we use the Department of Foreign Affairs—to our neighbours and other Arctic states to work on similar problems together.

In terms of the enforcement aspects, I have indicated to you the litany of enforcement regimes that we have under the AWPPA. Of course, others would have probably described the new military initiatives that will be going up into the north. Others will have talked about other investments in infrastructure in the north. Others will have spoken about the Rangers we have in the north. And in terms of search and rescue, we've had discussions with our neighbours, and future infrastructure is building from that.

So without going into details on domestic policy, from the point of view of the Department of Foreign Affairs, we're satisfied that our domestic departments are taking seriously the development of our north.

•(1715)

Ms. Jean Crowder: On that point, I'm just going to make a comment, and then I have another question.

In the Auditor General's report of February 2007 she is talking about the icebreakers, and she says "...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". It's that kind of comment that really doesn't lead us to have faith that just because you pass a piece of legislation, you're actually going to assign the resources.

Again, you can have all the regulations you want in place, but we've seen it in other departments. The Department of Agriculture is currently having a listeriosis study because of the shortcomings in CFIA. So we have too many cases where we have had the inability to enforce what may be very good legislation and regulation. That's my comment.

I want to come back to Mr. Huebert's comment about the Russians proposing similar legislation. Have you had an opportunity to take a look at that proposed legislation and determine if there's any impact on Canada or on the legislation that's currently before the House?

Mr. Alan H. Kessel: I can't imagine it's going to impact on our legislation. We would carry out our legislation in any event.

It seems that the Russians have taken a page out of our legislative handbook and are trying to emulate much of what we are doing. As I see this, what they have here is that these regulations—and many of them I see here I think were also adopted from 1990 through 1996—allow navigation in the Russian northern sea route on a non-discriminatory basis for ships of all states. They impose various conditions for the use of the northern sea route. For example, in order to navigate those waters, an application to Russian maritime authorities has to be made. They would give careful consideration to navigational safety and environmental concerns. A ship inspection is required, and at least two pilots need to be taken on board. Crew size must be sufficient to allow for a three-shift watch, and the master should have at least 15 years of experience.

That's what the Russians are doing.

Ms. Jean Crowder: That's what they're doing, but is there any impact on us?

The Chair: I hate to interrupt the proceedings, but we have bells ringing and lights flashing.

We appreciate the department's coming forward today. I'm sorry for the limited time, but it was certainly invaluable information. Thank you.

Again, for the committee members, submit amendments to the clerk, hopefully by noon tomorrow, and on Thursday we will deal with the witnesses that we talked about earlier today and hopefully get to clause-by-clause before the meeting's over.

Thank you.

The meeting is adjourned.

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