

**THE HISTORICAL  
AND LEGAL  
BACKGROUND  
OF CANADA'S  
ARCTIC CLAIMS**

**Gordon W. Smith**

# THE HISTORICAL AND LEGAL BACKGROUND OF CANADA'S ARCTIC CLAIMS

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Smith, Gordon W., 1918-2000, author

The Historical and Legal Background of Canada's Arctic Claims ;  
foreword by P. Whitney Lackenbauer

(Centre on Foreign Policy and Federalism Monograph Series ; no.1)

Issued in electronic format.

ISBN: 978-0-9684896-2-8 (pdf)

1. Canada, Northern—International status—History. 2. Jurisdiction, Territorial—Canada, Northern—History. 3. Sovereignty—History. 4. Canada, Northern—History. 5. Canada—Foreign relations—1867-1918. 6. Canada—Foreign relations—1918-1945. I. Lackenbauer, P. Whitney, editor II. Centre on Foreign Policy and Federalism, issuing body III. Title. IV. Series: Centre on Foreign Policy and Federalism Monograph Series ; no.1

Page designer and typesetting by P. Whitney Lackenbauer

Cover design by Daniel Heidt

Distributed by the Centre on Foreign Policy and Federalism



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# THE HISTORICAL AND LEGAL BACKGROUND OF CANADA'S ARCTIC CLAIMS

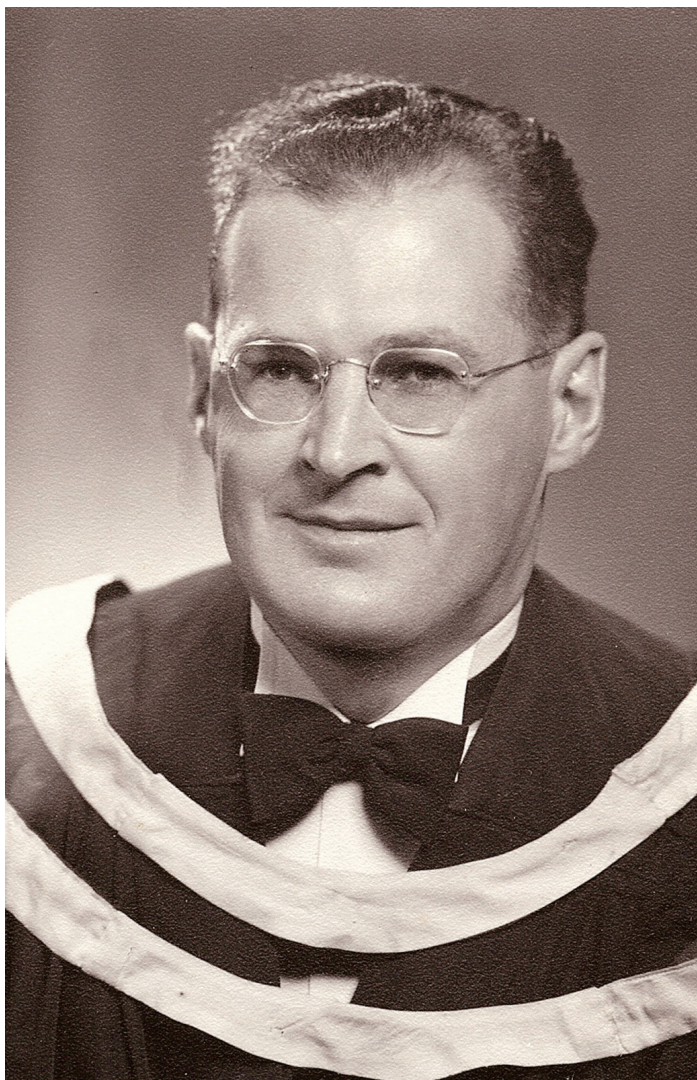
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Gordon W. Smith

Foreword by P. Whitney Lackenbauer

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2016



Dr. Gordon W. Smith (1918-2000)

## FOREWORD

Dr. Gordon W. Smith (1918-2000) dedicated most of his working life to the study of Arctic sovereignty issues. Born in Alberta in 1918, Gordon excelled in school and became “enthralled” with the history of Arctic exploration. After high school he worked as a teacher and principal in several rural Alberta schools. When his effort to enlist in the Second World War was thwarted by poor eyesight, he went to the University of Alberta and joined the Canadian Officers Training Program. He earned his Bachelor of Arts degree as a history major in 1944 and subsequently served as a lieutenant at a Prisoner of War Camp in Lethbridge, Alberta until the war ended. He returned to the U of A after the war and earned a Master’s degree in history in 1948. He then continued his studies at Columbia University in New York under the supervision of John Bartlett Brebner, who secured Gordon access to the Explorers’ Club where he met Arctic experts such as Vilhjalmer Stefansson (who granted the doctoral student use of his personal library).<sup>1</sup> At Columbia, in 1952, Dr. Smith obtained his PhD degree in British History with his thesis “The Historical and Legal Background of Canada’s Arctic Claims.” This pioneering study, which the preeminent legal scholar of Canada’s Arctic sovereignty, Donat Pharand, described as a “masterpiece of research,”<sup>2</sup> remains a foundational work on the subject.

The decision to publish Dr. Smith’s doctoral thesis complements a larger project to edit and publish his unpublished opus—a manuscript on “A Historical and Legal Study of Sovereignty in the Canadian North and Related Law of the Sea Problems,” written over three decades but incomplete at the time of his death in 2000.<sup>3</sup> The first volume on *Terrestrial Sovereignty, 1870-1939*, drafted by Smith in 1973 and published by the University of Calgary Press in 2014, offers a thoroughly documented analysis of the post-Confederation history of Canada’s sovereignty claims from the original transfers of the northern territories in 1870 and 1880 through to the start of the Second World War.<sup>4</sup> While some of the material in

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<sup>1</sup> Tom W. Smith and Nell Smith, “Foreword” to Gordon W. Smith, *A Historical and Legal Study of Sovereignty in the Canadian North, 1870-1942*, ed. P. Whitney Lackenbauer (Calgary: University of Calgary Press, 2014), vii-viii.

<sup>2</sup> Donat Pharand, “In Memoriam: Gordon W. Smith (1918-2000),” in *Canadian Yearbook of International Law* 39 (2001), ed. D.M. McCrae (Vancouver: UBC Press, 2002), 433.

<sup>3</sup> See also Jeannette Tramhel, “Gordon W. Smith: A Historical and Legal Study of Sovereignty in the Canadian North and Related Law of the Sea Problems” in *Canadian Yearbook of International Law* 39 (2001), ed. D.M. McCrae (Vancouver: UBC Press, 2002): 435-40.

<sup>4</sup> Topics include the administrative formation and delineation of the northern territories through to other activities including government expeditions to northern waters, foreign whaling, the Alaska boundary dispute, northern exploration between 1870 and 1918, the

Smith's later manuscript overlaps with his 1952 thesis, this earlier work provides a more extensive background that situates his thinking and research in pre-Confederation contexts and also provides a pioneering legal appraisal of Canadian efforts to establish its sovereignty over the north polar region—efforts, he noted, that “although fairly extensive in scope and of considerable interest” had “gone largely unnoticed” to scholars up to the time he wrote.<sup>5</sup>

In the first part of this study, Smith furnishes general overviews of the physical, ethnological, and strategic contexts of the Canadian North that offer a snapshot of prevailing conditions and assumptions in 1952. While these general overviews are reflective of their times in both language and the (relatively limited) scholarly and government knowledge that they mobilize, they provide scholars with insight into the state of Arctic affairs as they were perceived in the decade immediately after the Second World War.<sup>6</sup> The second part looks at patterns of discovery and exploration, from the Norse at the end of the first millennium C.E. through to the search for Sir John Franklin's ill-fated expedition. From Martin Frobisher's voyage in 1576 through to the mid-nineteenth century, Smith charts how British explorers extended geographical knowledge of the region and made “indefinite” territorial claims on behalf of Great Britain. “As a result of these activities,” Smith observes, “Great Britain came to regard herself as sovereign throughout this vast region, or at least in the known parts of it; but to what extent this assumption was justified has never actually been determined.” Accordingly, he makes the case that the record of discovery had a “predominantly British and Canadian character.”

The third part of Smith's dissertation examines patterns of government and administration of the region. He begins with the Hudson's Bay Company, which interpreted its 1670 Charter over Rupert's Land to include all of the lands which drained into Hudson Bay and Hudson Strait. New France, the Northwest Company, and eventually the Canadian government contested this control, and the HBC's “administrative activities were no more than was necessary to keep the fur trade going” until it sold its rights to the young Dominion of Canada in 1869-70.

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background of Canada's sector claim, the question concerning Danish sovereignty over Greenland and its relation to Canadian interests, the Ellesmere Island affair, the activities of American explorers in the Canadian North, the Eastern Arctic Patrol, and the Eastern Greenland case and its implications for Canada.

<sup>5</sup> For official perspectives on these questions in the first half of the twentieth century, see Peter Kikkert and P. Whitney Lackenbauer, eds., *Legal Appraisals of Canada's Arctic Sovereignty: Key Documents, 1904-58*, Documents on Canadian Arctic Sovereignty and Security (DCASS) No. 2 (Calgary and Waterloo: Centre for Military and Strategic Studies/Centre on Foreign Policy and Federalism, 2014) and Janice Cavell, ed., *Documents on Canadian External Relations: The Arctic, 1874-1949* (Ottawa: Global Affairs Canada, 2016).

<sup>6</sup> On this pivotal period, see Shelagh Grant, *Sovereignty or Security? Government Policy in the Canadian North, 1936-1950* (Vancouver: University of British Columbia Press, 1988).

Smith then documents why the British transferred their North American Arctic territories to Canada in 1880, leaving lingering questions about the extent of the territories and the “quality of the title” transferred.<sup>7</sup> He follows with chapters on the organization and delimitation of the Northwest Territories after 1895, Canadian government expeditions to “bring the entire [Arctic] archipelago under its control” in the first half of the twentieth century, and the Royal Canadian Mounted Police’s activities to “exercise general supervisory control” throughout Canada’s Arctic. While Smith develops his research on these themes more fully in his 1972 study, the chapters in his thesis build a concise case “to show that this administration, although of comparatively recent origin and possibly defective in some respects, is as comprehensive as can reasonably be expected under the circumstances, is steadily becoming more thorough, and consequently is sufficient to justify Canadian claims of sovereignty over the archipelago.”

The fourth and final section, which Dr. Smith considered the most significant, looks at problems of international relations and international law that applied to the Canadian Arctic. The increasingly “diverse” character of exploration in the late nineteenth and early twentieth centuries meant that American, Norwegian and Danish explorers were active in the Arctic Archipelago, leading to various “foreign territorial claims” to parts of Baffin, Ellesmere, and the Sverdrup Islands. Accordingly, he provides an overview of other nations’ claims and interests in the region in chapter 14, concluding that “no other nation has ever had, or could have at the present time, any legitimate claim in the Canadian Arctic.” Smith explains how Norway formally acknowledged Canadian sovereignty in 1930 and how “any Danish and American claim, such as they may have been, have either been terminated by formal or informal agreement, or if not, have been allowed to perish through silent acquiescence and by dereliction.” After providing an overview of Canada’s ambiguous, abortive and ultimately abandoned claim to Wrangel Island off the coast of Russia in 1924, he notes that:

There is no question that Canada’s proximity to Russia in the Arctic will be of the utmost importance, in the future, either in peace or war. Relations have deteriorated during the past five years, and there has been a growing tendency for each to suspect the other of suspicious activities on the opposite side of the Pole. Respecting sovereignty it may be said, however, that since Russia is herself one of the strongest exponents of the sector principle, she could not question or violate Canadian claims of sovereignty in the Arctic without placing in jeopardy the validity of her own claims. Any

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<sup>7</sup> Smith subsequently published his work on this subject as “The Transfer of Arctic Territories from Great Britain to Canada in 1880, and some Related Matters, as seen in Official Correspondence,” *Arctic* 14, no. 1 (1961): 53-73.

Russian infringement of Canada's arctic sector would be extralegal, if not by international law, by Soviet law itself.

This comparative approach remains relevant today when assessing the interests of the two largest circumpolar countries which, despite lingering suspicions, continue to share some common interests in terms of sovereignty and sovereign rights in the region.

In subsequent chapters, Dr. Smith examines how broader legal considerations about the acquisition of sovereignty over "remote and thinly settled lands" apply to Canada's title over the islands of the Arctic Archipelago. In chapter 15 he analyzes the situation in light of legal expert L.F.L. Oppenheim's five basic methods of acquiring territory (accretion, conquest or subjugation, cession, prescription and occupation), noting that Canada's claim was "based primarily upon the long background of predominantly British and Canadian discovery, annexation, and exploration, the transfer from Britain in 1880, the publicly expressed Canadian claim to the islands which was made in 1895 and repeated frequently thereafter, the almost total absence of legitimate foreign claims, and, perhaps more important than anything else, the steadily increasing effort to occupy and administer the islands." He also argues that "territorial propinquity with its attendant concepts of natural interest and national safety" strengthened Canada's claim, bolstered further "by the recent liberal trend in judicial decisions involving similar regions, by the doctrines of the continental shelf and the sea bed, and by the fact that ownership of other similar territories is universally accepted." Based on this assessment, Dr. Smith concludes that "Canadian sovereignty over the archipelago, although never tested legally and often questioned, should no longer be considered a matter of doubt."

The author devotes an entire chapter (16) to the concept of the sector principle—something he considers "one of the most novel and important geographical concepts of the twentieth century." Tracing the origins of Canada's sector claim and showing cases of other countries invoking sector claims to polar territories, Smith frames the considerable debate amongst jurists and scholars about the legal principle beginning in 1925. He explains U.S. resistance towards sector claims and concedes that the principle had never been formally incorporated into international law, but intimates that state practice was strengthening its place in the "accepted international legal order." Accordingly, he leaves the reader with the strong sense that the sector principle remained "uncertain and undefined," offering at best "some usefulness as a device for delimiting land territories to which a good title already exists or is in process of creation by other means." Nevertheless, he found it the "simplest and most suitable method for settling territorial problems as applied to polar lands," offering "a practical rather than a legal device" to delimit territory.

Dr. Smith then turns to the complicated question of whether the sector principle applied "to land territory only, or are water, ice, and air space within the sector also considered to be subject to sovereignty?" In chapters 17-19, he looks

specifically at the complicated issues of jurisdiction over polar waters and floating ice beyond territorial limits, as well as polar airspace – subjects that remain of interest to scholars and policy-makers today. Smith carefully describes the prevailing international legal rules, differentiating between high seas, internal and territorial waters under the jurisdiction of coastal states, and the status of airspace above these waters. Smith concludes that “the sector idea should be ruled out as inapplicable to water and ice beyond territorial limits, and to the airspace above them, in both polar regions,” instead advocating that polar states receive jurisdiction over water and ice according to a limited, internationally-defined distance from their land territory while “the remainder of the polar seas, including the large area around the North Pole, would remain unassigned.” Over time, several of these issues would be clarified in United Nations Conferences on the Law of the Sea and ensuing treaties, including continental shelves, limits on the breadth of territorial waters, exclusive economic zones, scientific research, and the special status of ice covered waters.<sup>8</sup>

The author ends with a summary that establishes, on the basis of his careful research, the validity of Canada’s claim to its Arctic territories. “My primary purpose,” Dr. Smith explains, “has been to examine the record of activity, foreign as well as Canadian, in what is now generally entitled the Canadian Arctic, and to assess the legality of the Canadian claim.” Predominantly British and Canadian exploration, legal land transfers, formal annexations of territory by the Canadian government, effective occupation, and administrative activities provided the basis for Canada’s claim, which was “supported by prevailing rules of international law governing the acquisition of territory, and also by the more liberal interpretations of existing rules which have found favor in recent years.” His “principal conclusion” is “that, in the light of what has transpired, Canada’s claim to the arctic land territories in question should be considered valid in international law.” By contrast, the “sector principle and the questions of jurisdiction over polar water, ice, and airspace” remained unsettled and, he believed, “a stable situation throughout the polar regions generally cannot prevail until such a settlement is achieved.”

The passage of time has confirmed his general conclusion that “Canada’s claim to the arctic land territories in question should be considered valid in international law.” It has also shown the persistence of his observation that “questions of sovereignty over regions of polar water, ice, and airspace remain unanswered.” The interpretation or application of provisions relating to maritime boundaries, extended continental shelves, and transit rights (both maritime and air) continue to generate controversy and debate in the twenty-first century. By publishing Dr.

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<sup>8</sup> For overviews, see Clyde Sanger, *Ordering the Oceans: The Making of the Law of the Sea* (Toronto: University of Toronto Press, 1987); Donat Pharand, *Canada’s Arctic Waters in International Law* (Cambridge: Cambridge University Press, 1988); and Donald Rothwell, *The Polar Regions and the Development of International Law* (Cambridge: Cambridge University Press, 1996).

Smith's dissertation and thus encouraging its broader circulation amongst academics today, we hope that it will reinforce his important place in the historiographical and policy landscape on Arctic sovereignty issues, and will serve as a basis for ongoing research into the development of Canada's sovereignty position through to 1952.

In preparing this manuscript for publication I owe special thanks to several people. First and foremost, Tom and Nell Smith have proven untiring in their perseverance to see Gordon's work into print, and their permission to publish his dissertation is most appreciated. A particular thanks as well to Corah Hodgson, a truly outstanding undergraduate student at the University of Waterloo, for her superb work in editing and formatting this work for publication.

Research on the periods covered by Dr. Smith has grown substantially since he compiled his study. Rather than trying to integrate suggested readings into references throughout the text, I have appended a list of further readings that provides readers with a sampling of recent scholarship on the subjects covered in this book.

### Note on Terminology

The language that Gordon Smith used in the original has been retained. This includes terms such as "Eskimo" and "Indian," as well as names for specific Indigenous communities, that would no longer be used today. Readers are encouraged to be mindful of the era in which Smith was writing when considering the text in this respect.

Name used by Smith	Preferred Name(s) Today
Beaver	Dane-zaa or Dunneza
Chipewyan	Dēnesųłiné
Dogrib	Tłıcho
Eskimo	Inuit
Hare	Sahtú Dene
Kutchins	Gwich'in
Nahani	Kaska, Esbataottine, Etagottine, Tagish, and Tahltan peoples between Upper Liard River and 64°N
Sekani	Tsek'ehne
Slave	Dene / Deh Cho Dene / Dene Tha

As editor, I have changed to italics some of the names and phrases that he placed in quotes, as well as corrected the occasional typographical error. Furthermore, I have added content (such as place of publication) to citations in some footnotes in an effort to further standardize them. Overall, however, the text is published here as it was submitted in 1952.

P. Whitney Lackenbauer, 2016

vii

Chapter 16: The Sector Principle And Canada's Sector Claim.....	206
Chapter 17: Jurisdiction Over Polar Waters .....	234
Chapter 18: Jurisdiction Over Polar Ice .....	251
Chapter 19: Jurisdiction Over Polar Airspace .....	266
 PART V: CONCLUSION .....	 279
Chapter 20: Summary And Concluding Remarks.....	280
 BIBLIOGRAPHY.....	 286
 FURTHER READING .....	 314
Selected Publications By Gordon W. Smith .....	314
Further Readings on Canadian Arctic Sovereignty and Security to 1952.....	315

## PREFACE

The polar regions have assumed a new importance in recent years, and the territories around both the North and the South Poles are now highly prized. Apart from whatever intrinsic worth of their own they may have, north polar territories are valued largely because of their positional or geopolitical significance, since they form a center around which the world's most powerful nations are grouped. They are thus considered to be of potential future importance, both as passageways for air commerce in peacetime and as invasion routes or battlegrounds in wartime. In the southern continent these potentialities are absent, and antarctic lands are coveted mainly in the hope that eventually they will prove to be valuable sources of mineral or other resources.

During the present century a corresponding interest has developed in the resultant problem of territorial jurisdiction. As appreciation of the possible future value of polar lands has deepened, nations which are directly interested have tried increasingly hard to cement their territorial claims. In the process a number of acrimonious disputes have occurred. Concerning sovereignty, it may be said that the jurisdictional status of north polar lands is now more definable than that of southern ones. For better or for worse all arctic land territories have been claimed by Russia, the United States, Canada, Denmark, and Norway; and there is little likelihood that the present situation will change radically. In the Arctic the territorial problem is thus fairly well settled, at least as far as land areas are concerned. This is not true of the Antarctic, however, and here disputes over polar territory continue to rage. In both hemispheres, also, the questions of sovereignty over regions of polar water, ice, and airspace remain unanswered. This deficiency may cause trouble in the future, especially in the Arctic, where such regions will be most extensively used.

The following work deals specifically with Canada's territorial claims in the north polar region, and with the effort she has made to establish her sovereignty throughout the territories claimed. This effort, although fairly extensive in scope and of considerable interest, has gone largely unnoticed. My primary purpose has been to examine the record of activity, foreign as well as Canadian, in what is now generally entitled the Canadian Arctic, and to assess the legality of the Canadian claim. The principal conclusion emerging from this investigation has been that, in the light of what has transpired, Canada's claim to the arctic land territories in question should be considered valid in international law.

I have found it convenient to arrange the material in three major divisions, exclusive of necessary introductory and concluding remarks.

The first of these major divisions deals with the record of discovery and exploration in the Canadian Arctic, from earliest times down to the present; and describes how various explorers - Scandinavian, French, and American, as well as British and Canadian - pushed back the frontier of this unknown region until its

geography was laid bare. This section is not intended to present new material, but rather to give essential background for a discussion of sovereignty, since discoveries characteristically result in the establishment of territorial claims. My aim has been principally to show the manner in which this exploration progressed, and to demonstrate its predominantly British and Canadian character.

The second major division describes administration and government in the Canadian Arctic. It starts with the somewhat haphazard regime of the Hudson's Bay Company in Rupert's Land, passes through the nineteenth century transfer of Hudson's Bay Company and British arctic territories to the Canadian Government, and continues with the gradual development of Canadian administration, until in recent years the whole of the Arctic Archipelago has been brought quite effectively under Canadian rule. The intention here has been to show that this administration, although of comparatively recent origin and possibly defective in some respects, is as comprehensive as can reasonably be expected under the circumstances, is steadily becoming more thorough, and consequently is sufficient to justify Canadian claims of sovereignty over the archipelago.

The third and most important part deals with the legal aspects of Canada's case for sovereignty in the arctic regions. Throughout this discussion the focal point has naturally been the Canadian sector. However, the problem of sovereignty over remote and thinly settled areas is one that has been encountered frequently elsewhere, and related situations are discussed in detail in order to throw light upon the Canadian case. Consequently this section is more general in tone than the preceding two. It makes quite clear the facts that Canada's claim to the archipelago north of her mainland is well founded in international law, and that foreign claims either have been extinguished or have been allowed to lapse. Other relevant matters are also dealt with, notably the much-discussed sector principle and the questions of jurisdiction over polar water, ice, and airspace. These matters cannot at the present time be regarded as conclusively settled, and a stable situation throughout the polar regions generally cannot prevail until such a settlement is achieved.

Gordon W. Smith, 1952

## PART I

### INTRODUCTION

## CHAPTER 1

### PHYSICAL BACKGROUND

This work deals primarily with the Canadian Arctic Archipelago, but also, for certain purposes, with the northern mainland. The archipelago is relatively easy to define, but just how much of the northern mainland should be considered part of the Arctic is a question. The term "Arctic" has been loosely used and is quite elastic. Some general observations may be made respecting the delimitation of the Canadian Arctic, but on the whole it would seem better not to attempt too rigid a definition.

The Canadian Arctic could, for example, be called that part of Canada north of the tree line. This would include, in addition to the archipelago, the mainland as far south as an irregular line drawn roughly from Aklavik to Churchill, and also the northern part of Quebec and Labrador as far south as Fort Chimo on Ungava Bay.

Another rough distinction could be made on the basis of climate, using isothermal lines. The isotherm of 50°F. in July follows a path which is remarkably similar to the tree line mentioned in the preceding paragraph, and the Canadian Arctic is sometimes considered to be the part north of it. The permafrost line could also be used as a southern boundary. Such climatic methods have the merit of being common and logical, and the defect that any division on the basis of climate necessarily varies from year to year.

A convenient method would simply be to include all of the Yukon and Northwest Territories - in other words, those parts of Canada which have not yet been given provincial status. This method has no direct relation to climate and omits northern Quebec and Labrador - areas which are included by other modes of definition. A still more mechanical device would be to use a line of latitude, for example the Arctic Circle or the sixtieth parallel, as the dividing line. This method has little to recommend it but simplicity.

In short, there is no satisfactory way of exactly defining the Canadian Arctic or any other arctic region. It is necessary, however, to have an approximate idea of the area under discussion. In this work, which approaches the question of sovereignty in the Canadian Arctic from a historical point of view, one must consider all northern parts of Canada which have been, at one time or another, relevant in respect to sovereignty. It will soon be apparent that part of the mainland as well as the entire archipelago must be included. Since exactitude is not possible, perhaps the delimitation given in the first sentence of this chapter will convey an adequate impression of the area dealt with - that it is primarily the Canadian Arctic Archipelago, but also, for certain purposes, an undefined part of the northern Canadian mainland.

However the Canadian Arctic may be defined, it involves a huge territory.<sup>1</sup> The Northwest Territories, composed of the three districts of Mackenzie, Keewatin, and Franklin, contain 1,309,682 square miles altogether and the Yukon an additional 207,076 - a total of over one and one-half million square miles.<sup>2</sup> Not all of this is to be considered arctic territory, but, in partial compensation, none of northern Quebec or Labrador is included. The Northwest Territories and the Yukon together have an area equal to between one-third and one-half that of the whole Dominion of Canada, or more than seven times that of France. The Franklin District alone comprises 549,253 square miles. This district is almost identical with the archipelago in which we are primarily interested, except that it also includes the mainland peninsulas of Boothia and Melville. The archipelago itself as claimed by Canada contains all the islands between the mainland and the North Pole, as far west as the 141st meridian of longitude and as far east as the middle of the channel west of Greenland. Three of its numerous islands, Baffin, Victoria, and Ellesmere, rank fifth, ninth, and tenth, respectively, among the world's largest, and each is much larger than any of the Canadian Maritime Provinces. Some of the other large islands are Banks, Prince of Wales, Somerset, King William, Southampton, Bylot, Devon, Bathurst, Melville, Prince Patrick, Cornwallis, Ellef Ringnes, Amund Ringnes, and Axel Heiberg, but there is a multitude of smaller ones, their exact total probably being still a matter of doubt. In size at least the Canadian Arctic commands respect.

This factor of size should put on his guard anyone who attempts to describe the physical characteristics, climate, and vegetation of this vast area, since what is true of one part may not be true of another part, and generalization becomes difficult or impossible. It is no more possible to describe the Canadian Arctic as a unit than it is to describe southern Canada or the United States as one.

Geologically, most of northern Canada is included in the three largest continental divisions. The great horseshoe around Hudson Bay forms the Laurentian Plateau or Canadian Shield - a distinctly northern geological division which however extends far enough south to dip into the United States at two points, west of Lake Superior and east of Lake Ontario. The Great Central Plain extends to the Arctic Ocean along the Mackenzie River valley, becoming narrower as it reaches farther north. The Cordilleran or Western Mountain Region also

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<sup>1</sup> Cf. H. L. Keenleyside, "Recent Developments in the Canadian North," *Canadian Geographical Journal* (Oct., 1949), p. 7: "The Arctic and sub-Arctic regions of this country can be defined roughly as consisting of the Yukon Territory, the Northwest Territories including the Arctic Islands and their waters, the northern half of Quebec and Labrador, and that segment of the ice-capped polar sea that is caught within the Canadian sector."

<sup>2</sup> The figures in this paragraph are taken from the *Canadian Almanac and Directory for 1950* (Toronto: Copp Clark Co., Ltd.), pp. 427-428. For a description of the Northwest Territories (including the archipelago) and the Yukon, see Griffith Taylor, *Canada* (London: Methuen and Co., Ltd., 1947).

extends to the Arctic Ocean, and includes most of the Yukon Territory. The archipelago is sometimes classed as a separate geological division, although parts of it bear a strong resemblance to the more southerly regions, especially to the Canadian Shield and the Great Central Plain.<sup>3</sup> Baffin, Devon, Axel Heiberg, and Ellesmere are similar in structure to the former, and are mountainous, rocky, and partially covered with ice. On the other hand, some of the more westerly islands such as Victoria and Banks are like an extension of the Great Central Plain, being for the most part quite low and fairly flat, with wide expanses of arctic prairie.

The islands are not attainable by boat except during a comparatively short period of time in summer, as ice blocks the way the rest of the year. However most of the water passages have been navigated in season, and each summer many of the islands are visited, regularly by government boats and irregularly by others. The long-sought Northwest Passage, conquered this century, has been found to have several alternative routes, none of which, however, is in commercial use at the present time.

The climate of the Arctic is one of its most interesting and controversial features. It has generally inspired dread, and people have customarily thought of the Arctic as a land of endless winter and darkness, permanently covered with ice and snow, and with a climate so severe that no plant or animal life can exist. It is admittedly rigorous, but not prohibitively so, and there is considerable variety. Stefansson points out that of the three main requisites for a cold winter climate, namely high latitude, high altitude, and great distance from the ocean, a large part of Canada's polar territory has only the first - high latitude.<sup>4</sup> Consequently the minimum temperatures throughout much of the Arctic are no lower than in much more southerly regions. Colder temperatures have been recorded in Montana than at the mouth of the Mackenzie River, and the coldest temperature ever recorded on earth, of -96° F., at Yakutsk, Siberia, was not near the North Pole or even the Arctic Ocean, but well inland at latitude 63° N., in a settled region.<sup>5</sup> Much of the Arctic has a distinct summer season; its duration and maximum temperature varying with the locality and from year to year. For example, along the Mackenzie River valley and even as far north as Aklavik summer temperatures usually go as high as 85° F. or even higher, and the season lasts long enough to permit the ripening of quick-maturing cereals and vegetables. There is not an excess of snow in most arctic regions, because evaporation and consequently precipitation are light.

In short, while average temperatures are undoubtedly lower in the Arctic during both summer and winter than in southern Canada, and living conditions are

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<sup>3</sup> A. W. Currie, *Economic Geography of Canada* (Toronto: Macmillan Co. of Canada Ltd., 1945), p. xii.

<sup>4</sup> Vilhjalmur Stefansson, *The Northward Course of Empire* (New York: Harcourt, Brace and Co., 1922), p. 22.

<sup>5</sup> *Ibid.*, pp. 26-28. The same author's *Arctic Manual*, which appeared in 1944, gives -94° F. as the record low temperature, recorded at Verkhoyansk, Siberia. See p. 39.

generally less favorable, yet there is considerable variety in climate and much of it is more habitable, or could be made more habitable, than is popularly thought. In this connection one should note that seventy-five or a hundred years ago it was commonly believed, even in eastern Canada, that severe climate would preclude settlement of what is now southern Alberta, Saskatchewan, and Manitoba. Their rapid growth and present status should provide a sobering thought for those who prefer to believe that for climatic reasons the Arctic must remain unpeopled. In view of the growing settlements at such mining centres as Fort Radium and Yellowknife, and the wartime enterprise at such locations as Camp Canol and Norman Wells, it would seem that climate in itself will not be a prohibitive barrier to living in the Arctic; and if economic opportunity appears or necessity dictates, people will be able to live in the North in spite of undesirable features in the climate. Settlement and use of the Arctic will depend upon economic and strategic factors more than upon climatic ones.

The future of arctic areas has been the subject of much interesting speculation and debate in recent years. The recent trend of events has caused the world's spotlight to be vast upon north polar regions, giving cause for thought as to whether they will have, in addition to their admitted strategic value, any particular intrinsic worth of their own. The Russians have undoubtedly have been more enterprising and successful in developing their Arctic than North Americans have been in developing theirs.<sup>6</sup> The traditional Canadian attitude has generally been one of indifference, but a growing interest has been noticeable in recent years. Canada's increasing consciousness of what her arctic territory may mean to her stems from a number of sources, notably the publicity it has been given by a great number of writers, the recent spectacular discoveries of mineral wealth, the course of developments during World War II and the new balance of power afterwards, and perhaps also a feeling that Canada should not continue indefinitely to claim but leave largely unoccupied such a large area, particularly when so many people in crowded parts of the world are in desperate need of room to expand.

Regarding natural resources in the Canadian Arctic, these are of necessity somewhat limited in comparison with those of more southerly regions, but are by no means insignificant.<sup>7</sup> Recent investigation by explorers, prospectors, scientists, government officials, and the armed forces has done much to demonstrate that the North is actually a huge untapped source of wealth.

The Arctic has of course long been known as a source of fish, furs, meat, game birds and whale oil. Of these the first three would appear to be capable of greater development on a commercial scale. The Canadian arctic waters, both fresh and

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<sup>6</sup> T. A. Taracouzio, *Soviets in the Arctic* (New York: Macmillan Co., 1938) gives a good picture of Soviet activity in the Arctic.

<sup>7</sup> See C. A. Dawson (ed.), *The New North-West* (Toronto: University of Toronto Press, 1947), for a good account of the natural resources of the Canadian Northwest.

salt, are among the world's great undeveloped fishing grounds; and, as need arises or a market develops, the future will doubtless see a more extensive exploitation, especially now that plane transportation makes possible speedy delivery of fresh and frozen fish. Domestic fur farming on a commercial scale may prove to be as suitable for the Territories as for Alberta or Prince Edward Island, and if so, this industry would have great possibilities. Stefansson has predicted that the North will eventually become one of the major sources of our meat supply, and that such animals as reindeer, caribou, and musk oxen will be kept in large herds for this purpose.<sup>8</sup> Both the Canadian and American Governments have experimented with reindeer herds in the Arctic, using animals originally imported from Siberia, and both have had encouraging success.<sup>9</sup> A considerable area, especially in Mackenzie District, the Yukon, and Banks and Victoria Islands, is covered with a variety of grasses, shrubs, and flowers, which provide suitable forage for such animals. It is believed that great numbers could be pastured there, but over-grazing would have to be carefully avoided. In view of the meat shortage which has prevailed throughout most of the world in recent years, the importance of such an industry, if successful, would be undeniable.

The North will never be primarily either an agricultural or a lumbering country, but it has some possibilities in both directions.<sup>10</sup> Just how far north the area of agricultural settlement might be extended is a question, but there would seem to be good prospects of a considerable northern expansion. In this connection it is worth mentioning that the Peace River settlement, which usually contributes far more than its share of prize winners at world grain and vegetable fairs, also marks the present northern limit of large-scale agricultural production. That this limit is so placed is mainly because the Peace River country is the most northerly agricultural area served by rail. It has been pointed out that it is possible for quick-maturing grains and vegetables to ripen as far north as Aklavik, in latitude 68° N. There is some good undeveloped land in northern Alberta and British Columbia, in the Yukon, and in the Mackenzie River Valley.<sup>11</sup> Agricultural development in such areas, which are actually not arctic but subarctic, would appear to involve such factors as necessity, economic feasibility, opportunity, and initiative rather than physical capacity.

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<sup>8</sup> Stefansson, *The Northward Course of Empire*, chapters V and VI.

<sup>9</sup> *The Northwest Territories, Administration, Resources, Development* (Ottawa: Department of Mines and Resources, 1948), pp. 54-56.

<sup>10</sup> See *Canada's New Northwest*, a study of the present status and future prospects of Northwestern Canada, issued by the North Pacific Planning Project, (C. Camsell, director, 1947).

<sup>11</sup> J. L. Robinson, "Land Use Possibilities in Mackenzie District, N.W.T.," *Canadian Geographical Journal*, July, 1945, and "Agriculture and Forests of Yukon Territory," *Canadian Geographical Journal*, Aug., 1945.

Possibilities for the development of a lumbering industry are confined to those areas south of the tree line, thus eliminating the entire archipelago and northeastern mainland. In certain areas, for example south of Great Slave Lake and in certain parts of the Yukon, there are considerable areas of merchantable timber. Unfortunately forest fires have taken, and still take, a heavy toll, often raging unchecked for long periods of time. Demand for forest products is at present confined to the needs of the local population, except for what is required by northern projects. Only a few sawmills are now in operation, near such favorably located settlements as Fort Smith and Yellowknife.

A potential asset for future development lies in the waterfalls and rapids suitable for the generation of hydro-electric power, along the numerous large northern rivers. Only a fraction of the available energy is now being used. The best site is at the Grand Falls, on the Hamilton River in Labrador, and several others nearby which are conveniently located to assist in developing the newly discovered Labrador iron ore deposits. There are small local power plants at such places as Yellowknife (including the recently opened Snare River plant) and on the Klondike River. Other suitable sites, undeveloped as yet, are the rapids between Forts Fitzgerald and Smith, the Lockhart River, the Great Bear River, and the Coppermine.

It is the mineral wealth of the north country, however, that is its most outstanding feature, and that offers the greatest possibilities for future development.<sup>12</sup> Comparatively little is known of it as yet, but enough is known to indicate that here is one of the greatest potential mineral-bearing areas in the entire world. Actually it is conspicuous not so much for what has been discovered as for what is likely to be. The southern portions of both the Central Plain and the Canadian Shield have become famous as producers of mineral wealth, and since both of these geological divisions extend northwards up to the Arctic Ocean and into the islands of the archipelago, there would seem to be every reason to hope that the northern parts of both will prove to be similarly productive. Already important discoveries have been made, and prospects for more appear to be bright.

The southern part of the Central Plain is noted chiefly as a source of nonmetallic minerals like coal, petroleum, and natural gas. In more northerly areas coal has been discovered along the Mackenzie River valley, in the Yukon, and in some of the arctic islands, although information as to both quantity and quality is scarce as yet. Both petroleum and natural gas have been discovered, and at least one large field of the former has been proved - that at Normal Wells, which led to the famous Canol Project during the last war. Neither northern coal nor petroleum finds much use at

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<sup>12</sup> J. L. Robinson, "Mineral Resources and Mining Activity in the Canadian Eastern Arctic," *Canadian Geographical Journal*, Aug., 1944, also H. L. Keenleyside, "Recent Developments in the Canadian North," *Canadian Geographical Journal*, Oct., 1949.

present beyond supplying local needs, but an emergency or shortage might change the picture quickly.

The pre-Cambrian rocks of the Canadian Shield are known to geologists as one of the richest of mineral-bearing formations. These minerals are mostly of the metallic type, and coal, petroleum, and natural gas are lacking. One thinks of the gold of Porcupine, Kirkland Lake, Noranda, and Flin Flon, the copper and nickel of Sudbury, the silver and cobalt of Cobalt, the iron of Steep Rock and Michipicoten, and other minerals such as zinc and platinum. It will be noted that the locations mentioned are all in the southern part of the Canadian Shield - the only part which has been examined at all closely. However, investigation has been proceeding more rapidly in the north in recent years, and has met with considerable success already.

The Canadian Arctic has been famous for its gold since the Klondike's heyday at the turn of the century, but the field at Yellowknife bids fair to surpass its older rival. A thriving modern settlement of about 3,000 people has grown up there, and a large area in the neighborhood is being prospected. It is believed that Yellowknife may be only one of several such fields.

An important mineral resource today is pitchblende ore, from which uranium and radium are obtained. A large deposit occurs on the south shore of Great Bear Lake, and recently others have been found. With experiments in atomic energy occupying the present-day spotlight, these deposits assume a significance of previously unsuspected magnitude.

The Canadian Shield has for many years been known to contain large iron deposits, but until recently they were thought to be too low-grade for present use. Such deposits had been located on the Belcher Islands and at various points in northern Quebec and Labrador. During recent years, however, it has been discovered that one of these deposits, near the Quebec-Labrador boundary, is both larger and of higher grade than had previously been realized. High hopes are now held that it will be able to replace the declining Mesabi Range as a producer of ore. Development is proceeding apace, and a railway that is being constructed from the site to Seven Islands on the St. Lawrence River will soon be ready to carry the ore to the seaboard.<sup>13</sup>

The above are the most publicized of northern Canada's known mineral resources, but others exist which may some day become important. For example, there is the copper at Coppermine River, which has been known since the time of Samuel Hearne, and may prove of unexpected value. Southeast of Cape Bathurst are large sulphur deposits, the extent of which has never been measured. Silver is obtained from the uranium-bearing ore at Great Bear Lake; lead and zinc have been discovered at Pine Point, on the south shore of Great Slave Lake; and there are huge

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<sup>13</sup> *New York Times*, Dec. 19, 1949. This article also reports discovery of a rich deposit of manganese near the iron ore. See also Herbert Yahraes, "Labrador Iron," *Scientific American*, Nov. 1948, pp. 9-13.

salt beds near Norman Wells. Other mineral deposits are known to occur at various places in the Territories.

It will be noted that the above deals chiefly with the northern mainland rather than the archipelago. The islands of the latter have no timber wealth and offer no prospects for any kind of agriculture, except for the possibility of grazing herbivorous animals upon their grass-covered plains. Apart from such a grazing industry and their resources in fish and fur, they would appear to depend upon their strategic location (discussed in Chapter 11) and the possibility of finding hitherto undiscovered minerals for any future development. A considerable number of mineral deposits have in fact been discovered already, but either in such small quantities or in such inconveniently placed localities that their value is, for the present, somewhat limited. Such expeditions as that of A. P. Low in 1903-1904, the Canadian Arctic Expedition of 1913-1918, and that of L. J. Weeks in 1924 did extensive preliminary geological work, and made many discoveries of minerals which, while usually not particularly important in themselves, offered some hope that larger ones may be made. Coal has been found in most of the larger islands, notably Baffin, Ellesmere, Banks, and Victoria, and in a few instances, for example at Pond Inlet on Baffin Island, is used by the local population.<sup>14</sup> Traces of iron are widely distributed, as in the Belcher Islands, and in various places samples of copper, gold, silver, gypsum, phosphorous, and other minerals have been found. Sizeable quantities of graphite and mica are known to occur in Baffin Island, and there is bituminous shale, indicative of petroleum, in Melville Island.

Considering the continental part of the Canadian Arctic, it is evident that much of it has physical characteristics less forbidding than is generally believed, and that it has natural resources of no mean significance. Considering the archipelago, any great intrinsic value of the islands themselves remains to be discovered. On the whole it would appear unlikely that most of the Canadian arctic will ever become densely populated, but its climate will not prevent settlement wherever this becomes economically desirable, and it will no doubt eventually play a more important part in the world's economy.

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<sup>14</sup> J. L. Robinson, "Mineral Resources and Mining Activity in the Canadian Eastern Arctic," *Canadian Geographical Journal*, Aug., 1944, p. 21.

## CHAPTER 2

### ETHNOLOGICAL BACKGROUND

#### The Eskimos in the Canadian Arctic

A consideration that has often been overlooked by the white man when claiming remote and undeveloped territories has been the rights of the natives whom he found when he first arrived. Here it might be observed that long before European explorers ever came to this continent, parts of its northern areas were inhabited, then as now, by a primitive race of people, who have always been so backward and unorganized that they have never constituted a serious threat to the white man's territorial aspirations.

These are the Eskimos, whose origin, migration and dispersion over the northern part of the continent still remain shrouded in mystery. The majority of anthropologists now appear to be in agreement as to the ultimate origin of pre-Columbian peoples on the American continents, and hold the common belief that their ancestors lived in northeast Asia, crossed to North America via the Bering Strait, and spread thereafter in some undetermined fashion to other parts of the New World.<sup>15</sup>

This theory, while prevalent now, has not been the only one, and in certain of its aspects, for example regarding the time of the original descent upon Alaska, still causes controversy and doubt today. Also, while offering an answer to the question of the ultimate origin of the pre-Columbian North Americans, it leaves unsolved the more perplexing puzzle of the immediate origin of the Eskimo himself, as distinct from the North American Indian or the inhabitant of northeastern Asia.

As Victor E. Levine points out, three general theories have been in vogue as to the immediate origin of the Eskimos. He says that "one theory postulates Europe as the original home, another Asia, and a third the interior of the American continent."<sup>16</sup> A great number of hypotheses have been put forward, but each follows

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<sup>15</sup> See the following for support of this belief: A. Hrdlicka, "The Coming of Man from Asia in the Light of Recent Discoveries," *Proceedings of the American Philosophical Society*, Vol. LXXI, No. 6, 1932, p. 393; H. B. Collins Jr., "Culture Migrations and Contacts in the Bearing Sea Region," *American Anthropologist*, Vol. XXXIX, No. 3 (Part 1) July-Sept., 1937, p. 375; D. Jenness, "Prehistoric Culture Waves from Asia to America," *Journal of the Washington Academy of Sciences*, Vol. XXX, No. 1, Jan. 15, 1940. Hrdlicka for example begins his article as follows - "The chief deduction of American Anthropology, in the substance of which all students concur, is that this continent was peopled essentially from northeastern Asia."

<sup>16</sup> From an article in manuscript form, unpublished as far as I know, in the Stefansson Library. Regarding ultimate origins Levine's point of view is similar to those of Hrdlicka, Collins, and Jenness. For example, "Most anthropologists are in accord as to the ultimate origin of the pre-Columbian peoples inhabiting the American continents. It is generally

one or another of these general plans.

An early theory was that of the Moravian missionary Cranz, who lived in Greenland about 200 years ago. He thought that the Eskimos were related to the Mongolians of central Asia, especially the Kalmucks, but had been driven from their homeland to the northeastern part of the continent, from where they had crossed the Bering Sea to North America before the birth of Christ.<sup>17</sup> In 1865 C. R. Markham, following Cranz closely, suggested that they lived originally in northern Asia, but were driven northward from the continent to some partly hypothetical arctic islands, from whence they moved via the North American arctic islands to Greenland.<sup>18</sup> In 1871 the Danish scientist Henry Rink advanced a novel idea - that the Eskimos were originally an inland race native to North America, and who, yielding to pressure of the peoples south of them, descended the arctic rivers to the coast, spreading from there to the wide areas now occupied.<sup>19</sup> Rink's thesis that the Eskimos had an American origin was followed closely by both Boas and Murdoch in 1888, Boas concluding that the original home was in Central Canada, and Murdoch that it was south of Hudson Bay.<sup>20</sup> In 1874 Boyd Dawkins formulated an even more startling theory, to the effect that the Eskimos have descended from the Palaeolithic cave dwellers of Europe, who followed the reindeer northward when the ice disappeared, and came via Iceland and Greenland to America.<sup>21</sup> This interesting theory received little support, although another authority, Sollas, appeared to give some credence to it.<sup>22</sup> When it seemed to be proven untenable, Dawkins advanced still another idea, that the European cave dwellers might have migrated right across Russia and Siberia to the Chukchee Peninsula, and then across the Bering Strait to America.<sup>23</sup>

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held that they came from Asia across the only feasible route to America, the Bering Strait or a land bridge across the strait connecting the two continents. The controversial question is the immediate origin of the Eskimo."

<sup>17</sup> Levine, *op. cit.*, p. 2. Also Therkel Mathiassen, "The Question of the Origin of Eskimo Culture," *American Anthropologist*, Vol. XXXII, Oct.-Dec., 1930, p. 591.

<sup>18</sup> C. R. Markham, "On the Origin and Migrations of the Greenland Esquimaux," *Journal of the Royal Geographical Society*, Vol. XXXV, (1865), pp. 87-99.

<sup>19</sup> Henry Rink, "On the Descent of the Eskimo," 1871. Reprinted in "Arctic Papers for the Expedition of 1875," *Journal of the Royal Geographical Society*, London, 1875, pp. 230-232.

<sup>20</sup> Franz Boas, "The Eskimo," *Proceedings and Transactions of the Royal Society of Canada*, Vol. V, 1888. Cited in Mathiassen, *op. cit.*, p. 592; Murdoch in *American Anthropologist*, Vol. 1, 1888. Cited in Mathiassen, *op. cit.*, p. 592.

<sup>21</sup> Boyd Dawkins, *Cave Hunting* (London: 1874). Cited in Mathiassen, *op. cit.*, p. 591.

<sup>22</sup> W. J. Sollas, *Ancient Hunters* (London: Macmillan and Co., Ltd., 1911), p. 379.

<sup>23</sup> Cited in Diamond Jenness, "The Problem of the Eskimo," *American Aborigines, Their Origin and Antiquity*, ed. by D. Jenness (Toronto: University of Toronto Press, 1933), p. 373.

In 1905 H. P. Steensby formulated a new theory, which suggested that an original or "Palae-Eskimo" culture had arisen in the Barren Lands northwest of Hudson Bay, had passed to the arctic coast, and had spread west and east from there to Siberia and Greenland. Then another "Neo-Eskimo" culture arose in the Bering Sea area, and spread eastward along the arctic coast, over the older culture.<sup>24</sup>

One of the most comprehensive theories regarding the origins of Eskimo culture was put forward by the Dane Kaj Birket-Smith, who with Mathiassen accompanied Knud Rasmussen's Fifth Thule Expedition, conducted during 1921 - 1924.<sup>25</sup> Birket-Smith concluded that there had been four strata of Eskimo culture. The oldest, a Proto-Eskimo culture, was a circumpolar inland ice-hunting culture which had apparently flourished in the northern parts of both the Old and the New Worlds. From it there arose a second, a Palae-Eskimo culture, which adapted itself to the arctic seacoast and spread over all the arctic regions, starting perhaps from northern Canada. Then in the west a third stratum appeared, the new or Neo-Eskimo or Thule culture, influenced by Pacific and Asiatic peoples, which spread eastward from Alaska perhaps as far as Greenland. In the central coastal region it was wiped out by the second inundation from the interior, the Eschato-Eskimo culture, which constitutes the fourth and most recent stratum.

Authorities generally appear to agree as to the existence of the last two strata postulated by Birket-Smith, namely the Thule and Eschato-Eskimo cultures, but much disagreement has developed about the first two. Mathiassen, for example, refused to concede that there had been a culture in the central regions older than the Thule culture.<sup>26</sup> Jenness would add still another, the Dorset culture, which he believed to be older than and independent of the Thule culture, and to have flourished in the eastern Arctic, especially near Cape Dorset, Baffin Island.<sup>27</sup>

Many other ideas have been put forward, but in general they follow one of the three main hypotheses previously mentioned. To summarize, Dawkins and Sollas have not found much support for their theory of a possible European origin; Cranz, Markham, Thalbitzer, and Hrdlicka have been prominent among those advocating the Asiatic origin; while Rink, Boas, Murdoch, Steensby, Rasmussen, Birket-Smith, Jenness, and Levine have been outstanding supporters of the North American origin.

The time of the Eskimos' first appearance is another matter which still baffles anthropologists and archaeologists, as indeed does the time of mankind's initial

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<sup>24</sup> H. P. Steensby, *Meddelelser om Gronland*, Vol. LIII, 1916. Cited in Mathiassen, *op. cit.*, p. 592.

<sup>25</sup> See the *Report of the Fifth Thule Expedition*, Vol. V, 1929, for a detailed exposition of Birket-Smith's theory. A good brief summary is given in Levine, *op. cit.*, p. 7.

<sup>26</sup> For the vigorous dispute between Mathiassen and Birket-Smith on this subject, see Mathiassen's article in *American Anthropologist*, already cited, and Birket-Smith's rejoinder in the same issue.

<sup>27</sup> D. Jenness, "The Problem of the Eskimo," *op. cit.*, p. 391.

arrival in the New World. There appears to be general agreement that both occurred in comparatively recent times, and that the Indian preceded the Eskimo. A reasonable estimate might be that man has been present in the Western Hemisphere for only about 20,000 years or less. On this subject Stefansson says:

By the varying judgments of archaeologists and palaeontologists, Bering Strait was first crossed by the eastward-moving people of Siberia between 10,000 and 20,000 years ago; for after the crossing it surely must have taken Folsom man 2,000 years to reach the Texas Panhandle and leave behind him there the relics that are now being dated at from 8,000 to 18,000 years.<sup>28</sup>

This appears to be the commonly accepted view. It is believed that Folsom man was the ancestor of the North American Indian, though the manner of descent has never been satisfactorily traced.<sup>29</sup>

It would seem probable that the Eskimo himself has not been identifiable for more than about 3,000 years. Stefansson says it appears certain that the forefathers of the Eskimo did not reach America longer ago than around 1000 B.C., and H. B. Collins Jr. gives the following reasons to support the idea that he was a recent anthropological development<sup>30</sup>:

... all known prehistoric Eskimo sites in Alaska are situated on or very near existing shore lines, usually in close proximity to the present settlements, showing that they were established when the relation of sea to land was essentially the same as today ....Moreover, the animal bones from even the oldest Eskimo middens are all those of existing species ....There is nothing to indicate that the ancient Eskimos knew anything of the Pleistocene fauna that existed in northern and western Alaska, in contrast to the situation in the western United States where Folsom and Sandia man hunted these same animals.<sup>31</sup>

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<sup>28</sup> V. Stefansson, *Greenland* (New York: Doubleday, Doran and Co., Inc., 1944), p. 10. Cf. the following - "The history of man in Europe and Asia goes back approximately a million years to early Pleistocene times, but the available evidence indicates that he has lived in North America probably no more than twenty thousand years." P. S. Martin, G. I. Quimby, D. Collier, *Indians Before Columbus* (Chicago: University of Chicago Press, 1947), p. 79.

<sup>29</sup> See Frank C. Hibben, "Our Search for the Earliest Americans," *Harper's Magazine*, July, 1944, for a neat summary of the discovery of Folsom Man; also Kirk Bryan, "Geologic Antiquity of Man in America," *Science*, Vol. XCIII, No. 2422, May 30, 1941.

<sup>30</sup> Stefansson, *Greenland*, p. 13.

<sup>31</sup> From a manuscript article in the Stefansson Library, entitled "Anthropological Problems of the Arctic." See also the chart in Martin, Quimby, and Collier, *op. cit.*, p. 515, which also dates the beginnings of Eskimo culture at about 1000 B.C.

Today the Eskimos are thinly scattered along the arctic coast from northeastern Siberia to the east coast of Greenland. They live as far south as the Aleutians in the west and Labrador in the east, and as far north as Victoria and northern Baffin Islands and northwestern Greenland. Since most of them are still nomadic to some extent they do not usually remain in one place, but they nevertheless occupy most of the larger islands in the southern part of the archipelago either permanently or on a part-time basis. They do not now live north of Lancaster and Melville Sounds, although it is known that they used to live on some of the larger islands to the north, including Devon and Ellesmere.<sup>32</sup> In recent years Eskimos have at times accompanied the Royal Canadian Mounted Police on their northern patrols, living near the police posts on the more northerly islands.<sup>33</sup> There is an increasing tendency for the Eskimos to congregate around white settlements, and even those who prefer to wander or live separately usually come to the posts at least once a year to trade.

The population of the Eskimos has gradually declined, and today they are pitifully few in numbers. Altogether there are only about 36,000 in the entire world, of whom about 7,700 live in the Canadian Arctic, according to a 1944 estimate.<sup>34</sup> Contact with the white man has been a mixed blessing for the Eskimos. He has undoubtedly brought them many benefits in the form of medical and educational services, the security of law and order, and many of the necessities and luxuries of civilization, among which such articles as the rifle, the outboard motor, and the primus stove are most valuable to the Eskimos. On the other hand he has also brought them his diseases; and the easy availability of his goods has gone far towards destroying their independent manner of life; two factors which have undoubtedly been contributory causes of the depletion in population.

One basic language is spoken among the Eskimos, although there are different dialects. During his Fifth Thule Expedition of 1921-1924 Knud Rasmussen found that his knowledge of the Greenland Eskimos' tongue enabled him to understand all the dialects spoken between there and Bering Strait.<sup>35</sup> Generally speaking, the mode of living shows similar features also in all areas, but the Eskimos of the western Arctic are the most civilized because of their greater association with the white man, those of the relatively inaccessible central Arctic are the most primitive, and those of the eastern Arctic occupy an in-between position. Since they are a migratory people they travel about considerably, moving as necessity or fancy dictates, in groups of

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<sup>32</sup> W. J. Sollas, *op. cit.*, p. 352.

<sup>33</sup> F. H. Kitto, *The North West Territories 1930* (Ottawa: Department Of the Interior, 1930), p. 134.

<sup>34</sup> J. L. Robinson, "Eskimo Population in the Canadian Eastern Arctic," *Canadian Geographical Journal*, Sept., 1944. The estimate above is for the whole Canadian Arctic.

<sup>35</sup> Knud Rasmussen, *Across Arctic America* (London: G. P. Putnam's Sons, 1927), Int., p. x. See also Diamond Jenness, "The Problem of the Eskimo," *op. cit.*, p. 379.

two or three or more families. There is no real tribal organization, and leadership is either lacking or simply left to some outstanding individual or individuals.

Many of the articles commonly associated with Eskimo culture are still in use - the snowhouse, kayak, harpoon, fur suits, dog sleds, raw flesh, blubber lamps, and so on, particularly in the central Arctic where many Eskimos still secure for themselves by hunting and fishing practically everything they need, without aid from the white man. In certain areas of the western Arctic, for example at Aklavik, others have become almost westernized, and own motor boats, carry on businesses, wear our style of clothing, and send their children to school. The typical Eskimo is friendly, happy, docile, cooperative, unconcerned, and improvident, living in the interests of the moment and giving little thought to the morrow.

As suggested above, the Eskimos have never been an impediment to the ambitions of their more civilized neighbors, in the sense that the Indians of North America or the negroes of South Africa have been. For one thing, they have occupied an area which has not been highly desired, except as a possible route to other regions. They have also been too few, too scattered, and too unorganized to check the white man's advance, even if they had been so inclined. They have not shown any marked tendency to oppose him, however, and with a few exceptions the relations between Eskimo and white man have generally been friendly and cooperative. It should be added that had these relations been otherwise, and had the Eskimo resisted the white man's encroachments with all his strength, it would in all probability have availed him little. The fact of the matter is that there have been no large-scale struggles with the Eskimos as with the Indians, and no land or other treaties have ever been made with them, as in the case of the red man. Consequently it may be said that the presence of the Eskimos has never had any important bearing upon the question of sovereignty in the Arctic.

### **The Indians in the Canadian Arctic**

The Indians in the Canadian Arctic live in the regions to the south of those occupied by the Eskimos. Considering that either is free to move into the territory of the other, there is remarkably little contact between the two races. While the Eskimos seldom wander far inland, the Indians do not inhabit any of the arctic islands, and do not ordinarily go as far north as the arctic coast, except in a few localities such as the Aklavik district and northern Quebec.

The total population of Indians in the Northwest Territories is estimated to be about 4,000, and in the Yukon Territory about 1,585.<sup>36</sup> This represents a serious reduction from their number before contact with the white man was established, and as in the case of the Eskimos the white man is chiefly blamed for the depletion

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<sup>36</sup> *The Northwest Territories, Administration, Resources, Development* (Ottawa: Department of Mines and Resources, 1948), p. 22; *The Yukon Territory* (Ottawa: Department of Resources and Development, 1950), p. 28.

of numbers, as he brought with him alcoholic excesses and diseases previously unknown, especially smallpox, tuberculosis, and influenza.<sup>37</sup> The majority of the Indians in the territories now live in the Mackenzie River valley and the southern part of the Yukon. Like the Eskimos they are showing an unfortunate but increasing tendency to depend upon the white man and to congregate around his settlements, giving up the simplicity of their former mode of life for an inferior and second-rate imitation of his. It is hoped that increasing settlement and economic development of the territories will open new avenues of employment and activity for the Indians, and improve their lot considerably. The largest concentrations of Indian population are near important white settlements such as Fort Smith, Resolution, Providence, Rae, Simpson, Norman, Good Hope and Aklavik, and, in the Yukon, Whitehorse, Dawson, and Mayo.

Most of the Indians in the Northwest Territories and Yukon belong to the Athapaskan family, except for a few representatives of the west coastal tribes, the Tlingits, who live in southwestern Yukon.<sup>38</sup> The Athapaskans all speak a similar language, but they are divided into a great many tribes. The most important are the Chipewyan, Beaver, Sekani, Slave, Yellowknife, Dogrib, Hare, and Nahani tribes in the Mackenzie River valley, and the Kutchins in the Yukon.<sup>39</sup> Of these some are easily identifiable with geographical place names. Among the rest, the Beavers inhabit northern Alberta, the Dogribs the area north of Great Slave Lake, and the Hares the area north of Great Bear Lake. It has been thought by some authorities that the Athapaskan language resembles the Tibeto-Chinese-Siamese group of languages in eastern Asia, thus fortifying the theory that the American Indians came originally from Asia.<sup>40</sup>

The present-day Athapaskan has in large measure copied the dwellings, clothes, and living habits of his white neighbor. He is not usually a farmer or stock-raiser, and seldom owns land, cattle, or horses, although he may cultivate a small vegetable garden. Often he still depends mainly upon hunting and trapping for his livelihood, but he may also become a guide, canoe-man, or laborer. A log cabin is the usual home, but often, especially in remote places, a tent will be used in summer-time. Like the Eskimo, he has benefitted from increased medical and educational services, and, like them, he receives family allowances in kind and relief supplies when needed. There has been a great deal of intermarriage between whites and Indians, and pure-blooded Athapaskans are probably few and declining in numbers.

Generally speaking, it has been the custom of the Dominion Government to acquire possession of lands occupied by the Indians peacefully, ahead of the march

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<sup>37</sup> *The Northwest Territories, Administration, Resources, Development*, p. 22.

<sup>38</sup> *The Yukon Territory*, p. 28.

<sup>39</sup> Diamond Jenness, *Indians of Canada* (Ottawa: National Museum of Canada), p. 378.

<sup>40</sup> Sapir, cited by Jenness, *ibid.*, p. 377.

of settlement, by making treaties with the chiefs of the various tribes.<sup>41</sup> In the North this has been accomplished with less trouble than has sometimes marked the transfer of Indian rights in southern Canada and the United States. In 1899 the Department of Indian Affairs made a treaty (No. 8) with the Indians who lived south of Great Slave Lake. In 1921 Treaty No. 11 was made with the tribes along the Mackenzie River and north of Great Slave Lake, and in the following year another treaty was made with the Indians of the Liard River district. Settlement was thus made with practically all the Indians of the Northwest Territories, whereby they gave up their aboriginal title to the land.<sup>42</sup>

In conclusion, it may be said of the Indians that they are of even less importance than the Eskimos in this work, since they have given up their title to the land, and only a few of them live in genuinely arctic regions, in no case penetrating as far north as the Arctic Islands. It is instructive, however, when considering the matter of population and extent of occupation, to ascertain how many Indians there are in the Northwest Territories and Yukon, and where they are located.

### **The White Population of the Canadian Arctic**

According to the 1941 census, the white population in the Northwest Territories was 2,284 and in the Yukon 3,172.<sup>43</sup> This total of less than 6,000 means that in this vast area there was in 1941 only about one white person for every 250 square miles of territory. The population increased considerably during World War II, and even though many of the newcomers were transients who left at the war's end, a sizeable net increase occurred between 1941 and 1951. According to an early bulletin of 1951 census figures issued by the Dominion Bureau of Statistics, the total population in both the Northwest Territories and the Yukon grew from 16,942 in 1941 to 25,100 in 1951 - an increase that would be mostly of whites since the Indian and Eskimo part of the population changes but little.<sup>44</sup>

The great majority of the whites are concentrated in a comparatively few centers of population, of which four of the largest and most noteworthy are Yellowknife, Fort Smith, Whitehorse, and Dawson. Yellowknife and Dawson are predominantly mining centers, while Fort Smith and Whitehorse are transportation centers. Fort Smith and Dawson are in addition the administrative headquarters for the Northwest Territories and the Yukon respectively. Approximate figures for the populations of these towns are as follows: Whitehorse, 3,900, Yellowknife, 3,500, Dawson, 800, and Fort Smith, 350, but official and up-to-date figures cannot be expected until the 1951 census figures are complete. Most of the other population

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<sup>41</sup> F. H. Kitto, *The Northwest Territories 1930* (Ottawa: Department of the Interior, 1930), p. 65.

<sup>42</sup> *Ibid.*, p. 65.

<sup>43</sup> Unless otherwise stated, the population figures in this section are taken from the government pamphlets cited in the previous section.

<sup>44</sup> Dominion Bureau of Statistics, *Daily Bulletin*, Vol. XXI, No. 35 (Ottawa: Feb. 11, 1952.)

centers of any importance are along the Mackenzie River, notably Fort Simpson, Fort Norman, Norman Wells, and Aklavik, but some, such as Mayo in the Yukon and Port Radium on Great Bear Lake, are not. There are a considerable number of smaller settlements, scattered widely throughout the territories, some having one hundred or more white inhabitants and some consisting of only a mission or a government weather station. Two of the government publications previously referred to list eighteen such settlements in the Yukon and eighty in the rest of the Canadian Arctic, the latter figure including a few locations in northern Quebec and northeastern Manitoba.<sup>45</sup> About twenty are in the islands of the archipelago, the greatest concentration being in Baffin Island, upon which are located the following posts: Arctic Bay, Pond Inlet, River Clyde, Pangnirtung, Frobisher Bay, Lake Harbour, and Cape Dorset. The other island posts are fairly well distributed in the archipelago, most of them being on the more southerly islands such as Victoria, Southampton, and Nottingham. A centrally located northern post is Resolute Bay on Cornwallis Island, and there are others, including several recently opened government weather stations. Nevertheless many of the islands remain uninhabited.

The occupants of these northern posts are limited to a comparatively small range of activities. They may be traders (usually Hudson's Bay Company employees), Anglican or Roman Catholic missionaries, Royal Canadian Mounted Police, or government personnel such as weather station and radio operators, post office managers, and medical doctors. In recent years there has been a large summer influx of geologists, botanists, zoologists, and other scientific and technical workers. At some of the larger posts, such as Coral Harbour and Pangnirtung, practically all of the above classes are represented. Some of the smaller posts, like Peterson Bay on King William Island, consist of nothing but a mission or a trading post.

In conclusion, it is obvious that the population in the Canadian Arctic, counting Eskimos, Indians, and whites, is extremely small and scattered. In 1941 only about 17,000 human beings were spread over the entire million and a half square miles of the Yukon and the Northwest Territories, and even though there has been a considerable increase the population remains extremely small compared to the vast area. The size and distribution of this population is of some importance, because in the past doubts have been raised at certain times and in certain quarters that Canada occupies all of this territory thoroughly enough to claim it.<sup>46</sup> Consideration of this question must be postponed to a later chapter.<sup>47</sup>

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<sup>45</sup> For example, *The Northwest Territories, Administration, Resources, and Development* (1948), and *Yukon Territory* (1950).

<sup>46</sup> E.g., David Hunter Miller, "Political Rights in the Arctic," *Foreign Affairs*, Oct., 1925, p. 51.

<sup>47</sup> See Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," *Behind the Headlines*, Vol. VI, No. 7, 1946. The author gives an interesting view of the strategic position of the Canadian Arctic as it appeared to him in 1946.

## CHAPTER 3

### STRATEGICAL BACKGROUND

In view of the facts outlined in Chapter 1, it is not surprising that Canada is taking an increasing interest in economic development of her northern regions. Not all her interest is related to economic development, however, as this area has acquired a strategic significance which may bear greatly upon the future of the world.

The arctic regions in general have recently assumed a new and vital role in international relations. They were formerly considered to be completely beyond the pale of ordinary human affairs, and destined to remain forever the habitat of only a handful of backward but hardy natives and the occasional explorer, trapper, policeman, or missionary. But with the advent of the airplane and the possibility of war transforming this region into a great battlefield, the Arctic has suddenly stepped into the world's spotlight; and it appears inevitable that its strategic importance will increase during the coming years. As the possessor of large areas in the Arctic, Canada cannot remain unaffected by or indifferent to whatever happens there, and consequently she has, and will have, a vital interest in arctic affairs.

Undoubtedly a primary reason for the growing appreciation of the Arctic's strategic importance has been the gradual correction of one of the most amazing geographical misconceptions that has ever dominated the human mind. The map designed by Mercator in 1569 was intended to be a sailing chart for navigators, but it came to be used universally as a map of the world, and has continued in this use down to the present day. Valuable as it has been, it nevertheless distorts most grossly the factors of distance, size, and location in high latitudes, the amount of error increasing as the North and South Poles are approached. This falsification has of course been recognized, but it is still remarkable to what extent "Mercator thinking" has influenced political, commercial, and military planning, even in recent years. Dr. Hans Weigert has maintained that, as recently as during World War II, renowned geopoliticians such as General Haushofer and leading German and Japanese military strategists used Mercator maps almost exclusively, with results disadvantageous to themselves.<sup>1</sup> For example, in May 1942 the Japanese sent a major attack force against Pearl Harbor in the Aleutians, which they might have captured at that time. They evidently thought of the Hawaiian Islands as the logical stopping-place on the way to America, yet Dutch Harbor is on the most direct route between Tokyo and Seattle, and the Hawaiians are about 3000 miles to the south.

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<sup>1</sup> Hans W. Weigert and V. Stefansson (editors), *Compass of the World* (New York: MacMillan Co., 1944), chap. ii, pp. 74-88.

A variety of maps have been devised from time to time with the idea of rectifying the errors of the Mercator map, but each of these has errors of its own. The azimuthal equidistant projection represents correctly all distances and all directions from a given point, for example the North Pole, which is centered on the map, but the representations from other points are not all correct, and areas and shapes are most violently distorted. Two other types that are centered on a point are the azimuthal equal-area projection, which shows areas correctly but not shapes; and the gnomonic or central projection, which translates great circles into straight lines but gives the most violent distortion of shape of any type. Many other types of projections have been invented, each being defective in one or more ways because, as has so often been stated, to have a completely accurate projection of a globe “is a geometric impossibility on a flat surface.”<sup>2</sup> One is led inescapably to the simple and obvious conclusion, known theoretically to most schoolboys but often neglected in practice by leading strategists, that to get a correct view of the globe one must turn to the globe itself.

Even a casual glance at a globe will reveal some surprising facts to a person whose thinking has been colored by Mercator distortions. For our purpose the outstanding one is this - that North America, which on a Mercator map appears remotely in the upper left corner, on the globe is brought face to face with the huge land mass of Eurasia across the narrow confines of the polar sea. This means that the two most powerful nations on earth, the United States and Russia, come in closest contact across the top of the world, and the Dominion of Canada lies directly in between. The implications behind this simple geographical fact may well make any Canadian ponder.

During the early years of the twentieth century the British geopolitician Sir Halford Mackinder evolved his unique combination of geography, history, and politics, which postulated central and northern Asia as potentially the most significant, powerful, and invulnerable region in the world.<sup>3</sup> This great body of land he called the “Pivot Area” or “Heartland.” To Mackinder the Heartland was bordered by an “Inner Crescent” comprising western continental Europe and southern and eastern Asia, this in turn being bordered by an “Outer Crescent” made up of the British Isles, the Americas, Africa, Australia and Japan. As a Britisher Mackinder feared more than anything else the consequences for his country, and for the Western World in general, of a union between Russia, which occupied most of the Heartland, and Germany. His warning has become a classic: “Who rules Eastern Europe commands the Heartland. Who rules the Heartland commands the World-

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<sup>2</sup> Irving Fisher and O. M. Miller, *World Maps and Globes* (New York: Essential Books, 1944), p. 28.

<sup>3</sup> Sir Halford Mackinder, *Democratic Ideals and Reality* (New York: Henry Holt and Co., 1942). This book was first printed in 1919, but Mackinder had presented his ideas much earlier, in a paper entitled “The Geographical Pivot of History,” read before the Royal Geographical Society in 1904.

Island. Who rules the World-Island commands the world.”<sup>4</sup>

Mackinder's concepts were seized upon enthusiastically by a number of others, notably by the German school of geopoliticians led by General Haushofer. Haushofer wanted Germany to turn her eyes to the East rather than to Great Britain and America, and labored hard to bring to pass what Mackinder feared so much - a close relationship between Germany and Russia. Hitler brought his dreams crashing to the ground on June 22, 1941, although another of his ideals, that of friendship with Japan, ran a definitive but tragic course.

Undoubtedly neither Mackinder nor Haushofer considered his theories to be final and not subject to change. Both however focussed their attention upon the Heartland of Eurasia and consigned North America to the Outer Crescent - indeed to the outer part of that - ignoring both geographical actualities and the latent and growing strength of this young continent. On this subject we refer again to Dr. Hans Weigert:

... we must warn, however, against the widely accepted myth that Haushofer and his men possessed truly a 'global view' of our new world. Haushofer saw the world as his great master, Sir Halford Mackinder, had seen it. That made him understand the pivotal importance of the land masses connecting the territories of Germany, the Soviet Union and China in one immense transcontinental block. But both Mackinder and Haushofer remained captives of Mercator's map. And the fateful mistake made them see the North American continent as a satellite sphere beyond the sphere of Eurasia. Thus in appraising Haushofer's view and vision of the Pacific and of Asia, we must keep in mind that it neglected the power and the geopolitics of the United States in this area.<sup>5</sup>

While paying just tribute to the prophetic vision of Sir Halford Mackinder, which has in many respects been vindicated, it would seem more accurate to say, using the year 1951 as a vantage point, that while the Heartland of Eurasia is the center of the world's greatest land mass, and while Russia still occupies nearly all of this Heartland, yet it is in a sense counter-balanced by a roughly equivalent area in North America, and these two counterweights face each other across a narrow polar ocean.

Another related but slightly different geographical concept may be introduced at this time. Mercator and other flat maps are apt to cause the impression that the north polar regions are about as far removed from the main land areas of the globe as it is possible to be. Reference to the globe will demonstrate how wrong this

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<sup>4</sup> Mackinder, *Democratic Ideals and Reality*, p. 150.

<sup>5</sup> Weigert in Weigert and Stefansson, *op. cit.*, pp. 397-398.

impression is. Actually three quarters of the world's land area, and about 95% of its population, are in the northern hemisphere. The world's greatest powers lie in surprisingly high latitudes, grouped about the polar sea, and in these regions are to be found the most important natural resources, the greatest concentrations of industry and population, the largest cities, and the leading trade routes. Mackinder's pivot area, centering somewhere in southern Siberia or Turkestan, is actually more significant for the Eurasian continent than for the world as a whole, and a better mid-point for the land areas of the latter would be somewhere in the Arctic Ocean. Stefansson and others have pointed out for years that the Arctic Ocean is a logical geographic crossroads for traffic among the world's great nations.<sup>6</sup> This concept received tribute recently in the planning of the official flag of the United Nations, which shows the countries of the world grouped around the North Pole as a center.

Granting that the Arctic Ocean is centrally located with respect to land areas, what are the possibilities for transpolar traffic? Considering navigation by water first, there would seem to be food for thought but not much hope for greatly increased traffic in the immediate future.

To begin with, the shortest Atlantic and Pacific sea routes are definitely northern. Navigators know that the shortest route from America to Asia comes close to the Aleutian Islands, and that Prince Rupert is much closer to Japan than is San Francisco. They also know that the shortest route from New York to Liverpool comes quite close to Greenland, and that Churchill, in the middle of the continent, is as close to Great Britain as New York is. Recognition of the superiority of both North Pacific and North Atlantic routes came long ago. The future of actual transpolar navigation is more uncertain.

For years European explorers suffered untold privations and in many cases lost their lives in fruitless search for northeastern and northwestern sea passages to China and Japan. After both passages had finally been navigated, in comparatively recent times, the general feeling after so many years of effort and failure was that they could never be used for commercial navigation. Little use has actually been made of the Northwest Passage, but the Russians have used their Northeast Passage more extensively. It is unlikely that either will ever become a commercial artery comparable with ice-free southern routes, although development might be furthered by technological improvements such as more powerful icebreakers, or perhaps by military necessity. The prospect of surface ships ever sailing directly over the polar ocean seems to be out of the question.

The prospect of underwater navigation of the Arctic Ocean does not seem so remote. Nansen and others observed that sea ice, even near the North Pole, does not attain a greater thickness than seven feet by actual freezing.<sup>7</sup> As early as 1919 Stefansson was considering the use of powerful submarines in the Arctic Ocean,

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<sup>6</sup> E.g. *The Northward Course of Empire*, chap. vii, pp. 168-202.

<sup>7</sup> Cited in Stefansson, *The Northward Course of Empire*, p. 192.

which would surface through the ice by setting off depth bombs, drilling holes, using heating coils to melt their way, or even ramming their way through from below.<sup>8</sup> One well-known explorer, Sir George Hubert Wilkins, actually organized an expedition to try to cross the Arctic Ocean by submarine, but made only preliminary attempts to dive beneath the ice. His submarine was old and outmoded, however, and his failure can hardly be taken as conclusive, especially when one takes into account the developments in undersea navigation since his attempt in 1932. Such improvements, making possible long nonstop undersea voyages, bring transpolar submarine travel closer - a prospect especially thought-provoking in the realm of defense.

It is in the airplane age, however, that the Arctic seems most likely to come into its own as a highway for transportation and communication.<sup>9</sup> As in the case of ocean travel the northern air routes from North America to Europe and Asia are shorter and more direct than the more southerly ones across the broad expanses of ocean. From San Francisco to Shanghai via Alaska is about 6600 miles, for example, but the distance between the same two points across the Pacific Ocean is 9150 miles. Between Edmonton and Archangel the difference is even more striking. The distance by the direct northern route is about 3500 miles, but by Montreal and England is about 7000 miles; in other words, twice as far. This point need not be labored; it has been cited frequently in recent years, and its significance is obvious.<sup>10</sup>

Land is available for bases along both North Atlantic and North Pacific routes; Newfoundland, Labrador, Greenland and Iceland in the first case and Alaska and the Aleutian Islands in the second. Gander in Newfoundland and Goose Bay in Labrador are key points in North Atlantic air traffic, and Whitehorse and Fairbanks occupy similar positions on the Great Circle route to the Orient. In the future, no doubt, the route due north will be used, and pilots wishing to make the shortest flight between Edmonton or Minneapolis and Archangel or Leningrad will fly directly over the polar sea. This route has not been developed, owing largely to the international situation, but both Canada and Russia have been pushing their air bases ever farther north, and it would be easy today to hop from bases on the Canadian Arctic Islands to Russian bases on their side of the North Pole. It is unlikely that this route will be used greatly until international harmony is restored, but when that occurs, it may become one of the world's great highways, and the Canadian Arctic Islands will doubtless play a decidedly important role as way stations.

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<sup>8</sup> Stefansson, *ibid.*, pp. 189-199.

<sup>9</sup> See Stefansson, *ibid.*, chap. 7, "Transpolar Commerce by Air," for an early assessment of the possibilities offered by transpolar air navigation. (The book was published in 1922.)

<sup>10</sup> The figures in this paragraph have been taken from a miscellany of sources, and checked by making calculations with a medium-sized globe. They are not guaranteed to be strictly accurate, but are approximately so. See Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," *Behind the Headlines*, Vol. VI, No. 7, 1946, p. 4.

Both the Canadian and American Governments have been forced by the events of the past ten years to take stock anew of the growing strategic importance of the Arctic, and also to readjust policies continually in the face of repeated threats from the north. Germany invaded Denmark in April, 1940, and fear that she might try to set up bases in Iceland led Britain and Canada to occupy the island a month later, their forces being replaced by Americans in July 1941.<sup>11</sup> In April 1941 the United States also undertook the protection of Greenland.<sup>12</sup> These engagements, for the duration of the war only, show plainly that an attack from the northeast was feared on this continent, and if Britain as well as France had gone under the Nazi heel, it is possible that Hitler would have chosen this route to attack Canada and the United States.<sup>13</sup>

The threat from the northeast was duplicated from the northwest after the attack upon Pearl Harbor on December 7, 1941. The Japanese took several small islands at the end of the Aleutian chain, but failed to make an attack in force upon the continent itself. What would have happened had they done so is a question that will never be answered, but it seems likely that a vigorous thrust in the early days of the war would have gained Alaska for them without great loss or difficulty. Constant fear of such an attempt, and desire to organize a counter attack, led the American and Canadian Governments to cooperate in a remarkable amount of defensive and offensive preparation in the Northwest. This included the strengthening of coastal defenses, with army and air force as well as naval installations, the building of the Alaska Highway from Dawson Creek to Fairbanks, the construction of the Canol oil pipeline from Norman Wells to Whitehorse, with a refinery at the latter place, and the building of strategically planned airfields throughout the Northwest, to name the most important enterprises on this great program.<sup>14</sup> Thus the war gave the Northwest an economic uplift such as it had not had even in Klondike days, as well as a strategic role which appears to have become of permanent importance.

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<sup>11</sup> Hans W. Weigert, "Iceland, Greenland, and the United States," *Foreign Affairs*, Oct. 1944, pp. 5-6.

<sup>12</sup> *Ibid.*, p. 12.

<sup>13</sup> The United States still has bases in Greenland however. See *New York Times*, June 17, 1950, also March 20, 1949; Germany actually had several weather stations on the east coast of Greenland during the war. See *The Polar Times*, June, 1944, p. 13, also *Arctic*, Sept., 1949, p. 108.

<sup>14</sup> See the series *Canada in World Affairs*, published by the Canadian Institute of World Affairs, especially the following: R. M. Dawson, *Canada in World Affairs 1939-1941* (Toronto: Oxford University Press, 1943), pp. 232-259; C. C. Lingard and R. G. Trotter, *ibid.*, 1941-1944 (published 1950), pp. 24-42, 65-77, 106-110, 159-160, 225-231; F. H. Soward, *ibid.*, 1944-1946 (published 1950), pp. 254-279. See also R. A. Davies, *Arctic Eldorado* (Toronto: Ryerson Press, 1944), for a brief but comprehensive treatment of projects in the North and Northwest until 1944.

Both German and Japanese threats to the North American continent via the Arctic gradually receded as the war went on, and were of course thoroughly eliminated in 1945. Since then they have been replaced by another threat which now seems of greater gravity still - that of Soviet Russia. Here is a nation of potentially greater strength than either Germany or Japan, perhaps than both put together. Unlike them it has territory contiguous to the Arctic, and a population for many of whom the rigours of the Arctic hold no terror. Indeed they have proven themselves more adaptable to its exigencies, and more proficient in the exploitation of its natural resources, than we have ourselves. The huge Russian sector claim in the Arctic, including roughly 160° of longitude, brings them into contact with the Canadian claim at the North Pole, and with American territory in Bering Strait. One may look back upon the days of World War II, and remember with some comfort that Germany could only have attacked North America from the northeast, and that she was far from our territory. Similarly Japan could only have used the northwest route, and was well removed from the shores of Alaska. It is thus an uneasy reflection that Russia could use either of these invasion routes, or both, with facility at least equal to that of Germany and Japan, and that she has in addition all the intervening area from which to choose a possible invasion route.

The activities sponsored by the Canadian and American Governments in these northern areas since the war's end are of considerable significance. They are partially a response to the new threat from the north, no doubt, but not entirely, since many of them have a wholly legitimate peacetime purpose.<sup>15</sup> On some of them the two governments have worked together in close cooperation, while others have been undertaken individually by the government concerned. Some receive a considerable amount of publicity; of others little is heard. Consequently it is not easy to draw a clear picture of the strategic situation in the North American Arctic today, but it is at any rate safe to say that in a strategic sense the eyes of both governments are turned northwards as never before in peacetime.

The projects which were undertaken on Canadian soil by the American Government during the war, either alone or in cooperation with the Canadian Government, received the latter's permission first, and reverted to Canada as the war drew to a close.<sup>16</sup> This arrangement applied to that part of the Alaska Highway within Canadian territory, which has been maintained and kept open for tourist and other traffic by the Canadian Government since the war ended. It applied also to the Canol pipeline, which was dismantled and sold. A number of American-built

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<sup>15</sup> Cf. H. L. Keenleyside, "Recent Developments in the Canadian North," *Canadian Geographical Journal*, Oct., 1949: "There has, however, been an altogether unhealthy emphasis placed on the military significance of recent developments in the Canadian North." (p. 17).

<sup>16</sup> Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic", *Behind the Headlines*, Vol. VI, No. 7, 1946, p. 13. The author stresses, in this article and in others, that Canada paid for American-built airfields and other installations which were turned over to her.

airfields and weather stations, whose construction had been designed to facilitate use of the Great Circle Route to Asia and the Crimson Route to Europe, were also purchased by Canada. If an emergency should threaten, any or all of these projects might resume their former importance.

The establishment of weather stations has continued since the end of the war, as a joint enterprise between the two governments.<sup>17</sup> Also efforts are being made to build up a radar interceptor network.<sup>18</sup> Some of these new installations are in remote areas in the North, and little news of them appears in the press. Typically, however, they are under Canadian command, and Canadian sovereignty is maintained.<sup>19</sup>

Northern military manoeuvres have also become common in recent years. The R.C.A.F. maintains a number of stations in the Arctic.<sup>20</sup> A number of naval exercises have taken place recently in northern waters, a particularly large one being that of the American fleet in Davis Strait during the winter of 1949-1950.<sup>21</sup> Churchill, Manitoba's salt water port, has been established as a permanent army and air base, and is used chiefly as a center for winter exercises and experiments. A number of important military tests have used it as a base, the most noteworthy being the well-publicized Muskox expedition in the winter of 1946. In this expedition forty-four men started from Churchill in February, travelled 3,000 miles through the Arctic via snowmobile, penetrating north as far as Victoria Island, and returned along the Mackenzie River and the Alaska Highway to Edmonton, arriving in May. It was a Canadian exercise, but observers of other nations were present.<sup>22</sup>

During the summer of 1949 the Canadian army and air force carried out the so-called "Exercise Eagle" in the vicinity of Grande Prairie in northern Alberta. More recently, during the winter of 1949-1950, the joint "Exercise Sweetbriar" was held along the Alaska Highway near the Yukon - Alaska boundary.<sup>23</sup> Bitter cold weather gave Canadian and American service personnel a taste of what winter warfare would be like in these regions. One conclusion appeared to be that it would not be so difficult to carry on a military campaign in the Arctic as was formerly thought.<sup>24</sup> However most of our authorities have believed that such campaigns would be, if not

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<sup>17</sup> *Edmonton Journal*, Jan. 30, 1950. See also *Polar Times*, June, 1947, p. 26.

<sup>18</sup> *New York Times*, Nov. 19, 1949.

<sup>19</sup> *Polar Times*, June, 1947, p. 26.

<sup>20</sup> A recent R.C.A.F. project has been an Arctic Survival School, to train fliers in survival techniques if forced down in the Arctic. See *Edmonton Journal*, Feb. 4, 1950.

<sup>21</sup> *New York Times*, Nov. 24, 1949.

<sup>22</sup> Lt. Col. G. W. Rowley, "Exercise Muskox," *The Geographical Journal*, April-June, 1947, pp. 175-185.

<sup>23</sup> *New York Times*, Feb. 24, 1950.

<sup>24</sup> *Free Press Prairie Farmer*, Winnipeg, March 8, 1950.

impossible, at least extremely strenuous.<sup>25</sup> It is to be hoped that Soviet leaders have reached the same conclusion.

The Canadian Government has also undertaken a great deal of air mapping, geological surveying, and other work in the Arctic in recent years. Such enterprise, in common with the building of meteorological stations and airfields, would have an undoubted wartime value, but is not intended to be offensive in nature, as Prime Minister King took care to stress in the Canadian House of Commons.<sup>26</sup>

From the above discussion only one conclusion is possible-that the Arctic is now regarded by both Canada and the United States as a primary bastion of defense. Regardless of whether peace or war prevails in the next few years, it is inevitable that it will continue to play an increasingly important role in human affairs. If the misfortune of a Russo-American war should occur, it could become a main route for aerial attack and defense, and it is possible that great armies equipped for winter warfare would struggle amid the arctic snows. Should we on the other hand be favored by a long period of peace, uncertain though this may be at the moment, the North would in all probability become one of the main networks for peaceful airplane traffic and transportation - perhaps the air crossroads of the world.

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<sup>25</sup> Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," *Behind the Headlines*, Vol. VI, No. 7, 1946, p. 15.

<sup>26</sup> Canada, *House of Commons Debates*, Feb. 12, 1947, pp. 359-361 (Daily Edition).

## PART II

### THE PATTERN OF DISCOVERY AND EXPLORATION

## CHAPTER 4

### THE NORSEMEN

An element in the attainment of sovereignty over a territory is the discovery and exploration of that territory. Discovery is not now as important a factor as it was several centuries ago, but is still considered to be of some effect in giving an inchoate or initial title to the land in question. Such a title is incomplete and temporary, but it may be converted and developed into full ownership by actually occupying the territory, planting permanent settlements there, and bringing them under an orderly administration. In most arctic regions large settlements are still few and far between, but discovery has been essentially completed and there has been a great deal of exploratory work. This is particularly true of Canada's arctic regions. It would seem, therefore, that in describing the development of Canada's claim to this territory the story of discovery and exploration cannot be neglected, and, historically speaking, is of considerable importance. The following four chapters are designed to tell the relevant features of this story.

Apparently the first Europeans to set foot in the Canadian Arctic were the Norsemen, who were active in the northeastern part of North America, particularly Greenland, at least five hundred years before the time of Columbus. Iceland had been settled by Vikings from Norway in the ninth century A.D., beginning with Ingolf's colonizing voyage in the year 870 according to the "Islendingabok" of the reliable twelfth century authority Ari Frod, although it appears likely that there had been at least three trips from Norway to Iceland during the decade preceding that year.<sup>1</sup> The Vikings drove out of Iceland Christian Celtic priests from Ireland whom they found upon their arrival. Apparently such anchorites had been there at least since 795 A.D., according to Dicuil's "De Mensura Orbis Terrae", written about 825 A.D.<sup>2</sup> It is possible that they had been in Iceland for considerably longer than that, and also that they discovered Greenland, but neither possibility has ever been established as a fact. Many scholars, including Stefansson, have reflected on whether the "Thule" described by Pytheas of Massilia after his voyage of 330 B.C. might

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<sup>1</sup> See Fridtjof Nansen, *In Northern Mists* (London: William Heinemann, 1911), Vol. I, pp. 252-258, for an interesting discussion of these early Icelandic voyages, with quotations from the "Islendingabok" and other original sources. A good English translation of the "Islendingabok" is *The Book of the Icelanders (Islendingabok)*, edited and translated, with introductory essay and notes, by Halldor Hermannsson (Ithaca: Cornell University Library, 1930).

<sup>2</sup> The Irish voyages, and Dicuil's account of them, are discussed in some detail in Chapter IV of Stefansson's "Greenland," pp. 42-60.

have been Iceland, or even Greenland, but again, conclusive evidence is lacking.<sup>3</sup> It is plain that the first European discoverers of both Iceland and Greenland are unknown.

What is better established is that Greenland was, if not discovered from Iceland, at least colonized from there, during the latter part of the tenth century A.D.<sup>4</sup> Exactly who made the first voyage is uncertain, but the best-known one, and the one often regarded as first, was that of Eric the Red, during the year 981 A.D. or thereabouts. He and his father had been compelled to leave Norway about ten years earlier for murders committed there, and had come to Iceland, where the father died. Eric was exiled from Iceland for three years for a similar offense, and decided to spend those three years in the "land seen by Gunnbjorn" - an earlier Norse voyager who perhaps saw but probably did not set foot upon Greenland. As a result of Eric's first and later voyages, a colony grew up there, to which settlers from Iceland were drawn, largely by the attractive name "Greenland" which Eric bestowed upon the place. This colony, in south Greenland, was Eysribygd, or the Eastern Settlement, over which Eric ruled as a great leader. Soon afterwards another colony, Vestribygd or the Western Settlement, grew up, farther north along the western Greenland coast. These settlements flourished for several centuries, then mysteriously disappeared.

Shortly after the settlement of Eysribygd the Norsemen discovered the mainland of North America. Again there is neither conclusive evidence nor unanimity of opinion as to who made the first voyage. The honor has traditionally been given to Eric's son Leif, nicknamed the Lucky, but some authorities, following the account given in the Flatey Book, consider the story of Bjarni Herjulfson's accidental discovery in 986 A.D. to be authentic. Hence they believe that Leif sailed deliberately to find a Vinland Bjarni had already discovered.<sup>5</sup> Bjarni's trip, if genuine, preceded Leif's by at least fourteen years.

Most authorities however appear to prefer the Hauk's Book version, which omits Bjarni's trip entirely, and names Leif as the accidental discoverer. He was

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<sup>3</sup> Stefansson, *ibid.*, chap. iii, pp. 28-41.

<sup>4</sup> For the old Icelandic sagas on the settlement of Greenland and the Vinland voyages, given both in Icelandic and in English translation, see A.M. Reeves, *The Finding of Wineland the Good* (London: Henry Frowde, 1895). The two main sagas reproduced therein are the Hauk's Book and the Flatey Book, both written in the fourteenth century, although the former is a little older. The two differ radically in important details, and renowned authorities have debated at length their relative authenticity. I believe that a majority, including Sir Clements Markham, A. M. Reeves, Gustav Storm, H. Hermannsson, and Stefansson, have favored the Hauk's Book as being freer from discrepancy and error, but a number of others, notably Gathorne-Hardy, have defended the Flatey Book.

<sup>5</sup> Edward Raman, *The Norse Discoveries and Explorations in America* (Berkeley: University of California Press, 1949), considers the Flatey Book version of Bjarni's and Leif's voyages to be true.

returning to Greenland from a visit to Norway in 1000 A.D., but was blown far south of his course, and finally came to a new, hospitable, and wooded shore. The location of this "Vinland" has never been agreed upon, since it has variously been regarded as Newfoundland, or a part of the mainland as far north as Labrador or as far south as Virginia. On this subject Einar Haugen remarks:

Vinland ... has by competent scholars been located in such various places as Newfoundland (Hovgaard), the mouth of the St. Lawrence (Steensby), Nova Scotia (Storm), northern New England (Thordarson), Massachusetts (Fiske), Rhode Island (Rafn), New York (Gathorne-Hardy), and Virginia (Mjelde).<sup>6</sup>

It would seem reasonable to say that the location of Vinland must still be regarded as one of the great unsolved mysteries of history.

Leif made his way back to the Eastern Settlement with the news of his discovery, and also with news of a new religion, Christianity, to which he had been converted while in Norway. During the years that followed, the now - Christianized Greenland colonists made a number of voyages westwards, perhaps to secure needed articles such as timber, which was scarce in Greenland. One important voyage to Vinland was led by Thorfinn Karlsefni, a few years after Leif had returned; but although he took settlers a colony was not founded because the natives of "Skrælings" drove them away. The Greenlanders became acquainted with several other places besides Vinland, among them Markland (Forestland), and Helluland (Flatstoneland). There has been almost as much disagreement over their location as over that of Vinland, but it is not disputed that Markland was north of Vinland and Helluland more northerly still. Helluland has often been identified as part of the coast of Labrador, but Stefansson in a recent work gives good reasons for considering it to have been part of the east coast of Baffin Island.<sup>7</sup>

Besides the sagas, there is considerable additional evidence to indicate that the Norsemen used the Greenland settlements as a base to range far and wide throughout the surrounding area. Early in the nineteenth century, on Kingigtorsuak Island, at about 73° N. lat., three cairns were found of which one contained a runic stone bearing the following (translated) inscription: "Erling Sigvatsson and Bjarne Thordsson and Enridi Oddsson on the Saturday before Gangdag (April 24) made this (these) cairns."<sup>8</sup> The style of the runes and language indicate that the inscription dates from the fourteenth century.

An account written in Iceland about 1640 by one Bjorn Jonsson tells of a voyage made almost 400 years earlier which reached farther north still. The account has

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<sup>6</sup> Einar Haugen, *Voyages to Vinland* (New York: Alfred A. Knopf, 1942), p. 136.

<sup>7</sup> V. Stefansson, *Greenland*, pp. 75-82.

<sup>8</sup> Quoted in Stefansson, *ibid.*, p. 184, & Fridtjof Nansen, *Farthest North*, vol. I (London: Constable and Co., 1897), pp. 296-8.

been interpreted to mean that the trip, if genuine, attained a latitude of about 74° or perhaps even more than 80°, which in the latter case would be well into Smith Sound.<sup>9</sup>

In 1876 the British polar expedition under Sir George Nares discovered two beacons or cairns on Washington Irving Island, east of Ellesmere in latitude 79° 35'. They were apparently very old, and have been thought by some to be of ancient Norse origin. The same expedition discovered an eider duck shelter on Norman Lockyer Island nearby - a relic which has been thought to be more Norse still.<sup>10</sup>

The Sverdrup expedition of 1898-1902 also found both eider duck shelters and cairns, in Jones Sound on the south coast of Ellesmere.<sup>11</sup> If these remains are truly Norse in origin, they testify that these gallant Vikings penetrated farther north into Smith Sound than anyone until Kane in 1854, and farther west into Jones Sound than anyone until Sverdrup in 1899.

On the strength of relics found in Ontario, James W. Curran has recently sought to prove that Vinland was near the Great Lakes, and that it was reached by sailing through Hudson Strait and Hudson Bay.<sup>12</sup> Hjalmar Holand has taken the Kensington Stone and nearby Minnesota discoveries to be genuine Norse relics, and thus has claimed that the Norsemen's travels took them to the heart of North America.<sup>13</sup> Both claims are controversial, and cannot be gone into here, but it may be said that if there is any truth in them, the scope of the Norsemen's travels becomes wider still. Even if they are without foundation, the Norsemen must still be regarded as among the greatest of explorers, and considering the time and circumstances in which they sailed, they are in a class by themselves.

The Greenland colonies reached their greatest development during the two or three centuries after they were founded. At their height they were estimated to comprise about 280 homesteads with a population of at least 2000 people, mainly in the Eastern Settlement. There were seventeen churches, and bishops were regularly appointed for Greenland until 1537, although in the colonies' declining years they did not even visit their See. The Pope made Greenland a separate bishopric in 1124, and tithes were at first regularly paid in kind to Rome. Archaeological remains show that the inhabitants had large stone houses and barns, and that they raised cattle, horses, sheep, goats, dogs, swine, and poultry, obtaining therefrom such products as milk, butter, wool, and eggs. Vegetable products were lacking, except for what they could obtain from Europe, although they cultivated a native type of hay. In addition they supplemented their diet with fish, seals, bears,

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<sup>9</sup> Nansen, *op. cit.*, vol. I, p. 310; Sir Clements R. Markham, *The Lands of Silence* (Cambridge: Cambridge University Press, 1921), p. 50.

<sup>10</sup> Stefansson, *op. cit.*, pp. 186-188.

<sup>11</sup> Stefansson, *ibid.*, pp. 189-190, and Nansen, *Farthest North*, vol. I, pp. 306-7, says it is doubtful.

<sup>12</sup> James W. Curran, *Here Was Vinland* (Sault Ste. Marie: Sault Daily Star, 1939).

<sup>13</sup> Hjalmar R. Holand, *Westward from Vinland* (New York: Duell, Sloan and Pearce, 1940).

and whales. Their manner of life, while in no sense sumptuous by modern standards, was perhaps not unsimilar to that of other Norsemen in Iceland and northern Norway.

The decline and disappearance of the Greenland colonies is still a fascinating mystery. We know that they existed, we know they gradually became isolated from Europe and were left to their fate, and we know that since the modern era of exploration began with Frobisher's voyage in 1576 no recognizable descendants of them have ever been found. What could have been their fate?

A number of theories have been advanced to explain their disappearance. Markham maintained that "the neglect of the Norwegians to send ships" provided the answer, since the colonies could not maintain themselves.<sup>14</sup> It is true that Norwegian goods were imported into Greenland until the fourteenth century, also that Greenland, formerly a republic, became subservient to Norway in 1261 and perhaps more dependent upon her. Again, Norway herself became a province of Denmark in 1397 and remained so for four centuries, undoubtedly losing both her interest in Greenland and her ability to help her. But other authorities say that Norway's help was always negligible, and that Greenland did not need it.

Nansen thought that lack of vegetable products might have caused a failing of reproductive powers.<sup>15</sup> This idea might have some validity, but it hardly explains how the Eskimos, whose diet has less vegetable in it than that of the Norsemen, have been able to maintain themselves as a race.

Other suggestions have been that a severe change of climate might have wiped out the colonies, or that they might have succumbed to attacks of Eskimos, or to the Black Death which ravaged Norway in 1349. There are strong objections to each - the climate did not change radically, the Eskimos were not sufficiently organized or powerful to wipe out the colonies, and there was no contact with Norway during and just after 1349. A final suggestion, given some approval by Markham, Nansen, and Stefansson, is that the Norsemen who remained in Greenland mingled with the Eskimos and were absorbed by them, giving the Greenland Eskimo the European traits which have since been observed.<sup>16</sup>

It would be futile here to attempt to contribute anything to this discussion, except to observe that not only one, but several, of the above causes may have been contributory factors to the disappearance of the Greenlanders.

The gallant exploits of the Norsemen have been of no significance in the territorial problems of the Canadian Arctic. Norway has never made any claims based upon them, the Sverdrup claims being based solely upon the discoveries of

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<sup>14</sup> Markham, *op. cit.*, p. 52. Stefansson says that "the last undisputed Norwegian voyage took place in 1410." (*Greenland*, p. 160.)

<sup>15</sup> Nansen, *op. cit.*, Vol. II, pp. 96-97.

<sup>16</sup> Markham, *op. cit.*, p. 52; Nansen, *op. cit.*, Vol. II, pp. 102-106; Stefansson, *Greenland*, pp. 180-183.

1898-1902.

The Norse voyages are worthy of mention, however, to point out the probability that the Norsemen were the first Europeans to set foot upon Canadian soil. In those post-Columbian days when prior discovery was still regarded as sufficient to establish rights of sovereignty, other European nations would have been perhaps less enthusiastic about pressing this theory had it been generally known that Norwegians had already discovered and explored much of the New World.

## CHAPTER 5

### FROM FROBISHER TO FRANKLIN

A new era in exploration was opened by the voyage of Columbus to the West Indies in 1492. The voyages of the Norsemen, little known in southern Europe anyway, were ignored or forgotten. Navigators from Spain, Portugal, France, England, and Holland henceforth took a more southerly route across the Atlantic on most occasions, and thus did not encounter Iceland and Greenland. When it was realized that Columbus had discovered, not the spice islands he was in search of, but some new ones, and that an entire continent blocked the western route to Asia, interest in the Americas remained dormant for a time, the primary concern being to find a route around them. This concern was partially satisfied when Vasco da Gama discovered a route to Asia around the southern tip of Africa in 1497.

England, like other countries, was at first chiefly interested in finding a short route to the spice islands. The first voyages under the auspices of the English king, namely those of the Cabots in 1497, 1498, and 1509, took a more northerly route than those of Columbus, and encountered the forbidding coasts of Labrador and Newfoundland.<sup>1</sup> Undoubtedly the codfish of the Grand Banks were regarded as a poor substitute for the precious stones, silks, and spices so ardently desired, and enthusiasm waned. Also, Pope Alexander VI's Bull in 1493 had divided the New World between Spain and Portugal by a demarcation line 100 leagues west of the Azores - a line which the two nations themselves moved 270 leagues further west by the Treaty of Tordesillas one year later. While in no sense willing to be thus shut out from the New World, Henry VII did not want a costly dispute on his hands either, and after the Cabots English exploration lapsed for half a century.<sup>2</sup>

When the English resumed activity, it was in an attempt to find a northern route to Asia that would match the southeastern route, dominated by the Portuguese since da Gama's voyage in 1497-1499, and the southwestern route, opened for the Spanish by Magellan in 1519-1522. Under the guidance of the now-aged Sebastian Cabot the "Merchant Adventurers of England" were organized (later called the Muscovy Company), and preparations were made to try to find a

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<sup>1</sup> King Henry VII's Letters Patent of March 5, 1495, authorized John Cabot to "seek out, discover, and find" lands and islands not possessed by other Christian princes, and to "occupy and possess" them. See Clements R. Markham (tr.), *The Journal of Christopher Columbus and Documents Relating to the Voyages of John Cabot and Gaspar Corte Real*, Publications of the Hakluyt Society (London, 1893) Series 1, Vol. LXXXVI, pp. 197-198.

<sup>2</sup> On the Cabots and other early explorers, see the following: J. A. Williamson, *The Voyages of John and Sebastian Cabot* (London: Bell and Sons, Ltd., 1937); and H. P. Biggar, *The Precursors of Jacques Cartier 1497-1534* (Ottawa: Government Printing Bureau, 1911).

Northeast Passage north of Russia. Sir Hugh Willoughby, Richard Chancellor, and Stephen Borough in 1553, Chancellor in 1555, Borough in 1556, and Arthur Pet and Charles Jackman in 1580 all made attempts, but none got farther than the Kara Sea. A northern trade route to Moscow was opened up, but the price was heavy, as Willoughby, Chancellor, and Jackman lost their lives in the Arctic. A few years after Willoughby's voyage the Dutch also began attempts to find a Northeast Passage, but expeditions under Oliver Brunel and William Barents stopped without passing the Ob River.<sup>3</sup>

Faced with all these failures, and with the northeastern route blocked by Russians as well as ice, it is not surprising that the English gradually turned again to what seemed to be the only remaining possibility - the northwest. Thus Frobisher's voyage in 1576 was an early step in an enterprise that was finally crowned with success only in the twentieth century.

Frobisher however was not the first explorer to search for a Northwest Passage. The Cabots had been influenced by the same idea, and Sebastian may have reached Hudson Strait in 1509.<sup>4</sup> The Azorean Fernandez, sailing for Portugal, travelled in northern waters, and appears to have been the "Ilabrador" or "small squire" whose name was given to Labrador.<sup>5</sup> The brothers Corte-Real, who were also Portuguese from the Azores, visited Greenland, Labrador, and Newfoundland between 1500 and 1502, and both lost their lives.<sup>6</sup> The Florentine Verrazano tried to find a passage for France in 1523, but made his attempt along the New England shore. Jacques Cartier's three trips between 1534 and 1541, also on behalf of France, were concentrated in the Gulf of St. Lawrence. There were other well-known voyages, notably that of Estevan Gomez in 1524-1525, and probably many more unrecorded ones, but as far as we know none reached genuinely arctic regions. Frobisher's fame lies not in being the first to make the attempt but in being the first to make a dent in the armor of the North, and also in being the first European to reach the Arctic Islands since the Norsemen.

Frobisher's career was as full of romance as that of any other Elizabethan sea-captain. To quote J. A. Williamson, he

bartered beads for gold dust on the Guinea coast, then sought a passage to Asia through the northern ice, converted that undertaking without a thought of inconsistency into the exploitation of a gold mine, sailed next with Drake to raid the Spanish colonies, commanded a squadron against the Armada, and received his death-wound as an officer of the queen in a land battle

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<sup>3</sup> Clements Markham, *The Lands of Silence*, pp. 58-80.

<sup>4</sup> James A. Williamson, *A Notebook of Empire History* (London: Macmillan and Co., Ltd., 1942), pp. 25-26.

<sup>5</sup> J. B. Brebner, *The Explorers of North America 1492-1806* (New York: Macmillan Co., 1933), p. 112.

<sup>6</sup> *Ibid.*, p. 112.

on the coast of Brittany.<sup>7</sup>

Frobisher had spent many years in the Levant trade but in the 1570's became interested in the question of a Northwest Passage. Aided by the Earl of Warwick and his friend Michael Lok, he spent several years raising money to finance a voyage to northwestern waters. The powerful Muscovy Company, which had a monopoly of all northern trade with Asia, steadfastly opposed the project, until a peremptory note from the Privy Council compelled them to stand aside. By 1576 the "Gabriel" and "Michael," of about 25 tons each, and a pinnacle of 10 tons were manned and equipped, and on the eighth of June they stood out from London harbor.

During the outward voyage they passed within sight of Greenland, but, confused by the erroneous "Zeno" map, they identified it as the mythical "Friesland." Terrific gales, dense fogs, and heavy shore-ice prevented them from landing. Misfortune dogged their footsteps, the tiny pinnacle went down with all hands, and the "Michael" became separated and returned to England. Frobisher in the "Gabriel" pushed on, and eventually reached what is now called Baffin Island - lonely, rocky, and inhabited only by a few Eskimos. The natives murdered five seamen, but Frobisher was nevertheless delighted to have found them, because their Mongoloid features gave reason for hope that Cathay was not far distant. Frobisher had one Eskimo hauled on board, kayak and all, and took him back to England, but the "strange infidele," as he called him, died of a cold soon after they landed.

Upon his return Frobisher announced that he had discovered the Northwest Passage, but people were not so much interested in this claim as in some strange black stones - iron pyrites really - that the explorers had brought home as souvenirs. These under certain conditions glistened like real gold, and hopes were fired that Frobisher had discovered an easy, new source of wealth. Queen Elizabeth cautiously christened the new land "Meta Incognita" - "worth unknown," and gave a charter with full monopoly rights to the original adventurers, whose new organization was called the Company of Cathay. She herself helped to fit out a second expedition for the following year, and early in 1577 the "Gabriel" and "Michael" set out again, this time accompanied by the Queen's own ship "Aid," of 200 tons.

Little new ground was covered on this second voyage. The ships sailed via the Orkneys this time, and, after again sighting Greenland, landed at Meta Incognita in almost the same spot as before. Here they mined about 200 tons of the ore, but did not attempt to travel farther. Cairns of stone were piled up as a sign of England's sovereignty, thus establishing for Britain what was as far as we know the first claim to the archipelago.<sup>8</sup> Again the explorers fell out with the Eskimos when they

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<sup>7</sup> J. A. Williamson, *A Short History of British Expansion* (New York: Macmillan Co., 1931), p. 92.

<sup>8</sup> V. Stefansson and E. McCaskill (editors), *The Three Voyages of Martin Frobisher* (London: Argonaut Press, 1938), Vol. I, p. 58. This book gives George Best's original account of Frobisher's three voyages to Baffin Island. See also Richard Hakluyt, *The Principal*

attempted to barter. One well-meaning but offending native, running out of other material, cut off the tail of his coat and offered it to the admiral. The latter took offense, tempers rose, and a fight was precipitated in which five Eskimos were killed. With two others as prisoners and a quantity of sealskins Frobisher and his men sailed for home.

When they arrived they were given a tumultuous welcome. Goldsmiths vied with each other in declaring the value of the ore brought back, and a huge expedition of fifteen ships was fitted out for a trip the following year - the largest English squadron to leave Europe up to that time. Frobisher was made general as well as admiral for this third voyage, and when he sailed in the spring of 1578 the stock of his company had swollen to £20,000.

Small plans of the second voyage to establish a colony were this time expanded into a great scheme which involved taking one hundred settlers to build a fort, make a permanent colony, and mine the gold-bearing ore. The voyage proved to be a bitter disappointment. Frobisher landed upon Greenland for the first time and claimed it for England, also penetrated a distance into Hudson Strait, but otherwise the story was one of dismal failure.<sup>9</sup> Bad weather hampered the explorers from the start, so much of their supplies and building materials were lost that neither a fort nor a colony could be established, the fleet was scattered far and wide upon its enforced return home, and worst of all, during their absence the worthlessness of the ore had been discovered. Within a very short time the Company of Cathay was bankrupt and ruined, the support for further exploration had been lost, and Michael Lok thrown into prison for the company's debts. In this unhappy manner ended England's first attempt at colonization in the New World, and Frobisher did not sail to the northwest again.<sup>10</sup>

Sir Humphrey Gilbert, whose "Discourse for a Discovery of a new Passage to Cathay" had been printed in 1576, was the leading exponent of the idea of a Northwest Passage, and had been of great help to Frobisher. Yet his own voyages were directed mainly towards plundering and colonization than towards finding a

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*Navigations, Voyages, Traffiques and Discoveries of the English Nation* (Glasgow, 1903-5), Vol. VII, p. 217.

<sup>9</sup> Richard Hakluyt, *op. cit.*, Vol. VII, p. 326. See also A. S. Keller, O. J. Lissitzyn, and F. J. Mann, *Creation of Rights of Sovereignty Through Symbolic Acts 1400-1800* (New York: Columbia University Press, 1938), p. 62. This valuable book deals with symbolic acts of appropriation made by various European nations during the years specified. See especially Chapter 5.

<sup>10</sup> In 1861-1862 the American explorer Charles Francis Hall found many relics on Baffin Island of Frobisher's expeditions, thus establishing the precise location of Meta Incognita. See Hall's *Life with the Esquimaux*, Vol. 1, pp. 271-272, 278, 302-304, 315-316, and Vol. II, pp. 77-80, 150-153, 161, 283, 293.

route.<sup>11</sup> In 1578, accompanied by Raleigh, he fought with some Spanish ships in southern waters. In the same year he received letters patent from the Queen, granting him the right to discover and possess lands which were not already the property of some other Christian prince.<sup>12</sup> In 1583, after claiming Newfoundland for England but failing to establish a colony there, he went down with his ship on the voyage home.<sup>13</sup>

A few years after Frobisher's failure Captain John Davis renewed his search with somewhat better luck.<sup>14</sup> The circumnavigation of the globe by Francis Drake, completed in 1580, and the high profits realized from that voyage, had kindled again English desires to find a short route to Asia. Again it seemed advisable to turn to the northwest, and a number of influential men including John Dee, Sir Walter Raleigh, the Hakluyts, and others, combined resources to organize an expedition. In 1584 a patent was granted, and next year the so-called Northwest Company was formed, with Davis as head navigator and captain of the expedition.

The expedition set out from Dartmouth in 1585 in two small ships, the "Sunshine" and "Moonshine," of 50 and 35 tons respectively. After a stormy passage they rounded the southern promontory of Greenland and sailed up the west coast as far as the present town of Godthaab. Heading westwards they reached Baffin Island at a point believed to be some distance north of Frobisher's Meta Incognita, just above Cumberland Sound. After a little friendly trading with the natives and a preliminary survey of Cumberland Sound Davis returned home without attempting to cover any more new ground.

He went back next year with a squadron of four vessels, and after detailing two to explore the eastern Greenland shore, with the remaining two he revisited the points he had seen the year before. He surveyed with surprising accuracy some of the Baffin coast, gained sealskins by trading with the Eskimos, entered Hudson Strait, and followed the Labrador and Newfoundland coasts till he reached the fishing banks. He returned to England much impressed with the commercial possibilities of fishing and sealing and of trading with the Eskimos.

The third and last voyage, undertaken in 1587, was the most successful of the three from an explorer's standpoint. With one ship only of the three he had when he started, a small pinnace called the "Ellen," he worked his way up the strait that now bears his name to the rocky headland Sanderson Hope, in latitude 72°12', and then turned westwards, crossing the widest part of Baffin Bay. Drifting south with the ice-pack until freed, he returned to England to find his countrymen making feverish preparations to resist the threat of the Spanish Armada. In these

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<sup>11</sup> J. A. Williamson, *A Notebook of Empire History* (London: Macmillan and Co., Ltd., 1942), p. 36.

<sup>12</sup> Richard Hakluyt, *op. cit.*, Vol. VIII, pp. 17-20.

<sup>13</sup> *Ibid.*, pp. 53-54. See also Keller, Lissitzyn, and Mann, *op. cit.*, pp. 62-65.

<sup>14</sup> Albert H. Markham, *The Voyages and Works of John Davis* (London: Hakluyt Society, 1880), Vol. LIX, gives original accounts of Davis's voyages.

circumstances a return to the northwest was out of the question, and Davis's exploratory work in this region was ended. But his contribution was great, for as Sir Clements Markham puts it, paraphrasing Luke Foxe, it was he who lighted Hudson into his strait, Baffin into his bay, and Hans Egede into the scene of his Greenland labors.<sup>15</sup>

Davis was undoubtedly a pioneer. In 1592 he made a courageous but abortive attempt to seek the Northwest Passage from the Pacific side, failing to clear the Straits of Magellan. Soon after Davis's time England in common with other nations began to think more of occupying America than of passing around it, and after the flurry of activity led by Hudson, Bylot, and Baffin Arctic exploration was in the doldrums for many years.

Two explorers between Davis and Hudson who may be passed over briefly are George Weymouth and John Knight. Sailing for the East India Company, they undertook separately to find the Northwest Passage, but both voyages came to grief. In 1602 Captain Weymouth sighted Greenland, Baffin Island, and Labrador, and sailed a short distance into Hudson Strait, but was forced to return to England when a mutiny broke out. Four years later Captain Knight reached northern Labrador, but he and four others failed to return after going ashore, and the crew returned to England without them. It was believed they had been killed by Eskimos.

Henry Hudson crammed an amazing amount of activity into the last few years of his life.<sup>16</sup> We know little about him prior to 1607, but between then and his disappearance in 1611 he made four great voyages, of which only the last took him into northwestern waters. Sailing for the Muscovy Company, in 1607 he had journeyed far up the eastern Greenland coast to latitude 80° 23' N. and then, turning east, had reached Spitsbergen. In 1608 he followed the Russian coast to Novaya Zemlya, but turned back in early July, either because of ice, a threatened mutiny, or both. It was in 1609 that, sailing for the Dutch East India Company, he started out northeast in the "Half Moon," and then turned towards the New World to discover the famous river which has been given his name.

Hudson started out on his last and most famous voyage in the "Discovery" on April 17, 1610. With him were the mate Robert Juet, apparently involved in the mutiny of 1608, Robert Bylot, later a famous explorer in his own right but of doubtful integrity during this voyage, John King, an ignorant quarter-master, and Henry Greene, a thorough rascal whom Hudson had befriended. The voyage was privately sponsored, notably by Sir Thomas Smith, Sir Dudley Digges, and Sir John Wolstenholme, who were leading supporters of voyages to search for a Northwest Passage.

Passing within sight of Iceland and Greenland the "Discovery," after some delay,

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<sup>15</sup> Sir Clements Markham, *The Lands of Silence*, p. 101.

<sup>16</sup> See G. M. Asher, *Henry Hudson the Navigator* (London: Hakluyt Society, Vol. XXVII, 1860), for original accounts of Hudson's voyages.

entered Hudson Strait. Frobisher, Davis, Weymouth and perhaps Sebastian Cabot had preceded Hudson thus far, but he was the first who is known to have passed through the strait into the bay. Turning south he took a long time to reach the southern shore of James Bay, and, bitterly disappointed at finding land in his path, he spent more time trying to find a way past the barrier. Finally, with winter upon him, he was compelled to beach the "Discovery" and pitch camp upon the desolate shore.

After seven months of cold and hunger they were able to sail again, but it was becoming increasingly difficult for Hudson to persuade his men to go further. Nevertheless they cruised over an unknown area in James Bay until fear and discomfort overcame loyalty. For the tragedy that now transpired there has never been any better word than that of the wretched survivors, and the written account by one of them, Abacuk Prickett, the truthfulness of which are open to question. Apparently a group of plotters, led by Juet and Greene, forced Hudson, his young son, the loyal sailors, and two sick men into an open boat and then cut them adrift. Their fate is unknown, but they must soon have perished.

The mutineers themselves fared little better. At Cape Digges in Hudson Strait Juet, Greene, and three others were set upon by Eskimos and either killed or seriously wounded. After terrible hardships eight starving survivors, led by Robert Bylot, brought the ship back to England. Justice and public opinion demanded that they be hung, but men familiar with northwestern navigation were so much in demand that when four of them were brought to trial several years later they were all acquitted.

So keen was the desire among London merchants to carry on Hudson's work that Bylot and Prickett were both employed in the year following their dishonorable return. As navigators they sailed under Captain (afterwards Sir Thomas) Button, who took the "Discovery" and another vessel back to Hudson Bay on behalf of the newly incorporated "Governor and Company of the Merchants of London, Discoverers of the Northwest Passage." Button found Hudson Strait without any difficulty and then sailed straight west, discovering Coats and Southampton Islands before reaching the western shore of Hudson Bay, at latitude 60° 40' N. He discovered the Nelson River and spent a hard winter at its mouth, then in the spring traced the coast north of 65° before returning home late in 1613. To Button more than anyone else is due the credit for laying bare the geography of Hudson Bay.<sup>17</sup>

Two men who had accompanied Button in 1612 made later attempts on behalf of the same company. William Gibbons in 1614, and William Hawkrigde a few years later both tried to find a Northwest Passage, but as far as is known neither

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<sup>17</sup> Sir Clements R. Markham, *The Lands of Silence*, pp. 136-137. It appears doubtful, however, whether Button ever formally claimed territory in this region. His successor Luke Foxe evidently assumed that he had done so, but this is questioned in Keller, Lissitzyn, and Mann, *op. cit.*, pp. 85-87.

succeeded in even entering Hudson Strait.

We first hear of William Baffin as the pilot on one of Captain James Hall's ships when the latter sailed to west Greenland for a group of English merchants in 1612.<sup>18</sup> Hall, a native of Hull, had previously made three trips to Greenland for the King of Denmark to search for the lost Greenland colony, but had now returned to England. Baffin distinguished himself during this voyage by making and carefully recording a great variety of scientific observations and calculations, which were subsequently proved to be astonishingly accurate. Hall was killed by an Eskimo dart in one of the Greenland fjords, and Baffin spent the next two years making two successive expeditions to Spitsbergen for the Muscovy Company.

In 1615 Baffin and Bylot were chosen to lead an expedition for the Northwest Company to Hudson Bay, in the famous old "Discovery," which now crossed the Atlantic for the fourth time. Bylot was the master, and Baffin, as pilot, continued his remarkable observations with his simple instruments. Geographically the expedition did little more than confirm Button's discoveries, although Salisbury, Mill, Southampton and Nottingham Islands were partially explored. The explorers returned to England in September 1615 without the loss of a single man.

The Northwest Company was so encouraged by the measure of success which the expedition had achieved that they sent the "Discovery" back next year for the fifth time, again with Bylot and Baffin in command. This time they pushed up Davis Strait to the great bay which has been named after Baffin until they reached a latitude of 78°, the most northerly to be attained in those seas until 236 years had passed.<sup>19</sup> An opening to the north was named "Sir Thomas Smith's Sound," after one of the promoters of the enterprise - the opening through which men finally reached the North Pole. Lancaster Sound and Jones Sound, both leading to the west, were discovered on the way back. This fifth voyage to the Arctic was Baffin's last in that direction, but he later entered the service of the East India Company, and was killed by a gun-shot in the Persian Gulf in 1622.

The next three voyages contributed little to geographical knowledge. King Christian IV of Denmark sent Jens Munk out to find a Northwest Passage in 1619, but after a dreadful winter spent at the present site of Churchill the only four survivors, including Munk himself, had barely enough strength left to sail the smaller of their two ships home.<sup>20</sup> A somewhat similar experience befell the inept Captain Thomas James, who, sailing for a number of Bristol merchants, passed through Hudson Strait and wintered miserably in 1631-1632 on Charlton Island in James Bay. His many unhappy experiences did not prevent him from claiming to

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<sup>18</sup> See Clements R. Markham, *The Voyages of William Baffin* (London: Hakluyt Society, Vol. LXIII, 1881) for original accounts of Baffin's voyages.

<sup>19</sup> Jeannette Mirsky, *To the Arctic!* (New York: Alfred A. Knopf, 1948), p. 65.

<sup>20</sup> Munk claimed the Churchill region for Denmark. Rev. B. M. Hofrenning, *Captain Jens Munk's Septentrionalis* (Pine Creek, Minnesota, 1942), p. 20.

take possession of all the surrounding territory “westward as far as Nova Albion, and to the northward, to the latitude of 80 degrees” for King Charles I, before sailing home.<sup>21</sup> Captain Luke Foxe also undertook a voyage to Hudson Bay in 1631, and explored most of its west coast from south of the Nelson River to a northerly point at about 67°, which he pompously christened “Northwest Foxe his furthest.” Upon his return he wrote his narrative “North-West Fox,” a pedantic, conceited account of the voyage, which is nevertheless quite clear in essential details. It records an indefinite claim to the Churchill region.<sup>22</sup>

The success of these men in revealing the geography of Hudson Bay, and their failure to get any further, caused Arctic exploration to lapse for some years, and the next important phase begins with the founding of the Hudson's Bay Company in 1670. This event will always be associated with the names of Pierre Esprit Radisson and his brother-in-law Medard Chouart Groseilliers, whose fascinating careers can only be touched upon here.<sup>23</sup> They are without doubt to be numbered among the greatest wanderers in North American history. Before they fled from New France in or about 1662 they had learned to live as Indians and had ranged far and wide throughout the West, travelling by canoe and on foot, perhaps as far as Manitoba and Hudson Bay. After several years spent in New England, and also, apparently, a voyage to the entrance of Hudson Strait, they crossed the Atlantic Ocean and presented themselves at the court of King Charles II, advertising vast plans for exploration and trade in the Northwest.<sup>24</sup>

Charles was lukewarm, until an expedition sponsored mainly by the adventure-loving Prince Rupert returned from Hudson Bay with a huge cargo of furs. Zachary Gillam led the expedition, with Groseilliers but not Radisson in attendance, and the first English fort was built at the mouth of the Rupert River. With Charles's fears at rest, a royal charter was granted in May 1670 and a company formed - “The Governor and Company of Adventurers of England trading into Hudson's Bay.” Prince Rupert, the first governor, saw that it was given a complete monopoly over fur trading and other activities in all lands which were drained into Hudson Bay - perhaps half of present-day Canada - and in return the Company was charged with the task of finding a Northwest Passage. The founding of the company is an important event in the history of arctic exploration, not only because the company maintained its claim to this large, ill-defined territory until 1869, but also because it furnished the bases, the personnel, and the initiative for a large number of northern expeditions.

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<sup>21</sup> Quoted in Thomas Rundall, Esq., *Narratives of Voyages Towards the North-West in Search of a Passage to Cathay and India 1496-1631* (London: Hakluyt Society, 1849), p. 220.

<sup>22</sup> Miller Christy (ed.) *The Voyages of Foxe and James to the North-West* (London: Hakluyt Society, 1894), Series 1, Vol. LXXXIX, p. 348.

<sup>23</sup> G. L. Nute, *Caesars of the Wilderness* (New York: Appletons, 1943) is a good work on Radisson and Groseilliers.

<sup>24</sup> *Ibid.*, especially pp. 75-124.

After working several years for the Company the Frenchmen felt that they were being underpaid, so they returned to New France, and in 1683 helped to capture the English posts on the Bay which they themselves had been instrumental in founding. Groseilliers then retired to his home at Three Rivers, but Radisson remained active, and again entered the service of the Hudson's Bay Company. In 1684 this amazing adventurer returned to the Bay and recaptured York Factory for the English. He made at least one more voyage to Hudson Bay for the Company, apparently not attempting to penetrate into more northerly waters, and then passes from history.

A servant of the Hudson's Bay Company undertook what turned out to be a tragic expedition in 1719. This was the aged James Knight, factor at York Factory, who hoped to find both a Northwest Passage and a rumored copper mine (perhaps the one later found by Hearne). Neither he nor any member of his expedition was ever seen alive again, although Captain Scroggs found the wrecks of his ships in 1722. Four later voyages in the same locality, those of Middleton in 1741, Moore and Smith in 1746, and two by Christopher in 1761 and 1762, were also unsuccessful, as none was able to get farther north than Repulse Bay. Christopher ascended Chesterfield Inlet until he reached Baker Lake.

The name of Captain Cook, more often remembered in connection with his work in the southern hemisphere and his two circumnavigations of the globe, is also memorable in arctic exploration. On his third great voyage, in 1778-1779, the specific purpose of which was to discover a Northwest Passage from the Pacific side, he sailed through Bering Strait, east as far as Icy Cape, and west as far as North Cape. Great ice-packs blocked his path in both directions, so he turned back, and, crossing and recrossing the strait at its narrowest point, proved to his own satisfaction at least that there was no land connection between North America and Asia.<sup>25</sup> Vitus Bering, the Dane in the employ of Peter the Great, had missed this discovery in 1728, and it was not finally confirmed until Lieutenant Wrangel's voyage of 1820-1822. Cook is also to be noted as the discoverer of the value of fruit juices in the prevention of scurvy - a discovery of great value to later explorers.

Samuel Hearne, probably the greatest land explorer the Hudson's Bay Company produced, initiated overland travel to the Arctic Ocean.<sup>26</sup> Using Fort Prince of Wales as his base in each case, he made three expeditions into the Arctic, both to find the reported copper mine on the shores of the frozen ocean and to find a Northwest Passage. The first two attempts, in 1769 and 1770, were both failures,

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<sup>25</sup> Cook had been ordered to take possession of previously undiscovered and unclaimed territories, but although he made such claims in southern waters, there is apparently no evidence that he made any claims in the arctic regions he visited. Keller, Lissitzyn, and Mann (*op. cit.*, pp. 88-98) believe that he refrained because he recognized a prior right on the part of Russia.

<sup>26</sup> J. B. Tyrrell (ed.), *Hearne's Journey from Hudson's Bay to the Northern Ocean* (Toronto: The Champlain Society, 1911).

but the third was more successful. With a party of Indians to help him, including the great chief Matonabbee and his six enormous wives, Hearne finally crossed the Barren Lands and descended the Coppermine River, reaching its mouth in July 1771. Here he was forced to watch in horror and helplessness while his Indian guides attacked and massacred every Eskimo in a small encampment they chanced upon. Hearne was then taken to the famed copper mine, but was bitterly disappointed, not only because he could find little free copper, but also because the Arctic Ocean nearby appeared to be impassable. He returned to Fort Prince of Wales via Great Slave Lake with a sense of failure, but the Company was quite pleased with his achievement. Not only had he reached the mine, such as it was, and the frozen sea, but he had discovered that the Coppermine River flowed into the Arctic Ocean rather than Hudson Bay, and had proved that there was no Northwest Passage between Fort Prince of Wales and the mouth of the aforesaid river.

Eighteen years after Hearne's journey to the Coppermine another great figure in northern exploration appeared on the scene. This was Alexander Mackenzie, a dour, determined young Scot who had been placed in charge of the Athabaskan area by the new company of Montreal traders which was beginning to challenge the long rule of the Hudson's Bay Company. At Lake Athabaska Mackenzie and his cousin Roderick built Fort Chipewyan, in the teeth of severe competition from the Hudson's Bay Company; and at a stroke took from the older company the profitable trade of the Peace, Athabaska, and Slave Rivers. The Hudson's Bay Company men were particularly worried because the various rival elements centering on Montreal had as recently as 1784 united to form the Northwest Company, and this vigorous young organization, intent on immediate and individual profits only, was outwitting and outdoing them at every turn, in spite of great handicaps of distance and difficult country.<sup>27</sup>

Mackenzie's goal was the Pacific Ocean. Consequently he was more than a little disappointed in his voyage of 1789, during which he descended the Slave and Mackenzie Rivers and found, not the Pacific, but the Arctic Ocean. It was nevertheless a most remarkable journey, as the total time taken to travel from Fort Chipewyan to the mouth of the Mackenzie was only thirty-nine days. Four years later Mackenzie realized his dream and stood upon the shores of the Pacific - the first to cross the continent by land.<sup>28</sup>

After Mackenzie no great explorer appeared in the Arctic until after the end of the Napoleonic Wars. These kept the British navy fully occupied, and ships were not available for arctic exploration. In North America the intensifying rivalry between the two trading companies caused exploration to be neglected, in order to

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<sup>27</sup> Not to be confused with the Northwest Company formed after John Davis's first voyage in 1585.

<sup>28</sup> See Alexander Mackenzie, *Voyages from Montreal to the Frozen and Pacific Oceans* (London: 1801) for Mackenzie's personal narratives.

concentrate upon capturing the fur trade; a situation that did not end until the two companies united in 1821. Beginning in 1818 there was a resurgence of exploration which did not pause until the geography of all the Polar regions had been revealed, and both the Northwest Passage and the North Pole attained. The Rosses, Parry, Dease, Simpson, Rae, Franklin and his associates Back and Richardson are the great figures of the first half of the nineteenth century. Of these Franklin stands head and shoulders above the rest, but these would stand out in sharper relief if their deeds were not so overshadowed by his.

The first expedition of this period set out from England in 1818, having been organized largely at the urging of Mr. (afterwards Sir) John Barrow, Second Secretary to the Admiralty. It was in two parts. The first section, under Buchan and Franklin, sailed northeast, but failed to get past Spitsbergen. The second section, under Captain John Ross with Edward Parry as second-in-command, sailed northwest through Baffin Bay; but after penetrating a short distance into Lancaster Sound Ross turned back with the excuse that he had encountered a land-locked bay.<sup>29</sup> He was much condemned after the voyage, as his officers did not agree with him about the bay, and Parry and others soon proved by subsequent voyages that it did not exist. Ross did not redeem himself until 1829-1833, when with his nephew James Clark Ross he spent four severe winters on the Boothia Peninsula, and returned to England with the loss of only three men. This expedition was undertaken in the "Victory," the first steam-driven ship to be used in the Arctic. The Rosses discovered the northernmost point of continental North America, at the tip of Boothia Peninsula, without knowing it, and missed Bellot Strait, but they mapped five hundred miles of the surrounding coastline, located the North Magnetic Pole, and in the manner of the times took possession of the adjacent area for Great Britain by erecting cairns and hoisting flags in various places, as the older Ross had done in Lancaster Sound in 1818. Both men were later knighted for their leadership in this notable voyage.<sup>30</sup>

Parry, who had been under Ross's command in 1818, afterwards led four expeditions of his own into arctic waters. In 1819 he returned under Admiralty orders to Lancaster and Barrow Straits, and got as far as Melville Island, where he wintered. At one time he was within sight of Banks Island. In 1821 he passed through Hudson Strait and spent the next two winters on the east shore of Melville Peninsula. While there he discovered and named Fury and Hecla Strait, but was unable to pass through. In 1824 he returned to Lancaster Sound, but after wintering there in Prince Regent Inlet he lost one of his two ships near Somerset Island and

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<sup>29</sup> Ross claimed an indefinite amount of territory for Great Britain at Cape Byam Martin on Bylot Island. Sir John Barrow, *Voyages of Discovery and Research into the Arctic Regions from the Year 1818 to the Present Time* (New York: Harper and Brothers, 1846), pp. 45-46.

<sup>30</sup> W. F. King, *Report upon the Title of Canada to the Islands North of the Mainland of Canada* (Ottawa: Government Printing Bureau, 1905), pp. 39-40.

had to return home. His last expedition, in 1827, was an attempt to reach the North Pole from Spitsbergen. Following the example of John Ross, Parry left cairns and flags at the various locations he visited.<sup>31</sup>

Three Hudson's Bay Company officials, Peter Dease, Thomas Simpson and Dr. John Rae, succeeded in exploring much of the northern coastline of continental North America. Actually Franklin and Richardson had covered most of this territory first. Dease and Simpson devoted three successive summers, 1837-1839, to filling in gaps left by the discoveries of Mackenzie, Hearne, and the first two Franklin expeditions. By their efforts not only the whole coastline between Point Barrow and the mouth of the Castor and Pollux River was made known, but also the south shores of some of the adjacent islands. In 1846-47 Dr. Rae, working further east with York Factory as a base, traced the coastline from Fury and Hecla Strait to Lord Mayor Bay on the east side of Boothia Peninsula. The northern mainland coast had now all been traced, except for a short stretch on the west side of Boothia. As Rae returned to York Factory in triumph in 1847, he passed, unwittingly, quite close to the Franklin expedition, upon which the hand of fate was slowly and inexorably descending.

Sir John Franklin's career as an arctic explorer began in 1818, when he served as second-in command under Buchan in one phase of the double-headed expedition planned by John Barrow. They failed in their assignment to sail straight north to the Pole and then return home through Bering Strait, but Franklin had been fired by a desire to give his life to arctic exploration. This he did, though in a manner that could never have been anticipated.

In 1819, he was given command of a land expedition which was to explore the northern shore of America from the Coppermine River eastwards. It must be remembered that in 1819 the only known parts of the arctic coast were the two widely separated points located by Hearne and Mackenzie - the mouths of the Coppermine and Mackenzie Rivers. Franklin's crew included his friend the naturalist Dr. Richardson, two midshipmen Back and Hood, and a sailor named Hepburn, each one loyal to the core. Between 1819 and 1822 they reached the arctic coast, travelling by way of York Factory, Fort Chipewyan, and the Coppermine River, explored eastwards to a point they named Turnagain, and then returned via the Hood River to Great Slave Lake. The hardships they endured almost defy description, and they were at times more dead than alive, once existing for thirty-one days in cold winter weather on scraps of old deerhide and boiled "tripe-de-roche." They were finally rescued by a band of Indians.

Franklin returned to the attack in 1825, after a well-merited rest in England, again with Richardson, Back, and Hepburn to help him. After descending the Mackenzie, they split into two groups. Franklin led a party westwards for 375 miles, but failed by 160 miles to join with Beechey, who had sent an advance party to

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<sup>31</sup> W. F. King, *op. cit.*, p. 38.

Point Barrow from the Bering Strait. Meanwhile Richardson traced the coast eastwards as far as the mouth of the Coppermine, thus linking up with the westernmost point reached in 1819-1822. Franklin's first two expeditions thus outlined the entire coast between Foggy Island and Point Turnagain.

Between 1827 and 1845 Franklin was not active in arctic exploration. During part of the time he served as Governor of Tasmania. His subordinate George Back led two expeditions during those years, the first one in 1833-1835 descending the Great Fish (now Back) River to the arctic coast in a search for the overdue Ross expedition, and the second one failing to get past Southampton Island in an attempt to complete the coastal survey from Fury and Hecla Strait to Point Turnagain.

Franklin set out on his last voyage in May 1845, with the two ships "Erebus" and "Terror." This, unlike his two previous great journeys, was to be confined to the sea, and the Admiralty had assigned him the task of finding a Northwest Passage, using a route through Lancaster and Barrow Straits.

After a winter spent on Beechey Island Franklin turned south and sailed through the passage west of Somerset Island until he reached King William Island. Two passages beckoned, and he chose the wrong one, because an erroneous map made by James Clark Ross in 1829-1833 had shown a land connection between King William Island and Boothia Peninsula. Franklin took the western passage, and in the middle of September 1846 was seized in a relentless mass of pack-ice from which his ships never escaped. The winter of 1846-1847 was spent on board the imprisoned ships, and on the eleventh of June 1847 Sir John Franklin died. After another and harder winter what was left of the party, in declining health and faced by a rapidly dwindling food supply, struck out in desperation for the mainland. The date was April 22, 1848, and the number of men 105. Not one of them was ever seen again, save by a group of Eskimos who later reported their distress, saying "They fell down and died as they walked away."

Their fate, and that of their commander, was unknown for years, until countless search parties, some organized and financed by Lady Franklin herself, gradually unravelled the mystery and supplied some of the missing details. Others have remained unknown. But Franklin and his men had finished their work, for as Sir John Richardson claimed, their sacrificial journey had completed the route of the Northwest Passage, and they had "forged the last link with their lives."<sup>32</sup>

Summarizing the exploration in this region from Frobisher's first voyage until Franklin's last, it is evident that it was almost exclusively British. In fact the only foreign explorer of note was the Dane Jens Munk, who made an indefinite claim in the Churchill region on behalf of Denmark, which was allowed to lapse. Many of the British explorers made territorial claims on behalf of Britain, which although

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<sup>32</sup> John McIlraith, *Life of Sir John Richardson* (London: Longmans, Green and Co., 1868), p. 251.

also indefinite in most cases and of dubious value by modern standard, were actually the only important ones made before the middle of the nineteenth century. Thus if any territorial rights were held in this region by 1850, they were held by Great Britain, and no other nation held any such rights whatever.<sup>33</sup> Much of the area as yet remained undiscovered, but a considerable part had been discovered and partly mapped, including the islands of Hudson Bay, Baffin, Bylot, Devon, Somerset, King William, and the Parry Islands, and almost the entire arctic coast of the mainland.

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<sup>33</sup> This question is discussed in more detail in Part IV.

## CHAPTER 6

### THE FRANKLIN SEARCH

For a decade or so after 1848 arctic exploration was almost exclusively devoted to an intensive search for the lost Franklin expedition.<sup>1</sup> During these years forty search parties were sent out to look for the missing men and, as hope faded, to try to find evidence that would throw some light on their fate. Of the forty parties thirty-four travelled by ship and penetrated the Arctic through either Bering Strait or Baffin Bay, while the remaining six were sent overland to the arctic coast, mainly by the Hudson's Bay Company. The majority of the expeditions were organized by the British Government, but there were several under American auspices also, and Lady Franklin herself outfitted four ships. Even after Rae brought back the first news in 1854 of the tragic fate of Franklin and his men, expeditions to find out missing details continued, the last being Schwatka's in 1878-1879. Little enough was discovered about Franklin, but the expeditions resulted incidentally in great additions to geographical knowledge of the Arctic. A route for a Northwest Passage was discovered, the last gaps on the northern continental coastline were filled in, new islands were discovered and their outlines traced, and new water routes charted.

The first person to be worried about Franklin's safety was old Sir John Ross, who urged the Admiralty to action during the winter of 1846-1847. George Back's former companion Dr. King did likewise in 1847, and suggested, correctly, that the "Erebus" and "Terror" might have been beset near King William Island, so that a relief party should be sent down the Great Fish River. Sir James Clark Ross said that there was not as yet any reason for anxiety, however, and since the entire Admiralty, except Admiral Beechey, agreed with him, nothing was done until 1848.

In that year the British Government began the search by sending three separate expeditions, one overland from Hudson Bay, one through Bering Strait, and one through Lancaster Sound. The land expedition, under Sir John Richardson with the indefatigable Dr. Rae to help him, descended the Mackenzie River to its mouth, and in accordance with orders searched the coastline eastwards to the Coppermine, but not further. After a winter spent at Fort Confidence on Great Bear Lake Richardson went south to report, while Rae in the only remaining boat was to search the shores of Wollaston and Victoria Lands. Unfortunately gales and ice prevented his even crossing Dolphin and Union Strait, and he finally had to return to Fort Simpson without being able to extend the search.

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<sup>1</sup> Jeannette Mirsky, *op. cit.*, Chap. XII, pp. 137-160, gives a good brief account of the Franklin search.

The Bering Strait expedition was under Captain Thomas Moore in the "Plover" and Captain Henry Kellett in the "Herald." The two ships were to meet in Kotzebue Sound north of Bering Strait in 1848, but owing to the slowness of the "Plover" a whole year was lost, and the rendezvous did not take place until July 1849. At that time they were joined by the volunteer Robert Sheddton with his Royal Thames Yacht Club schooner "Nancy Dawson." Sheddton took Lieutenant Pullen as far as Point Barrow in his yacht, being the first to attain this point in a ship. Pullen then went on in three boats to the mouth of the Mackenzie River, thus linking up with the starting point of Richardson and Rae. He ascended the river, wintered at Fort Simpson, met Dr. Rae there, and receiving new orders, tried in 1850 to search the coast and islands east of the mouth of the Mackenzie, getting only as far as Cape Bathurst. Meanwhile Kellett in the "Herald" explored the waters north and west of Bering Strait, and discovered Herald Island July 29, 1849. He probably saw Wrangel Island too, and though he claimed the former for the queen, he apparently made no attempt to take possession of the latter.<sup>2</sup> In 1851 Captain Rochfort Maguire took Moore's "Plover," which had reached Dease Inlet in 1850, and spent the next three seasons searching and making observations in the neighborhood of Point Barrow, getting as far east as Franklin's westernmost point in 1827.

The third and last expedition of 1848, that from the Atlantic, was commanded by Sir James Clark Ross in his ship the "Enterprise". With him were his old friend Captain Bird in the "Investigator" and two dashing young lieutenants, both of whom later won fame, Leopold McClintock and Robert McClure. In contrast to the two other expeditions, which were designed to meet Franklin, this one was to overtake him.

Luck was not with Ross on this voyage. He could not get beyond Lancaster Sound, since both Barrow Strait and Prince Regent Inlet were stopped by ice, and so he spent the winter at Port Leopold in northeastern Somerset Island. Scurvy attacked his crew, and when they tried to penetrate further westwards in 1849 they were caught in an ice-pack which carried them all the way back to Baffin Bay. They could not free themselves till late September, so there was little else to do but sail home in defeat. However a spring sledging party had travelled down the east coast of Somerset to some stores left by Parry at Fury Beach, establishing that Franklin had not called there to replenish supplies, while another party under Ross and McClintock traced the same island's west coast (a route used first by Franklin) almost to its southern tip. Thus the expedition was not a complete failure. Meanwhile a supply ship sent out in 1849 under James Saunders failed either to reach Port Leopold or contact Ross, while several British whalers penetrated Jones and Lancaster Sounds in 1848 and 1849, but failed to find any trace of Franklin.

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<sup>2</sup> D. M. Smith, *Arctic Expeditions from British and Foreign Shores from the Earliest Times to the Expedition of 1875-1876* (Edinburgh: Grange Publishing Works, 1877), p. 425.

The Admiralty, and the world at large, were now thoroughly alarmed about Franklin's long absence, and efforts to find him redoubled in 1850. A total of fourteen ships were sent out that year, of which three were to use the Bering Strait entrance. These were the "Enterprise" under Captain Collinson, the "Investigator" under Captain McClure, and the "Plover" under Captain Kellett, the last being only a depot ship on this voyage, to be stationed near Point Barrow. McClure's ship became separated from the other two and he proceeded independently. Coming to Banks Island he claimed it for Britain in the belief that he was its discoverer, although Parry had seen it in 1819-1820.<sup>3</sup> He failed to get through Prince of Wales Strait, and after spending the winter of 1850-1851 there failed in 1851 to get around the west coast of Banks Island, his ship being caught in Mercy Bay. Here he spent the next two winters. During these three years his men made sledge trips along the nearest coasts of Banks, Victoria, and Melville Islands. His men were in a very serious condition when finally rescued in 1853 by a party sent at the order of Captain Kellett, who was now commanding the "Resolute" at Dealy Island, near Melville Island.<sup>4</sup> The "Investigator," still icebound, had to be abandoned, but McClure and his crew by joining Kellett and returning to England via Lancaster Sound were the first men to negotiate the Northwest Passage. For this feat they were awarded a parliamentary grant of 10,000 pounds.

Meanwhile Collinson in the "Enterprise" had been just as active in a less spectacular way. After spending the winter of 1850-1851 in Hong Kong, he tried, and failed, to pass through Prince of Wales Strait, and spent one winter there and one at Cambridge Bay. He failed also to find a passage around the west coast of Banks Island, but a sledging party reached Melville Island. He spent 1852 and 1853 sailing along the mainland coast, wintering at Cambridge Bay and sending a sledging party in April 1853 to Gateshead Island off the east coast of Victoria Island, only about fifty miles from where Franklin's ships had been beset. After another winter off the Alaska coast he returned to England with his men in good health, having conducted one of the most successful expeditions of the period, and having explored much new territory in Victoria Island besides.

In 1850 eleven ships had converged on Lancaster Sound from the Atlantic side. Lady Franklin purchased and equipped the "Prince Albert," and instructed its commander Captain Forsyth to search the coasts of Boothia Peninsula. Her steadfast belief, later vindicated, was that Franklin had turned south from Lancaster Sound. Forsyth encountered ice south of Fury Beach and could go no farther, and since the graves of three of Franklin's men had been discovered at the site of the latter's first winter quarters on Beechey Island, he decided to return home promptly

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<sup>3</sup> W. F. King, *Report upon the Title of Canada to the Islands North of the Mainland of Canada* (Ottawa: Government Printing Bureau, 1905), p. 43.

<sup>4</sup> Kellett's party found a note left by McClure under Parry's cairn at Winter Harbour, Melville Island, and thus knew of their plight.

with the news.

All of the other ten ships were to search northwards through Wellington Channel. Two of them represented the United States, as they had been privately bought and outfitted by the American Henry Grinnell, and were commanded by Lieutenant De Haven of the American navy. He reached the entrance to Wellington Channel, but being equipped for only one season decided to return home. He was caught in the ice and was unable to free himself until the following July, in Baffin Bay.<sup>5</sup>

Two other ships also accomplished little. These were under the command of the aged Sir John Ross, and had been equipped largely by the Hudson's Bay Company. Ross like De Haven got as far as Wellington Channel, but after spending the winter with Captain Penny's expedition he decided to return home. His subordinate, Commander Phillips, explored part of Cornwallis Island during the winter of 1851.

The two most active expeditions were those led by Captain Penny and Captain Austin. Penny had two ships, one commanded by himself and the other by Captain M. S. Stewart, while Austin had a squadron of four, in charge of himself, Captain Ommaney, Lieutenant Cator, and Lieutenant Osborn. Austin had also as subordinates Lieutenants Browne, McClintock, Aldrich, Mecham, and Hamilton.

Ommaney was the first to find some trace of Franklin's party, when he located their camp on Beechey Island on August 23, 1850. A few days later Penny found the three graves mentioned above. The searchers knew that their path was right thus far, but after a short time spent in preliminary investigations they were faced with the onset of the cold season, so they went into winter quarters near Griffiths Island in Barrow Strait. The men were kept healthy and occupied, and most of the time was spent in making preparations for sledging journeys in the spring. Leopold McClintock was placed in charge of this activity, both in preparation and in performance - a wise choice, as he had worked out the technique of sledging to perfection, and was the most consistently successful in this field of all arctic explorers.

In the spring of 1851 a great deal of ground was covered by this method. Penny's men went north up Wellington Channel, Stewart and Sutherland surveying the west shore of Devon Island, Goodsir the north shore of Cornwallis, while Penny himself went farther north still to look into Queens Channel. He returned convinced that it was useless to spend any more time searching northwards.

Parties from Captain Austin's ships extended their travels much further to the west and south. Vesey Hamilton explored Lowther Island in Barrow Strait, Mecham explored Russell Island to the south, Browne travelled about half way down the east coast of Prince of Wales Island, while Ommaney and Sherard Osborn went an equal distance down the west coast of the latter island. McClintock himself turned

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<sup>5</sup> See E. K. Kane, *United States Grinnell Expedition in Search of Franklin* (New York: Harper and Brothers, 1854).

westwards with three parties. One under Aldrich examined the south and west shore of Bathurst Island, another under Dr. Bradford searched the east and south coast of Melville Island, while McClintock himself led a group along the south-western shore of Melville Island to Liddon Gulf, thus passing the most westerly point reached by Edward Parry in 1819. Altogether the sledging parties traced 1225 miles of new land, and McClintock himself set a new record for arctic sledging travel, going 770 miles in 80 days. The total distance covered by all parties was 7000 miles.<sup>6</sup>

When the sledge parties returned, in the summer of 1851, Captain Austin decided to return home. His expedition was a rousing success from the standpoints of health, organization, and geographical discovery, but no trace of Franklin had been found except the graves on Beechey Island. Unfortunately Austin disagreed with Penny in thinking that further exploration to the south and west would be valueless, and more unfortunately still, the authorities in Britain followed Austin's view, so that later expeditions were sent on a wild goose chase up Wellington Channel.

The next large expedition sent by the Admiralty was the one led by Sir Edward Belcher in 1852-1854, but during the interval the search was extended by several smaller parties. In 1851 Dr. Rae of the Hudson's Bay Company, again employed by the Admiralty, descended the Coppermine and finally succeeded in crossing Dolphin and Union Strait, thus being the first white man to visit Victoria Island.<sup>7</sup> During the summer he traced its south coast from Cape Baring to Gateshead Island, and claimed it for Great Britain.<sup>8</sup> At his most easterly point he was, like Collinson two years later, only fifty miles from where Franklin's ships had been imprisoned, but he was unable to cross the intervening Victoria Strait. On his return he found at Parker Bay the butt of a flagstaff which appeared to belong to the Franklin squadron. Rae, it is to be noted, was the man who succeeded in bringing back the first definite news of the Franklin party. In the spring of 1854, while on a Hudson's Bay Company assignment to survey the west coast of Boothia Peninsula from Castor and Pollux River to Bellot Strait, he met an Eskimo who told him that a large party of white men had died of starvation some distance westwards several years before. Rae hurried back to Repulse Bay, and the news was received in England at the end of July. For his achievement Rae was awarded 10,000 pounds.

After Captain Forsyth's early return in 1850, Lady Franklin again outfitted the "Prince Albert" and sent it back to Lancaster Sound in 1851, but this time under William Kennedy. Also present were the volunteer Lieutenant Bellot, of the French navy, and Franklin's old assistant Hepburn. After wintering at Batty Bay on the east

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<sup>6</sup> Markham, *The Lands of Silence*, p. 260.

<sup>7</sup> A. W. Greely, *Handbook of Arctic Discoveries* (London: Sampson Low, Marston, and Co., 1896), p. 135.

<sup>8</sup> W. F. King, *op. cit.*, p. 30.

coast of Somerset Island they made a notable spring sledge journey of over one thousand miles, discovering that Sir John Ross's Brentford Bay was actually a strait (Bellot Strait) separating Boothia Peninsula and Somerset Island. After this discovery Kennedy turned north and went completely around Somerset Island, but if he had followed his instructions and continued south he might have found the scene of the disaster.

Lady Franklin sent out another expedition in 1852, which again discovered nothing about Franklin, but accomplished something in the field of exploration. Captain Inglefield took the "Isabel" through Baffin Bay and up Smith Sound, beating the previous northernmost record (held by Baffin) by over one hundred miles. On his return he penetrated about half way through Jones Sound. In the following year Captain Inglefield returned from England with supplies for Belcher's squadron - a trip featured by the accidental drowning of the French volunteer Lieutenant Bellot.

The last major expedition sent by the Admiralty, that led by Sir Edward Belcher in 1852-1854, was marked by both great brilliance and great ineptitude. Belcher himself provided most of the ineptitude, being old, stubborn, incompetent, and without arctic experience, while some of his younger officers provided most of the brilliance. The expedition comprised five ships, of which two were under Belcher's second-in-command, Captain Kellett, and one was the supply ship "North Star" under Captain Pullen. Belcher was ordered to go to Lancaster Sound, and then, following Austin's rather than Penny's recommendation, to concentrate on a search through Wellington Channel northwards that could not be other than fruitless.

The squadron arrived at Beechey Island in August, 1852, and the "North Star" was left there as a depot ship. Belcher himself with Richards and Osborn sailed up Wellington Channel and spent the winter at the northwest tip of Grinnell Peninsula, while Kellett took the two remaining ships to winter quarters at Dealy Island, near Melville Island. In the spring a number of remarkable sledge journeys were made. From the base on Grinnell Peninsula Belcher, Richards and Osborn led three parties which together covered much of the northern coasts of Cornwallis, Bathurst, Melville and Devon Islands, and discovered Exmouth, Cornwall, Buckingham and Graham Islands.<sup>9</sup> The achievements of Kellett's three parties were even more impressive. The great sledge master McClintock led one to the northernmost part of Melville Island, along its north and west sides, over to the new island Prince Patrick, up to its northern extremity, and over to the Polynia Isles.<sup>10</sup> Frederick Meham conducted one almost as long (1173 miles to 1408). He traced the south coast of Melville Island, crossed over to Prince Patrick Island, discovering Eglinton Island on the way, and then followed the southern shore of Prince Patrick,

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<sup>9</sup> A. W. Greely, *Handbook of Arctic Discoveries*, p. 156, and P. D. Baird, "Expeditions to the Arctic," *The Beaver* (Hudson's Bay Co. Quarterly), June 1949, p. 46.

<sup>10</sup> P. D. Baird, *op. cit.*, p. 46.

which McClintock had not covered. Vesey Hamilton went to the north of Melville Island, discovered Findlay Island, and then returned along the coast of Bathurst Island. The three trips together resulted in the mapping of 1800 miles of new coastline.<sup>11</sup> The Belcher expedition claimed their new discoveries for Great Britain by erecting flags and leaving records at a considerable number of places.<sup>12</sup>

Mecham had previously found the note left by McClure at Winter Harbour under Parry's rock in April 1852, so while these exploratory sledge journeys were in progress in the spring of 1853 Lieutenant Pim led a relief party which saved McClure and his men from their now desperate plight at Mercy Bay. Under Kellett's orders McClure's "Investigator" was abandoned, and he and his men brought to Dealy Island - a wise move since the "Investigator" was obviously doomed. Kellett's order was understandable to all and was not criticized, but such was not the case with a similar order given by Belcher the following spring.

Late in 1853 Kellett's two ships were caught in an ice floe south of Bathurst Island, while Belcher's two were caught fifty miles north of Beechey Island, in Wellington Channel. The two parties spent the winter of 1853-1854 with their respective ships. As the next summer wore on and the ships did not become free, Belcher became worried, and finally, over the protests of his officers, ordered all four ships to be abandoned, with only a few miles of ice separating them from free water in Lancaster Sound. He crowded the four crews (six counting those of the "Investigator" and "North Star") into the "North Star" with the intention of taking them all back to England in one ship, but the arrival of Captain Inglefield with two ships made this course unnecessary. Nevertheless the other four ships were abandoned. One, Kellett's "Resolute," later drifted into open water, was found by an American whaler, and returned to England.

Belcher was court-martialled when he arrived in England, and though he was acquitted, "his sword was returned in a silence more damning than words."<sup>13</sup>

The loss of Belcher's ships, the outbreak of the Crimean War, and the discovery of the Franklin expedition's fate by Dr. Rae, all in 1854, caused the British Government to decide that the search should be ended. Lady Franklin was not yet satisfied, feeling that further effort might be rewarded, and a last expedition that she sent out with McClintock in command proved that she was right.

Meanwhile the American Henry Grinnell had fitted out another expedition in 1853, to be led by Dr. E. K. Kane, who had been with De Haven in 1850-1851. Dr. I. I. Hayes was with Kane, and their assignment was to search for Franklin in Smith Sound (not a very likely place) and try to extend Inglefield's discoveries in that locality. They passed through Smith Sound and Kane Basin, also penetrated some distance into Kennedy Channel, thus going considerably farther than

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<sup>11</sup> J. Mirsky, *op. cit.*, p. 149.

<sup>12</sup> W. F. King, *op. cit.*, pp. 31, 32.

<sup>13</sup> Markham, *The Lands of Silence*, p. 270.

Inglefield had done. They travelled as far as Grinnell Land in Ellesmere Island by sledge during the winter, and to Cape Constitution on the Greenland side. Kane raised the American flag and built cairns at several places, in Greenland and on the nearby small islands.<sup>14</sup> Unfortunately they had to abandon their ship, and after two winters of extreme suffering barely managed to reach the Danish settlement of Upernivik in August 1855. A relief squadron under Lieutenant Harstein brought them back to the United States.

After Rae returned with the news of his startling discovery in 1854 the British Government asked the Hudson's Bay Company to organize a party to search the estuary of Back's Great Fish River. Franklin's party had apparently headed for this point, and it was hoped to find survivors or remains. The factor James Anderson was selected to head this expedition of 1855, which explored Montreal Island and Adelaide Peninsula. Some Eskimos were found with Franklin relics, also an Eskimo cache with additional relics, but lack of an interpreter prevented Anderson from obtaining any definite details. In spite of Lady Franklin's protests, the Admiralty now declared the official investigation closed.

Her entreaties being disregarded, Lady Franklin herself organized a final expedition which was successful in bringing back the only written records of Franklin's cruise which have survived. She bought and outfitted the steam yacht "Fox," and was fortunate in getting Captain Leopold McClintock to command it, with Captain Allen Young and Lieutenant Hobson as subordinates. They set sail in 1857, but an unusually bad season prevented them from even getting through Baffin Bay. Caught in the ice-pack, they drifted throughout the whole winter, but next summer made a speedy passage to Lancaster Sound. Failing in his attempt to sail down Peel Sound, McClintock tried and succeeded on the other side of Somerset Island, reaching Bellot Strait through Prince Regent Inlet. By a number of winter and spring sledge journeys McClintock and his men mapped the hitherto incompleated west coast of Boothia Peninsula, circled the fateful King William and Montreal Islands, explored the nearby mainland coast, the southern part of Prince of Wales Island and Franklin Strait. Altogether they added eight hundred miles of new shoreline.<sup>15</sup> Of more direct interest was their discovery on King William Island of several skeletons with clothing which identified them as Franklin's men, a boat containing a variety of articles, and a record written by one of Franklin's officers, Captain Fitzjames, telling of the imprisonment of the ships, Franklin's death on June 11, 1847, and the efforts of the remainder under Captain Crozier to reach the mainland in the spring of 1848. McClintock returned to England with his sad relics, and was rewarded for his success with knighthood.

Three Franklin search expeditions remain to be noted, all of which were undertaken under American auspices. C. F. Hall undertook one in 1860-1862 for

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<sup>14</sup> W. F. King, *op. cit.*, pp. 33, 46.

<sup>15</sup> A. W. Greely, *Handbook of Arctic Discoveries*, p. 163.

Henry Grinnell of New York, who was obviously one of the most interested of private contributors to the search. He intended to reach King William Island through Foxe Basin and Fury and Hecla Strait, but got no farther than Baffin Island, where he lived with the Eskimos for two years and found, not Franklin, but Frobisher, relics. He discovered that Frobisher "Strait" was actually a bay and made a claim to the island for the United States.<sup>16</sup>

Between 1864 and 1869 Hall spent five winters in the area between Melville Peninsula and King William Island. He found numerous relics of the Franklin expedition and got some information from Eskimos he met, but failed to realize his hope that he might find survivors living with the natives.

The final search was conducted by Lieutenant Schwatka of the U.S. army in 1878-1880. He made a praiseworthy attempt to throw more light on the fate of the lost party and brought back numerous relics, but actually contributed little new information. His search, like Hall's second one, was also concentrated in and around King William Island.

In summary, it is evident that an overwhelming majority of the Franklin search expeditions were British. American expeditions, privately outfitted for the most part, were led by De Haven, Kane, Hall, and Schwatka. Otherwise the only noteworthy non-British participant in the search was the French sailor Lieutenant Bellot, who was a private volunteer. Some of the American explorers, notably Kane and Hall, made territorial claims, mostly indefinite in nature, on behalf of the United States. Actually, however, all the territory they covered had been previously explored and claimed (often in just as indefinite a manner) by Britons, except for certain parts of northern Ellesmere and northwestern Greenland. The Franklin search expeditions collectively added much to geographical knowledge of the Arctic, and from that time on the only important new islands discovered were those found by Sverdrup and Stefansson. Of course detailed geographical and scientific knowledge of the area was still in a very incomplete state, and it was towards the solution of such problems that later explorers turned.

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<sup>16</sup> C. F. Hall, *Life with the Esquimaux* (London: Sampson Low, Son, and Marston, 1864), Vol. II, pp. 111, 118, 119. Also W. F. King, *op. cit.*, pp. 47-48.

## CHAPTER 7

### EXPLORATION AFTER THE FRANKLIN SEARCH

Apart from scientific and administrative work, exploration in the Canadian Arctic after the Franklin search was over had four main objectives - to navigate the Northwest Passage, to reach the North Pole, to discover new islands, and to complete exploration of those already discovered.<sup>1</sup> Amundsen succeeded in passing through the Northwest Passage with the "Gjoa" in 1903-6, Peary attained the North Pole in 1909, and Stefansson made the last major discovery of islands in 1913-1918. Consequently the trend has in recent years been towards a steadily increasing variety of scientific activities, engaged in by many nations, and also towards activities of an administrative nature, which have been, as might be expected, almost exclusively Canadian.<sup>2</sup>

Dr. Hayes, who had been in Smith Sound and Kane Basin with Kane in 1853-1855, returned to the same area in 1860 on behalf of a number of American scientific institutions. His object was to attain the North Pole through the open water passage which he believed to exist beyond Kane Basin. After wintering just south of Etah on the Greenland coast, he made a difficult sledge journey next spring up the Ellesmere coast, and claimed to have reached latitude 81°35' N. Unfortunately his astronomer Sonntag had died during the previous winter from exposure, and Hayes' measurements are now thought to have been inaccurate.<sup>3</sup> Hayes left some American flags and a written record in a cairn as proof of his presence at his most northerly point.<sup>4</sup>

C. F. Hall, whose first two expeditions had been in connection with the Franklin search, devoted his third and last one to an attempt to extend Kane's and Hayes' discoveries north of Smith Sound. The American Government sponsored his expedition, provided him with the steamship "Polaris," and gave him some instructions, but left him with wide powers of discretion after he reached Smith Sound. Hall showed that this confidence in him was amply justified. Abandoning his plan to try Jones Sound, he sailed clear through Smith Sound, Kane Basin, Kennedy Channel, and Robeson Channel until he came to the ice-blocked "polar sea," on August 31, 1871. Here he was at latitude 82° 11' N., two hundred miles

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<sup>1</sup> Franklin and McClure had both discovered routes for a Northwest Passage, but neither had taken a ship through.

<sup>2</sup> Canadian expeditions which have been primarily administrative or scientific rather than exploratory are dealt with in Part III.

<sup>3</sup> Nellis M. Crouse, *The Search for the North Pole* (New York: Richard R. Smith, 1947), pp. 76-78.

<sup>4</sup> Isaac I. Hayes, *The Open Polar Sea* (Philadelphia: David McKay, 1885), p. 351.

north of Kane's farthest, having extended the known coastline of both Ellesmere and Greenland almost to their northern limits.<sup>5</sup> Hall established winter quarters in Hall Basin, on the Greenland side, and made what seems to have been a fairly specific claim to his discoveries on behalf of the United States, but he does not seem to have made any claim on the Ellesmere side.<sup>6</sup> Hall was taken ill after a short sledging journey in Greenland and died. The remainder of his party returned to civilization in the summer of 1873 after incredible adventures, during which the "Polaris" was destroyed. The party divided into two groups, one reaching a Scottish whaler by boat and the other being picked off an ice floe near southern Labrador by Captain Bartlett in the "Tigress."

The last major British Government expedition was the one led by Captain George Nares in 1875-1876. British interest in arctic exploration had been at a low ebb for twenty years, but it was revived by Hall's accomplishments and the unceasing propaganda of such enthusiasts as Sherard Osborn and Clements Markham. Two well-equipped ships, the "Alert" and the "Discovery," were provided, and Captain Nares was told that his primary object should be "to attain the highest northern latitude, and, if possible, to reach the North Pole," also to explore the adjacent coasts.<sup>7</sup> A supply ship accompanied them as far as Disko, and from there the "Alert" and "Discovery" pushed up Smith Sound alone, leaving caches at convenient places on the way. The "Discovery" was left in winter quarters at Lady Franklin Bay on August 25, 1875, while Captain Nares in the "Alert" pressed on to Cape Sheridan in latitude 82° 30', on the northern coast of Ellesmere Island, where he decided to establish winter quarters. "No ship had ever wintered so far north before."<sup>8</sup> Since they were now in virgin territory, the sledge journeys during the following spring covered much new ground. Commander A. H. Markham led one party directly north from Cape Joseph Henry in an attempt to reach the North Pole, and got to 83° 20' N. latitude, which was the highest up till that time. Lieutenant Beaumont led a party from the "Discovery" along the north Greenland coast to the far side of Sherard Osborn Inlet, in longitude 51° W., while Lieutenant Archer, also from the "Discovery," surveyed Lady Franklin Bay and Archer Fiord. Most successful of all was Lieutenant Aldrich's trip westwards from the "Alert" along the north Ellesmere coastline to Cape Alfred Ernest, in longitude 86° W., a journey that revealed almost the entire northern coastline of Ellesmere. Altogether the sledge journeys had resulted in the exploration of three hundred miles of new coastline and the planting of the British flag nearest the North Pole.<sup>9</sup>

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<sup>5</sup> Nellis M. Crouse, *The Search for the North Pole*, pp. 94-95; Jeannette Mirsky, *op. cit.*, p. 166.

<sup>6</sup> W. F. King, *op. cit.*, pp. 48-49.

<sup>7</sup> Sir G. S. Nares, *A Voyage to the Polar Sea 1875-1876* (London: Sampson Low, Marston, Searle and Rivington, 1878), p. xi.

<sup>8</sup> C. R. Markham, *The Lands of Silence*, p. 306.

<sup>9</sup> C. R. Markham, *ibid.*, p. 309.

Nares and his officers erected cairns, raised the British flag and left records at a number of significant points which they reached.<sup>10</sup> Further work was prevented by the fact that all sledge parties had been severely attacked by scurvy, causing the loss of several lives - an odd circumstance in view of the care with which the expedition had been provisioned. Nares was forced to return to England in 1876 with less accomplished than he had hoped for, but he had opened wide the door indicated by Baffin, Inglefield, Kane, Hayes, and Hall, through which Peary finally passed to reach the Pole.

Another English expedition set out in the same year as the one led by Nares. It was privately financed, mainly by Captain Allen Young, who had been with McClintock in 1857-1859, and who now wanted to attempt the Northwest Passage using the same route that Franklin had followed. Young cruised along Peel Sound in his yacht "Pandora" almost as far as Bellot Strait, and then was bitterly disappointed to find that his way was completely blocked by ice. There was nothing to do but return to England. Next year he planned to return and try to force his way through Prince Regent Inlet and Bellot Strait, but the Admiralty had become worried about the Nares expedition, so Young agreed to go to their relief instead. He failed to contact them in Smith Sound, and only met them in mid-Atlantic on the way home.

A radical change in the purpose of arctic expeditions was proposed by Lieutenant Karl Weyprecht of the Austrian navy in 1875. Speaking before the German Scientific and Medical Association at Graz, he suggested that scientific investigation should be the primary object of arctic exploration, and that geographical discovery should be a secondary consideration, important mainly in enlarging the scope for scientific inquiry. The International Meteorological Congress approved his idea, and the outcome was two International Polar Conferences, at Hamburg in 1879 and Berne in 1880, where plans were drawn up to establish cooperative meteorological stations. Eventually fifteen expeditions were sent out, from eleven countries, four of the fifteen being in the Antarctic and the remainder in the Arctic. Only three stations were established in the Canadian Arctic and thus of significance here. One was the British post at Fort Rae, Great Slave Lake, which was occupied from August 1882 to September 1883. It contributed its share of valuable scientific observations but added nothing to geographical knowledge. The second was the German post at Kingua Fiord in Cumberland Sound, Baffin Island, which was occupied by Dr. W. Giese from August 1882 to August 1883. Besides carrying out his observations Giese explored the little known inner part of Cumberland Sound. The last expedition in the Canadian Arctic in this connection, and by far the most important, was the American enterprise led by Lieutenant (later General) A. W. Greely of the American army.

Greely and a party of twenty-five, including officers, N.C.O.'s, and men, of

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<sup>10</sup> W. F. King, *op. cit.*, pp. 50-51.

whom two were Eskimos, were taken north through Smith Sound in the steamer "Proteus" in 1881 to the selected location on Lady Franklin Bay, Ellesmere Island. Here Fort Conger was built, and the "Proteus" departed. It was intended that she should return next year and pick up the party, but as events turned out they were completely isolated for almost three years. During this time important exploratory work was done, in addition to the making of scientific observations. Lieutenant Lockwood led a party along the north Greenland coast in 1882, and persevered until he reached Lockwood Island, 150 miles beyond Beaumont's farthest east, and four miles beyond A. H. Markham's farthest north in 1876.<sup>11</sup> Dr. Pavy in 1882 and Lockwood in 1883 both tried to travel towards the North Pole from Cape Joseph Henry on the northern coast of Ellesmere, but both were set adrift on pack ice and were lucky to get back in safety. Meanwhile Greely himself, with the help of Lockwood in 1883, did the most important work of the expedition, by examining about six thousand square miles of newly discovered land in the Hazen Lake and Greely Fiord regions.<sup>12</sup> Yet although the expedition accomplished so much, it was marked by dissension throughout and ended in tragedy. Expeditions sent to their relief were clumsily arranged and carried out, so that instead of help arriving in 1882 they were left until 1884. The "Proteus" had been caught in the ice in 1883 and had sunk, while the commander of an earlier relief ship, the "Neptune," had apparently been reluctant to try to go as far as Fort Conger in 1882. Lt. Kislisbury and a private had "resigned" as early as 1881 but too late to go home with the "Proteus," even if they had been allowed to do so. Dr. Pavy and a sergeant rebelled, and a private named Henry was finally shot, at Greely's order, when he would not desist from stealing food. During the last terrible winter of 1883-1884 supplies finally ran out, the men died one by one, and when Captain Schley finally arrived with two relief ships in June 1884, only Greely himself and six others of the original twenty-six were left alive in their last camp at Cape Sabine.

The next great figure to be considered is Captain Otto Sverdrup, the Norwegian explorer whose expedition of 1898-1902 resulted in the exploration of Jones Sound and the discovery of the group of islands since known as the Sverdrup Islands. The command of the expedition was first offered to Fridtjof Nansen, and Sverdrup, who had been with Nansen during the first crossing of Greenland and later as captain of the "Fram" on her famous drift across the Arctic Ocean, was accepted as leader when Nansen declined.<sup>13</sup> The patrons of the privately sponsored voyage were the consul Axel Heiberg and the firm of brewers, Ringnes Brothers; but the Norwegian Government loaned the "Fram" and donated 20,000 kroner.<sup>14</sup> It was decided that Sverdrup should go through Smith Sound and explore the North Greenland coast,

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<sup>11</sup> J. Mirsky, *op. cit.*, p. 188.

<sup>12</sup> A. W. Greely, *A Handbook of Arctic Discoveries*, p. 217.

<sup>13</sup> J. Mirsky, *op. cit.*, pp. 281-282.

<sup>14</sup> Otto Sverdrup, *New Land* (London: Longmans, Green and Co., 1904), Vol. I, pp. 1-2.

but he was left free to turn elsewhere if this route could not be used.<sup>15</sup> The expedition spent the winter of 1898-1899 at Cape Sabine, not far from Greely's "Starvation Camp," and in the spring two parties crossed Ellesmere to Bay Fiord. Having failed to get further north by water in the summers of both 1898 and 1899, Sverdrup attacked Jones Sound instead. Establishing his base at two points in south Ellesmere during the next three years, Sverdrup and his men carried out a remarkable series of sledge journeys, tracing almost the whole western coast of Ellesmere and discovering and exploring Axel Heiberg and the two Ringnes Islands. They also explored the hitherto untravelled north shores of Cornwall and Devon Islands.<sup>16</sup> The expedition was back in Norway in September, 1902, having discovered and claimed for Norway one hundred thousand square miles of new territory.<sup>17</sup> This claim constituted one of the few serious threats to Canadian sovereignty over the archipelago, and was not cleared up until 1930.<sup>18</sup>

The name of Robert E. Peary will always be associated with the attainment of the North Pole, but he is also noteworthy in the exploration of Greenland, and, of more significance here, of the Canadian Arctic Islands. Peary made eight trips to the Arctic, but the first five were confined to Greenland, and only the last three took him into the archipelago. In these last three expeditions he abandoned the exploration of Greenland and concentrated upon attempts to reach the North Pole. After two failures he met with success. During the expedition of 1898-1902, he started on a poleward dash from Cape Hecla, and on April 21, 1902, reached latitude 84° 17½', a new record for this sector, but still about three hundred miles short of the Pole. Earlier in the same expedition Peary made several journeys in Ellesmere, which proved that Bache "Island" was actually a peninsula, and that Grant and Ellesmere Lands were joined.<sup>19</sup>

He made his second unsuccessful attempt in 1905-1906. This time he had a newly constructed ship, the "Roosevelt," with Captain Bob Bartlett of Newfoundland as skipper. Starting again from Cape Hecla on the northern coast of Ellesmere, he attained latitude 87° 06' on the twenty-first of April 1906, but opening leads prevented further travel. This was a world's record at that time - 32' further north than the Italian Cagni's in 1897.<sup>20</sup> Upon his return to Cape Hecla

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<sup>15</sup> *Ibid.*, pp. 1-2.

<sup>16</sup> J. Mirsky, *op. cit.*, pp. 282-287; P. D. Baird, *op. cit.*, pp. 46-47 (Sept. issue). - See also the detailed account in Sverdrup's *New Land*, referred to above.

<sup>17</sup> O. Sverdrup, *op. cit.*, Vol. II, pp. 449-450: "An approximate area of one hundred thousand square miles had been explored, and, in the name of the Norwegian King, taken possession of."

<sup>18</sup> See Chapter 14.

<sup>19</sup> J. Mirsky, *op. cit.*, p. 231. Also see Robert E. Peary, "Four Years Arctic Exploration," *Geographic Journal*, Vol. XXII, Dec. 1903.

<sup>20</sup> Robert E. Peary, *Nearest the Pole* (New York: Doubleday, Page and Co., 1907), p. 134. Also J. Mirsky, *op. cit.*, p. 296.

Peary made an additional trip westwards, which filled in the small remaining gap on the northwest Ellesmere coast between the discoveries of Aldrich in 1876 and Sverdrup in 1898-1902.<sup>21</sup> Peary thought he saw new land - "Crocker Land" - to the northwest, but his belief was later shown to be an error.<sup>22</sup>

Peary's final and successful trip was made in 1908-1909. This voyage, like the two previous ones, was privately financed, and like them, of course, was primarily concerned with reaching the North Pole. Again he had the "Roosevelt," with Captain Bartlett, the negro Matthew Henson, who was with him on nearly all of his trips, and a young man named Donald MacMillan, just beginning his long career of exploration. Peary had worked out in detail a complicated system to facilitate extended travel, which depended mainly upon speed, light loads, the use of dogs, and the help of supporting parties which would break trail and lay down supplies. Leaving Cape Columbia with six supporting parties on February 28, 1909, he sent back all of the six one by one until, at 87° 50', he sent back the last one, led by Bartlett. Peary, Henson, and four Eskimos made up the chosen group which pressed on and reached the North Pole on April 6, 1909. A chapter of polar exploration was ended.

Peary claimed the entire region, including the North Pole itself, for the United States - a claim that has since aroused much discussion. He left the following message in a bottle at the North Pole:

90 N. Lat., North Pole,  
April 6, 1909.

I have to-day hoisted the national ensign of the United States of America at this place, which my observations indicate to be the North Pole axis of the earth, and have formally taken possession of the entire region, and adjacent, for and in the name of the President of the United States of America.

I leave this record and United States flag in possession.

Robert E. Peary,  
United States Navy.<sup>23</sup>

The highly controversial figure of Dr. F. Cook can hardly be omitted in a discussion of Peary, but may be passed over briefly. Cook, who had been with Peary in Greenland in 1892, led an expedition of his own in 1907-1909 with the avowed intention of reaching the North Pole, and returned to civilization claiming that he

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<sup>21</sup> Peary, *Nearest the Pole*, p. 240.

<sup>22</sup> *Ibid.*, p. 240. See also N. M. Crouse, *The Search for the North Pole*, p. 341.

<sup>23</sup> Robert E. Peary, *The North Pole* (New York: Frederick A. Stokes Co., 1910), p. 297.

had succeeded.<sup>24</sup> Without going into details, it may be said that Cook undoubtedly spent two seasons in the vicinity of Jones Sound, Axel Heiberg Island, and perhaps northwards, but it is not now generally believed that he reached the North Pole.<sup>25</sup>

Roald Amundsen is chiefly remembered as the discoverer of the South Pole, but he is also famous as the first man to actually take a ship through the Northwest Passage. Starting from his native Norway in the tiny "Gjoa" in 1903, he elected to use the same route that Franklin had chosen, except that he went east rather than west of King William Island. After spending three winters in the Canadian Arctic in comparative comfort he completed the passage by bringing the "Gjoa" successfully to Nome, Alaska, in August 1906. In the spring of 1905 his second-in-command Lieutenant G. Hansen had led a party which succeeded in surveying part of the unknown north coast of Victoria Island.<sup>26</sup>

Vilhjalmur Stefansson was the last explorer to discover islands of considerable size in the archipelago. His discoveries occurred during his last major expedition to the Arctic in 1913-1918, but previous to this he had twice visited this area.

In 1906 he joined the Anglo-American Polar Expedition as anthropologist, at the invitation of the leader Ernest Leffingwell, to study the little known Eskimos of Victoria Island. Stefansson travelled alone to Herschel Island via Edmonton and the Mackenzie River, hoping to meet the rest of the expedition there. They did not arrive, so he spent the winter with the Eskimos of the Mackenzie River delta, familiarizing himself with their language and customs. When spring came he learned that Leffingwell's party had wintered near the Alaska coast, en route from Victoria, B.C., and that their ship had been ruined, so the expedition was ended. Leffingwell with the co-leader Mikkelsen and the mate Storkerson had succeeded in making a two-months sledging trip over the ice to the north. They had devised an "amphibious" sledge-boat to facilitate travel, and had lived largely on what they could catch and shoot - two ideas later used and developed by Stefansson, that made possible much of his achievement.

In 1908 Stefansson returned to the Arctic, being this time in charge of his own expedition. He was sponsored by the American Museum of Natural History and the Canadian Geological Survey, and was accompanied by the zoologist Dr. Rudolph M. Anderson. They spent four full years along the arctic coast between Point Barrow and Coronation Gulf, devoting most of their time to scientific work, but also exploring for the first time the Horton River area.<sup>27</sup> Stefansson also made a short trip to Victoria Island in 1911. Both men returned to civilization via Bering

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<sup>24</sup> See F. A. Cook, *My Attainment of the Pole* (New York: M. Kennerley, 1912).

<sup>25</sup> See J. Mirsky, *op. cit.*, pp. 298-302, for an interesting discussion of Cook's claim, which she denies with emphasis.

<sup>26</sup> Roald Amundsen, *The Northwest Passage* (London and New York: E. P. Dutton and Co., 1908). Hansen's account of his trip is included as a supplement, Vol. II, pp. 296-364.

<sup>27</sup> P. D. Baird, *op. cit.*, p. 48 (Sept. issue). See V. Stefansson, *My Life with the Eskimo* (New York: Macmillan Co., 1921) for the complete original account of this expedition.

Strait in 1912, to find themselves celebrities because of the publicity given their discovery of the so-called “blond Eskimos” in the Coronation Gulf area.

Stefansson's last major expedition, the Canadian Arctic Expedition of 1913-1918, was by far his most important. Stefansson's main purposes were to explore the unknown Beaufort Sea area, and perhaps discover new islands there, to prove that animal life existed north of and beyond the regions inhabited by Eskimos, even in the middle of the Polar sea far from land, and to show that human beings, whites as well as Eskimos, could maintain themselves there by “living off the country” - using its natural resources instead of trying to bring in supplies. The expedition was originally sponsored by several scientific societies, notably the National Geographic Society and the American Museum of Natural History, and by interested individuals, but the Canadian Prime Minister Robert Borden felt that a matter so vital to Canada should be looked after by the Canadian Government, and in February 1913 the latter took over all responsibility.<sup>28</sup> Again Dr. R. M. Anderson was with Stefansson as second-in-command, and he also had Captain Bob Bartlett (who had won fame with Peary), Diamond Jenness, George Hubert Wilkins, Burt McConnell, Storker Storkerson, and Ole Andreasen. Stefansson divided the expedition into two parts, a smaller northern one under himself, which would concentrate on exploration, and a larger southern one under Dr. Anderson, which would devote its time largely to scientific investigation. Anderson's group spent an extremely profitable but relatively quiet four years in exhaustive research along the arctic coast to Coronation Gulf, their work being so extensive that reports of it by the various members of the party filled fifteen volumes.<sup>29</sup>

Stefansson had a more exciting time. He became separated from his ship, the “Karluk”, which drifted in the ice almost to Wrangel Island, and only the resourcefulness of Captain Bartlett saved 14 of the 25 who were on board when the ship drifted away. Left almost alone, Stefansson took two men, Andreasen and Storkerson, and made a remarkable journey over the ice to Banks Island which took ninety-six days, and validated his theory that life existed in the polar sea. During the following three years he made a number of long self-supporting sledge journeys, in the course of which he discovered Borden, Brock, Meighen, and Perley Islands, all of which he claimed on behalf of the Canadian Government, “by authority especially vested in me for that purpose.”<sup>30</sup> He also explored Sverdrup's “King Christian Land,” and found that it was actually a group of islands, one of which, as discoverer, he named Loughheed island.<sup>31</sup> Meanwhile Storkerson in 1917 explored the part of the northeast coastline of Victoria Island which Hansen had been unable

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<sup>28</sup> Vilhjalmar Stefansson, *The Friendly Arctic* (New York: Macmillan Co., 1943), Preface, pp. xi-xx.

<sup>29</sup> See *Canadian Arctic Expedition Reports*, Ottawa (various authors and dates).

<sup>30</sup> V. Stefansson, *The Friendly Arctic*, p. 330. See also p. 520.

<sup>31</sup> *Ibid.*, map, p. 534, and p. 542.

to reach in 1905.<sup>32</sup> The final work of the expedition was a six-months drift on an ice-floe in 1918, carried out by Storkerson, since Stefansson himself had been taken ill.<sup>33</sup> The latter recovered in time to be present in Toronto for the Armistice celebration, having conducted one of the longest and most significant Arctic expeditions on record.

Another great modern explorer was Knud Rasmussen, who like Stefansson was one of the last of the old school. He was a Dane, born and raised in Greenland, and became famous as the organizer of the seven great Thule expeditions in arctic America, between 1912 and 1932. These were for the most part concerned with scientific investigation in Greenland, but one of them took Rasmussen into the Canadian Arctic. This was the Fifth Thule Expedition of 1921-1924, in which Rasmussen travelled by dog-sledge from Baffin Island to Kotzebue Sound, Alaska, thus negotiating the Northwest Passage by this means of travel for the first time.<sup>34</sup> He was more interested in ethnological research than geographical discovery, and the expedition contributed little in the latter field. It is interesting to note that the Canadian Government informed both Rasmussen and the Danish Government in advance that it would not recognize as Danish property any new land which he might discover in the Canadian sector.<sup>35</sup> It seems likely that in taking this step the Canadian authorities were influenced by Rasmussen's previous refusal, in 1919, to recognize Canadian jurisdiction in northeast Ellesmere Island.<sup>36</sup>

The last great name in Canadian arctic exploration, exclusive of those who have travelled by air, is the American Donald B. MacMillan. Like Stefansson, MacMillan bridges the gap between past and present, because he was active early in this century and is still alive. Unlike Stefansson, he has not retired from active exploration, having made twenty-nine trips altogether to the Arctic, the two most recent being in 1949 and 1950<sup>37</sup>. MacMillan's most important enterprise was his "Crocker Land" Expedition of 1913-1917, the purpose of which was to explore the land Peary thought he saw northwest of Ellesmere in 1906. MacMillan was disappointed to find that "Crocker Land" actually did not exist, but he did extensive exploratory work in Ellesmere and the Sverdrup Islands.<sup>38</sup> He has been such a constant visitor to the Arctic that it would be impossible to give a detailed account of all his voyages

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<sup>32</sup> *Ibid.*, pp. 657-658, also map, p. 594.

<sup>33</sup> *Ibid.*, Appendix 1, pp. 715-729. (By Storker Storkerson. Reprinted from Maclean's Magazine, March 15 and April 1, 1920.)

<sup>34</sup> See Knud Rasmussen, *Across Arctic America* (New York: G. P. Putnam's Sons, 1927).

<sup>35</sup> David Hunter Miller, "Political Rights in the Arctic," *Foreign Affairs*, October, 1925, p. 50.

<sup>36</sup> V. Kenneth Johnston, "Canada's Title to the Arctic Islands," *Canadian Historical Review*, March, 1933, p. 37.

<sup>37</sup> *Evening Citizen*, Ottawa, Sept. 10, 1949; *New York Times*, June 18, 1950.

<sup>38</sup> Donald B. MacMillan, *Four Years in the White North* (Boston: Medici Society, 1925), pp. 321-322.

here, but suffice it to say that they have contributed much to geographical and other knowledge of the eastern islands of the archipelago, Greenland, and Labrador.<sup>39</sup> For example, after his 1949 trip he claimed to have discovered twenty-five small, new islands, mostly off the Labrador coast.<sup>40</sup>

With Peary, Amundsen, Stefansson, Rasmussen, and MacMillan the era of discovery in the Canadian Arctic may be said to have ended, at least as far as finding large new islands and establishing new records are concerned. Arctic exploration on a scientific basis goes on, however, delving continually deeper into the mysteries of the North, and resulting incidentally in more detailed exploration of little-known islands and regions. Expeditions to the Arctic have become so frequent that they are now commonplace, and with the help of modern science the difficulties that hampered early explorers are now largely overcome. Among the greatest assets are the airplane, which makes possible speedy travel and survey of large areas, radio, which enables explorers to maintain contact with civilization, and the aerial mapping camera, by means of which a permanent and accurate photographic record can be kept of the territories surveyed. Although such devices as the snow house and the dog team are still in common use, and long, lonely patrols are still frequent, particularly among missionaries and the mounted police, yet it is possible today for well-equipped expeditions to live and travel in comparative ease.

Most expeditions to this sector in recent years have been Canadian, either government-sponsored or private, but there has been a considerable number of others. One of the greatest arctic explorers of recent years was Captain Bob Bartlett, the Newfoundland-born mariner who accompanied Peary in 1909 and Stefansson in 1913, and who, like MacMillan, was almost a yearly visitor to northern waters until his death in 1946. His work was by no means confined to Canadian territory, but he spent a great deal of time in Hudson Bay, Labrador, Baffin Island, and Ellesmere.<sup>41</sup> The German Dr. H. Kruger led an expedition westwards from Ellesmere in 1930, and then disappeared. A Royal Canadian Mounted Police party from Bache Peninsula led by Corporal Stallworthy searched for Kruger in 1931-1932, and although they found a message he had left at Peary's cairn on Axel Heiberg Island Kruger himself was never seen again.<sup>42</sup>

In recent years some important explorations have been carried out by British parties, organized mainly at Oxford and Cambridge Universities. J. M. Wordie of Cambridge led two expeditions to Baffin Island in 1934 and 1937, carrying out cosmic ray and archaeological investigations. His trip in 1937 took him north to

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<sup>39</sup> Apparently MacMillan regularly got permission from the Canadian government before entering Canadian territory. See A. E. Millward, *Southern Baffin Island* (Ottawa: King's Printer, 1930), pp. 43, 100-101.

<sup>40</sup> *Evening Citizen*, Ottawa, Sept. 10, 1949.

<sup>41</sup> G. P. Putnam, *Mariner of the North: The Life of Captain Bob Bartlett* (New York: Duell, Sloan and Pearce, 1947) gives a brief but complete picture of Bartlett's life and work.

<sup>42</sup> *Polar Record*, July 1933, p. 114.

Ellesmere Island.<sup>43</sup> The Oxford University Exploration Club, founded in 1927, has sent out a number of parties, two of which went to Ellesmere. The first one was organized by Edward Shackleton and led by Dr. Noel Humphreys. It divided its time between Greenland and Ellesmere, and in the latter island penetrated far into Grant Land. This expedition, which took place in 1934-1935, was followed three years later by another, under the leadership of David Haig-Thomas. In the spring of 1936 Haig-Thomas and an Eskimo sledged westwards from Ellesmere as far as Amund Ringnes, discovering a small new island on the way.<sup>44</sup> The British explorer and scientist T. H. Manning spent two years in the Hudson Bay area between 1933 and 1935, and then, after a short stay in England, spent the five years between 1936 and 1941 exploring the little known interior of Baffin Island. P. D. Baird and G. W. Rowley, who led "Exercise Muskox" in 1946, were with Manning part of the time.<sup>45</sup>

Travel by plane in the Arctic was pioneered by Amundsen, Ellsworth, Nobile, Byrd, Wilkins, Eielson, Chekalov, Gromov, and Levanevsky. Canadian bush-pilots such as "Punch" Dickins, "Wop" May, Leigh Brintnell, A. M. Berry, and Herbert Hollick-Kenyon did pioneer flying in the northern regions of Canada, but their flights were for the most part confined to the air above the mainland. In 1926 Commander Byrd, flying from Spitsbergen, became the first man to reach the North Pole by plane.<sup>46</sup> Also in 1926, Amundsen, Ellsworth and Nobile succeeded in flying non-stop all the way from Spitsbergen to Alaska, passing directly over the polar sea.<sup>47</sup> A year earlier Amundsen and Ellsworth had set two seaplanes down in an open land only 120 miles short of the North Pole, and had been lucky to escape with one of them.<sup>48</sup> In 1928 George Hubert Wilkins and Carl Ben Eielson reversed Amundsen's route, and flew in a plane from Alaska to Spitsbergen. Wilkins was knighted for this achievement.<sup>49</sup> Longer flights were made by Russian flyers in 1937, when first Chekalov and then Gromov flew from Moscow to Oregon and California respectively, with no intermediate stops on the way.<sup>50</sup> Levanevsky, who had flown a seaplane from Los Angeles to Moscow in 1936, making a number of stops en route, tried to make a non-stop return flight directly over the Arctic Ocean in 1937, but was lost somewhere on the Canadian side of the North Pole. An intense search was begun, aided by many nations, but Levanevsky and his crew were

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<sup>43</sup> Andrew Croft, *Polar Exploration* (London: Adam and Charles Black, 1947), pp. 86-88.

<sup>44</sup> *Ibid.*, pp. 117-118, 126.

<sup>45</sup> *Ibid.*, p. 127.

<sup>46</sup> R. E. Byrd, "The First Flight to the North Pole," *National Geographic Magazine*, Sept., 1926, pp. 357-376.

<sup>47</sup> L. Ellsworth, "At the North Pole," *Yale Review*, July 1927. The dirigible "Norge" was used on this trip.

<sup>48</sup> *Ibid.*

<sup>49</sup> J. Mirsky, *op. cit.*, p. 313.

<sup>50</sup> Andrew Croft, *Polar Exploration*, pp. 140-141.

never found. During the search Sir George Hubert Wilkins covered an estimated 150,000 square miles of new territory in and north of the Beaufort Sea by plane, without seeing any sign of the land. After the search was over he concluded that "there is no new land to be discovered in the Beaufort Sea and the area between longitudes 120° and 145° west and the North Pole."<sup>51</sup>

While Wilkins' conclusion has probably not been completely verified, it is at any rate safe to say that discovery of new lands in the Canadian Arctic is essentially completed. From now on, the stress will be upon the acquisition of detailed scientific information, the discovery and exploitation of minerals and other natural resources, the provision for adequate defense, when necessary, and the preparation of air bases to serve as stopping points in the future expanded arctic aviation.

This concludes the discussion of discovery and exploration in the Canadian Arctic, except for Canadian Government expeditions, which are dealt with in Part III, and which, as will be shown, have in the past half century been more numerous than any others. Exploration after 1850 was not so exclusively British and Canadian as prior to that time, however, and representatives of other nations, including the United States, Norway, and Denmark, have played a notable part. Nevertheless, the only important new islands discovered by explorers from countries other than Britain or Canada were those discovered by the Norwegian Sverdrup, unless one includes the parts of Ellesmere which were examined for the first time by Sverdrup and several Americans. An attempt will be made in Part IV to evaluate the significance of discovery and exploration as elements in the achievement of sovereignty, but for the present it may be well to reiterate that almost the entire background of activity in this region prior to 1850 was British, and since that time has been British or Canadian.

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<sup>51</sup> Sir G. H. Wilkins, "Our Search for the Lost Aviators," *The National Geographic Magazine*, Aug., 1938, p. 141.

## PART III

### THE PATTERN OF GOVERNMENT AND ADMINISTRATION

## CHAPTER 8

### THE HUDSON'S BAY COMPANY IN THE ARCTIC

The Hudson's Bay Company was almost the sole authority in the regions north of Canada for two hundred years following the granting of its charter in 1670. Even since the transfer of its rights to the Canadian Government in 1869-1870 it has remained a factor of considerable significance in the Arctic, owing to its experience, prestige, and widespread commercial and trading interests. It is evident, therefore, that it merits some attention in any consideration of administration in the Canadian Northland.

There is no doubt that the charter incorporating "The Governor and Company of Adventurers of England trading into Hudson's Bay," granted by Charles II on May 2, 1670, was intended to make them "true and absolute lords and proprietors" of the territory which was to be called "Rupert's Land." To this end the Charter was worded in part as follows:

We ... do give, grant and confirm, unto the said Governor and Company, and their successors, the sole trade and commerce of all these seas, straits, bays, rivers, lakes, creeks and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits, commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid, that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State, with the fishing of all sorts of fish ... and all mines royal, as well discovered as not discovered ... and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called 'Rupert's Land.'

And further we do ... constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places, and of all other the premises, saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors....<sup>1</sup>

To remove possible doubts about the power and authority of the Company, the Charter conferred upon it a variety of specific rights, such as to acquire, possess and

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<sup>1</sup> From the Hudson's Bay Company Charter, reproduced in full in Beckles Willson, *The Great Company* (Toronto: Copp Clark Co., Ltd., 1899), Appendix 1, pp. 515-526.

dispose of property including lands and buildings, to hold meetings and make laws for the regulation of the Company's business, to govern both trade and settlement in its territory, and to regulate immigration therein. All that was expected of the Company in return was that it should maintain allegiance to the Crown, govern its possessions according to the laws of England, search for the Northwest Passage, and pay "yearly to us, our heirs and successors, for the same, two elks and two black beavers, whenever ... we, our heirs and successors, shall happen to enter into the said countries, territories and regions hereby granted."<sup>2</sup>

A number of questions arise from the wording of the Charter.<sup>3</sup> In the first place, it specified that the grant did not include any lands "already actually possessed by or granted to any of our subjects." This was perhaps a necessary precaution, because it was not known with any exactitude how much territory the Company had been given. Also there might have been some earlier grant which would overlap with this one. It appears, however, that the precaution was needless. The only monopoly charter given previously in the Northwest that I have discovered was the one given to Frobisher's Company of Cathay in 1577, but that company went bankrupt a year later; besides, Frobisher's Meta Incognita was not tributary to Hudson Bay or Strait.

Also excluded were lands "possessed by the subjects of any other Christian Prince or State." Aside from fishing vessels of various nations which may have penetrated through Hudson Strait into Hudson Bay, about the only such subject of another state to enter Hudson Bay prior to 1668 was the Dane Jens Munk in 1619. He had made a claim for Denmark at the present site of Churchill, but Denmark had done nothing to follow it up.<sup>4</sup> The French, however, regarded the Hudson Bay region as logically theirs because of its proximity to New France, and consistently refused to acknowledge the validity of the Hudson's Bay Company charter.<sup>5</sup> A bitter dispute ensued which was not settled until the Peace of Paris in 1763, when France gave up all claims not only in that area but in New France also. From 1763 on, therefore, the French claims may be discounted, but one writer maintains that they had no validity before 1763 either, as the French had not made the overland voyages from New France to Hudson Bay which they alleged they had, and upon which their claims were largely based.<sup>6</sup>

It is obvious, however, that although the grant of the English Crown might be

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<sup>2</sup> *Ibid.*, p. 521.

<sup>3</sup> Chester Martin, "The Royal Charter," *The Beaver*, June, 1945, p. 26, remarks, "Few documents have been challenged by such powerful interests or recognized, at one time or another for two centuries, by such an array of official evidence - by order-in-council, by act of parliament, by royal commission, by the opinion of law officers of the crown, by treaty, and by select parliamentary committee."

<sup>4</sup> Rev. B. M. Hofrenning, *op. cit.*, p. 20.

<sup>5</sup> B. Willson, *op. cit.*, pp. 52-59. See also A. S. Morton, *A History of the Canadian West to 1870-71* (London: T. Nelson and Sons Ltd., 1939), chap. III, pp. 53-124.

<sup>6</sup> Beckles Willson, *op. cit.*, p. 55 and ff.

binding upon English subjects, it was not necessarily binding upon other states or their subjects. Discovery and exploration, along with the sweeping assumption of ownership such as that asserted by Charles II in 1670, had undoubtedly more weight in determining sovereignty then than now, but most of the land included in the Charter had never been explored or even seen by white men. Britain herself was always meticulous in observing the rights granted to the Hudson's Bay Company by its charter. For example, in the 1816 fisheries treaty with the United States, she insisted that the "exclusive rights of the Hudson's Bay Company" be guarded, respecting the fisheries in Hudson Bay and Strait, and the validity of the Charter was again upheld in the 1821 "License of Exclusive Trade to the Hudson's Bay Company," in the renewal of this license in 1837, and in the "Rupert's Land Act" of 1868, which empowered the Company to surrender its lands, and Her Majesty to accept them.<sup>7</sup>

How much territory had been granted to the Company under the Charter? Its extent was actually undefined and unknown. The quotation from the Charter given above indicates that the grant was intended to include all lands and waters "in whatsoever latitude they may be, that lie within the entrance of the straits" - but this wording could be given a variety of subjective interpretations. Later - by 1763 according to Professor Morton - the Company came to believe that its territories comprised all the country drained by the rivers which flowed into Hudson Bay and Strait, an interpretation it clung to although it was disputed in turn by the French, the rival Northwest Company and the Canadian Government.<sup>8</sup> Rupert's Land would thus include most of northern Quebec and Ontario, all of Manitoba and the Red River Valley, most of Saskatchewan, half of Alberta, and a large portion of the present Northwest Territories, including southern Baffin Island - in other words about half of present Canada. It may be noted here that the Hudson's Bay Company has at various times in its history had many posts located beyond the limits of this region, in the northwestern United States, British Columbia, Alaska, the Yukon, the Mackenzie Valley and more recently, in the Arctic Islands.<sup>9</sup>

Rupert's Land was never considered to be identical with the "Northwest Territory." In the late eighteenth and early nineteenth centuries the traders from Montreal used the term "Northwest" to denote the whole region north and west of Lake Superior, except the small holdings which they conceded to the Hudson's Bay Company along the shores of Hudson Bay.<sup>10</sup> In the nineteenth century the Canadian Government looked upon the Northwest Territory as the vast, unorganized, ill-defined area in western and northern Canada, beyond Rupert's

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<sup>7</sup> W. F. King, *op. cit.*, p. 26; *ibid.*, p. 25. See also A. S. Morton, *op. cit.*, p. 57.

<sup>8</sup> A. S. Morton, *op. cit.*, p. 256.

<sup>9</sup> See frontispiece map in Beckles Willson, *op. cit.*, showing some of these H.B.C. trading posts.

<sup>10</sup> A. S. Morton, *op. cit.*, p. 256.

Land.<sup>11</sup> The Northwest Territory of those days was of course not the same as the Northwest Territories of today, which are considered to include the entire non-provincial part of Canada, including the Arctic Archipelago, except the Yukon Territory.

The Hudson's Bay Company took a prompt but limited course of action to establish trade and ownership in Rupert's Land. In 1668-1669 Groseilliers and Zachary Gillam had built what became the Company's first trading post. This was Fort Charles, since known as Rupert's House, on the eastern shore of James Bay. By 1682 three others had been added, Moose and Albany at the mouths of the rivers with those names, in James Bay, and Fort Nelson (rebuilt as York Factory in 1692) on the Hayes River in Hudson Bay. Others were added more slowly - Fort Severn in 1685, Fort Churchill (later called Prince of Wales) in 1688, Eastmain in 1723, and Henley House in 1743. It is to be noted that all except the last-named were on the shore of either Hudson Bay or James Bay, and Henley House was only one hundred and sixty miles up the Albany River. From the start the Hudson's Bay Company men were averse to moving inland.

Meanwhile the Company's first governor, Charles Bayly, made formal treaties with the Indians at Fort Nelson in 1670 and at Moose Factory in 1673, by which the latter gave the English the right to trade and to possess the soil. At the same time he formally claimed the region, in an attempt to forestall the French.<sup>12</sup>

The Company's monopoly did not remain long unchallenged. In 1671 Talon, the Intendant of New France, sent the Sieur de St. Simon and Father Albanel on an overland voyage to Hudson Bay which resulted in the establishment of a French trading post not far from Fort Charles and a French counter-claim to the region.<sup>13</sup> Also in 1671, at Sault Ste. Marie, Sieur de St. Lusson proclaimed as French the entire territory bounded by the Seas of the North (Hudson Bay and Strait) and of the South (Pacific Ocean).<sup>14</sup> This would have given France practically the whole West and Northwest. From this time until 1763 two opposing forces pulled upon the Indian fur trade, the Hudson's Bay Company attempting to attract it to its posts on the Bay, while the French tried to draw it southwards to the St. Lawrence. Almost a century of warfare in Hudson Bay and Rupert's Land between the two, at times undeclared and at other times open.

Several years after the Hudson's Bay Company had been founded, first Radisson and then Groseilliers deserted its service and returned to New France. Radisson was instrumental in founding a French "Company of Hudson Bay," and under its auspices returned in 1682 to build a Fort Bourbon on the Hayes River and capture (in 1683) the English Fort Nelson nearby. Only the following year, back in the

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<sup>11</sup> W. F. King, *op. cit.*, p. 4, pp. 19-20. Also A. S. Morton, *op. cit.*, pp. 845 ff.

<sup>12</sup> A. S. Morton, *op. cit.*, pp. 66-67, 73.

<sup>13</sup> *Ibid.*, pp. 70-71.

<sup>14</sup> *Ibid.*, p. 72.

service of the Hudson's Bay Company, he recaptured Fort Bourbon from Groseillier's own son Jean-Baptiste Chouart. He remained in the English service until his death, but occupied no position of importance.

Radisson's escapades between 1682 and 1684 initiated several years of undeclared war in the Bay, which became open after the War of the League of Augsburg began in 1689. A treaty of neutrality was signed between England and France in 1686, including a "modus vivendi" under which the status quo was to be preserved in the Bay, but it had little effect upon the trade war. The rivals raided each other's strongholds whenever opportunity offered, and ownership changed with dizzy frequency. In 1686, just before the treaty of neutrality was signed, Chevalier de Troyes and the dashing young Pierre le Moyne d'Iberville captured Forts Albany, Charles and Moose after a quick trip overland from Montreal, leaving the Company only Forts Nelson and Severn. Attempts of the English to retake the lost posts were defeated, and in 1689 d'Iberville captured Fort Severn.

During the War of the League of Augsburg the English were decidedly worsted in the Bay. Fort Nelson, which was rebuilt as York Factory by the English in 1692, changed hands several times but remained in French possession after 1697. In this same year (1697) d'Iberville won the greatest of his several sea victories in Hudson Bay. The English recaptured Fort Albany in 1693, and held it thereafter, but it remained the only post in their hands until 1713. Had it not been for this success, they would have been completely ejected from Hudson Bay, as the Treaty of Ryswick in 1697, which ended the war, accomplished little there beyond preserving the status quo.<sup>15</sup> A board of commissioners appointed to fix the boundary between British and French possessions had accomplished nothing when war broke out again in 1702. The French maintained their favored position in the Bay until 1713, and the Company's trade suffered so much that no dividends were paid between 1691 and 1717.<sup>16</sup>

From the viewpoint of the Hudson's Bay Company the War of the Spanish Succession had a happier outcome than the War of the League of Augsburg. Marlborough's great victories in Europe gave Britain the advantage at the peace conference, and at Utrecht in 1713 she was able to insist that France give up her claim to Hudson Bay and the surrounding regions. The tenth clause of the Treaty of Utrecht ran as follows:

The said most Christian King shall restore to the Kingdom and Queen of Great Britain, to be possessed in full right for ever, the bay and streights of Hudson, together with all lands, seas, sea-

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<sup>15</sup> It has been maintained that under a strict interpretation of the Treaty of Ryswick the English were not entitled to Albany, since Ryswick confirmed captures made during the peace preceding 1689. See A. S. Morton, *op. cit.*, p. 119; B. Willson, *op. cit.*, p. 168.

<sup>16</sup> Douglas MacKay, *The Honourable Company* (New York: Bobbs-Merrill Co., 1936), Appendix D, p. 339.

coasts, rivers and places situated in the said bay and streights, and which belong thereunto, no tracts of land or of sea being excepted, which are at present possessed by the subjects of France....<sup>17</sup>

Thus at the end of the war the Company had restored to it its former rights and privileges. As A. S. Morton points out, there was an element of justice in this.<sup>18</sup> Despite its heavy financial setbacks and the loss of its posts, it had maintained its identity as a company, and had unceasingly and persistently alleged its rights under the Charter of 1670. Finally it had petitioned both the Lords of Trade and the Queen for assistance until rewarded by a statement of the former in 1712 that they had "considered the enclosed petition and ... are humbly of opinion that the said Company have a good right and just title to the whole Bay and Streights of Hudson."<sup>19</sup>

The Treaty of Utrecht gave no more exact definition of the territories given up by France than that in the tenth clause quoted above. A commission was provided to fix the boundary line between Rupert's Land and New France, but after much neglect, delay and disagreement it broke up without achieving a solution.<sup>20</sup> The French refused to concede that the territory returned to the English included all the lands which were drained into Hudson Bay, and maintained that the English were only entitled to the narrow strip along the Bay upon which the Company's forts stood. Their own claim to the region in question being rather flimsy, the French went back to the Treaty of St. Germaine - en - Laye in 1632, and asserted that the English, who at that time returned New France to them, had then accepted their interpretation that New France extended to the sixtieth parallel of north latitude.<sup>21</sup> The result was another northern half-century of dispute, marked by diplomatic wrangling in the Old World and frontier incidents in the New.

During this half-century the French showed far more enterprise than the English. Pierre de la Vérendrye and his sons led in developing a lake and river route from New France all the way to the western plains, with numerous trading posts placed strategically along the way. Between 1731 and 1748 they built Forts St. Pierre on Rainy River, St. Charles on Lake of the Woods, Maurepas at the mouth of the Winnipeg, Dauphin on Mossy River, la Reine south of Lake Manitoba, Rouge at the present site of Winnipeg, and Pascoyac and Lacorne on the Saskatchewan River. These forts, with those on the Great Lakes, threatened to confine the English to the shores of Hudson Bay in the same way that the similar chain west of the Appalachians threatened to confine the New England settlements to the Atlantic

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<sup>17</sup> Quoted in A. S. Morton, *op. cit.*, p. 123.

<sup>18</sup> *Ibid.*, p. 124.

<sup>19</sup> Quoted in Beckles Willson, *op. cit.*, p. 198.

<sup>20</sup> *Ibid.*, pp. 206-207.

<sup>21</sup> A. S. Morton, *op. cit.*, pp. 125-126.

seaboard. Aside from rather spasmodic attempts to penetrate the interior such as the journey of Henry Kelsey in 1690-1692 and Anthony Henday in 1754-1755, the Hudson's Bay Company men were usually content, before 1754 at least, to sit tight in their few trading posts and let the Indians come to them. After Henday's expedition Company men regularly passed the winters with the Indians in the hinterland, but nevertheless there was real danger, especially before 1754, that through inertia the Company would lose to the French much of what it had been granted by its charter and the Treaty of Utrecht.<sup>22</sup>

Open hostilities resumed during the War of the Austrian Succession, but it was inconclusive in the New World as in the Old, and the final decision did not come until after the Seven Years War. There was little actual fighting in Rupert's Land during either war, but the need for soldiers to defend New France caused a steady depletion of personnel at the French posts in the 1750's, and one by one they were closed, St. Louis in 1757, Bourbon in 1758, and Pascoyac in 1759. When the Peace of Paris was signed in 1763 the grip of the French upon the Northwest had already been loosened, and the surrender of New France removed for all time the French threat to Rupert's land.<sup>23</sup> After 1763 the opposition the Hudson's Bay Company faced was from British subjects.

In retrospect, it is evident that during the entire period of rivalry with the French, from the granting of the Charter in 1670 until the removal of the French threat in 1763, there had been little attempt by the Company to administer Rupert's Land. No settlements of an agricultural nature had been founded, the inland regions had been almost completely ignored until 1754, and with the exception of Henley House on the Albany River, even the trading posts were confined to the edge of Hudson Bay. It is little wonder that after 1763 other British traders challenged the rule of the Hudson's Bay Company in its great domain.

Montreal had been the headquarters for the French-Canadian fur trade, and the starting point for the long journey to the plains. Shortly after the French surrender the Montreal trade was resumed under British rule by enterprising Scottish, English, and American traders. They kept in their employ a large number of French-Canadians and half-breeds, and used them mainly in the west, where their greater initiative and superior skill continued to embarrass the Hudson's Bay Company.

The Proclamation of October 7, 1763, which gave Quebec very limited boundaries, left undefined the southern boundary of Rupert's Land, and also the northern boundary of the territory in between, which was left for the Indians. The first clause threw the Indian trade open to all His Majesty's subjects, with the very significant limitation that the charter and territories of the Hudson's Bay Company

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<sup>22</sup> See A. S. Morton, *op. cit.*, p. 272, but also pages 135, 157-161, 206-207, 239-242.

<sup>23</sup> It is perhaps worth mentioning that in 1782, during the American Revolution, the French Admiral Galaup captured and destroyed both Fort Prince of Wales (Churchill) and York Factory. A. S. Morton, *op. cit.*, p. 333. See also *ibid.*, p. 254.

were not to be interfered with. For a short time the protection thus afforded the Company by the Proclamation was effective, but soon the regulations were being so flagrantly disobeyed that the system of Imperial supervision was given up. In 1768 Lord Hillsborough, Secretary of State, abandoned responsibility for the control of the Indian trade, leaving the Governor of Quebec free to permit the Montreal merchants to penetrate into Lake Superior and beyond. It was perhaps natural that the Quebec governors should favor the struggling traders from their own province rather than the distant, privileged company which claimed the right to keep them out of what seemed to them the logical field for their exploitation.<sup>24</sup>

The Quebec Act of 1774 extended the boundaries of the province south to the Ohio and west to the Mississippi. It gave the Montreal merchants a considerable area to trade in, but the American Revolution and Jay's Treaty of 1794 deprived them of the territory south of the Great Lakes and the forty-ninth parallel, and left them only the narrow strip between the Great Lakes and Rupert's Land. It was not to be expected that the traders who had swarmed into the Northwest following Hillsborough's Proclamation would submit tamely to such confinement.

For some time after 1763 Montreal was the headquarters of a large number of small concerns which not only opposed the Hudson's Bay Company but were rivals among themselves. Some of the early leaders were the adventurer Peter Pond, James McGill, who was the founder of McGill University, Benjamin and Joseph Frobisher, Simon McTavish, and the explorer Alexander Mackenzie. The Montreal traders - "Pedlars" as they were christened by the Hudson's Bay Company men - besides competing vigorously with each other showed also an early tendency to form combinations. These were at first small, temporary unions, but developed into larger, more permanent organizations, among which the Northwest Company was outstanding.<sup>25</sup> When and how the latter had its origin is doubtful, but it was clearly in evidence by 1779, when a sixteen-share association was formed including among others these concerns - Todd and McGill, Benjamin and Joseph Frobisher, McTavish and Company, and McBeath, Pond and Company. Upon the union in 1787 of this association with Gregory, McLeod and Company, of which Alexander Mackenzie was a partner, the full-fledged Northwest Company came into existence. It continued to swallow its smaller Montreal rivals until 1804, the year of the absorption of the XY Company. The latter company had only been organized in 1800, but had quickly become a serious competitor, even enticing Sir Alexander Mackenzie to join in 1802. After it united with the Northwest Company, the formerly dispersed Montreal interests presented a united front to the Hudson's Bay Company, whose charter, trade, and actual existence were now threatened as never

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<sup>24</sup> See A. S. Morton, *op. cit.*, pp. 257-262, for a discussion of the Proclamation of 1763, Hillsborough's circular, and the Quebec Act in this connection.

<sup>25</sup> For a short but comprehensive account of the Northwest Company, see Gordon C. Davidson, *The North West Company* (Berkeley: University of California Press, 1918).

before. The stage was set for the final and most violent phases of the struggle, with the two rivals facing each other along a front that was extended right from Montreal to the Pacific and Arctic Oceans.

The Northwest Company, young, energetic, daring and unscrupulous, had easily the best of the struggle for about a decade after 1804. They built a network of posts that covered the plains between Lake Superior and the Rocky Mountains, and threatened to cut off the older company from the entire area. Mackenzie having shown the way to the Arctic, they built posts on the Peace, Athabaska and Slave Rivers, and even as far north as Fort Liard on the Mackenzie itself. Following Mackenzie, Fraser, and Thompson through the mountain passes, they extended the network westwards to the Pacific Ocean, and their Columbia enterprise included a number of posts south of the present international boundary. They pressed closer and closer to the Hudson's Bay Company's own preserve near the Bay, and, coveting the entire area, made offers to buy out the latter's interests - offers which were always refused.

This is one of the darkest periods in the entire history of the Hudson's Bay Company. In 1774 they had abandoned their century-old policy of establishing posts mainly on the shores of the Bay, when they sent Samuel Hearne inland to build Cumberland House on Cumberland Lake. Thenceforth they were active competitors for the trade of the interior, but could not match the performance of their rivals, as their posts did not extend so far north or west, and were less numerous on the plains. They were forced out of the Athabaska area in 1805, and failed to secure any appreciable portion of the Pacific trade. Wherever they built a post, even in the territory they regarded as rightfully their own, it had to withstand competition from a Northwest Company post built nearby. They could not resort to force, or even meet violence with violence, because their rivals had more posts, more men, more weapons, and more supplies. Their position appeared to be hopeless, and it is not surprising to learn that from 1809 to 1814 they were unable to pay any dividends.<sup>26</sup>

Nevertheless the Hudson's Bay Company finally emerged from the struggle victorious. A number of factors contributed to their victory, of which three appear to be outstanding. First was a mighty reorganization of the Company's finances, personnel and methods, directed by Lord Selkirk's brother-in-law Andrew Wedderburn and beginning in 1810; in which all available resources were concentrated to defeat the Nor' Westers. Second was the founding of the Red River Colony by Lord Selkirk in 1812, and its eviction by the Nor' Westers a few years later - a step which backfired upon the latter. Selkirk promptly re-established the settlers in their homes, and though he was himself ruined in the resultant legal battles, the Northwest Company lost heavily also, financially and otherwise. The Hudson's Bay Company remained essentially unscathed during this struggle, and

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<sup>26</sup> D. MacKay, *op. cit.*, p. 342.

benefitted because the colony seriously impeded the Nor' Westers' route from the West to Montreal. The third and perhaps most decisive factor was that the Hudson's Bay Company possessed the short, easy, sea route to the interior that the Northwest Company lacked, and the latter's long overland route proved to be too expensive to maintain in the face of keen competition. The Nor' Westers began to make overtures for an amalgamation, which materialized in 1821, when the two companies were joined.

Although the union was arranged on a basis of equal shares, profits, and losses for each company, the Hudson's Bay Company had the better of the deal, as its name, charter, and headquarters were to be used henceforth, and the Northwest Company lost its identity. London rather than Montreal was to be the administrative centre and the canoe route through the Great Lakes to the West was deserted in favor of the sea route through the Bay. Most important of all, an act of the British Parliament in 1821 confirmed the right of the Hudson's Bay Company to Rupert's Land, and its claim to the territory up to the height of land was strengthened.<sup>27</sup> The Company was given also the sole right to trade with the Indians in the region north of the forty-ninth parallel, east of the Rockies, and beyond Rupert's Land, and the sole British rights of trade in the Oregon country, west of the Rockies.<sup>28</sup> It was also given the responsibility of administering civil and criminal law in Rupert's Land; a responsibility that in important cases had hitherto usually been transferred to the courts of Upper and Lower Canada.<sup>29</sup>

It is evident that the position of the Hudson's Bay Company had changed considerably between 1763 and 1821. In 1763 it had only nominal control, essentially unexercised, over an unknown, undefined, and unoccupied area. By 1821 it had been given through an act of parliament the responsibility of administering a Rupert's Land which was better known, more closely defined, and partly occupied; and sole British rights of trade in the region between Rupert's Land and the Pacific Coast. A growing settlement was established on land it had granted, and its trading posts totalled about one hundred and seventy in all, including some on Lake Athabaska, Great Slave Lake, and the Mackenzie River.<sup>30</sup> It had not however pushed its trading posts northwards to the Arctic Ocean or to the islands of the archipelago.

The period from 1821 to the surrender of the Company's lands in 1869 was one of general quiet, marked by the slow but steady growth of the Red River Colony, the exploration of the North, and the undisturbed prosecution of the fur trade. Towards the end there was a growing denunciation of the Charter and a rising demand, notably on the part of the Canadian Government, that it be terminated.

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<sup>27</sup> A. S. Morton, *op. cit.*, p. 628.

<sup>28</sup> *Ibid.*, p. 628; also D. MacKay, *op. cit.*, p. 158. In 1818 Britain and the United States had agreed that each should have the right to trade in the Oregon country for ten years.

<sup>29</sup> D. MacKay, *op. cit.*, p. 158.

<sup>30</sup> *Ibid.*, p. 130.

The union with the Northwest Company, which had originally been arranged on the basis of a twenty-one year co-partnership, was made permanent in 1824, and in the process some of the prominent Nor' Westers were thrown to the wolves.<sup>31</sup> The exclusive license to trade with the Indians in the Northwest Territory, due to expire in 1842, was renewed for twenty-one years in 1838.<sup>32</sup> In an attempt to provide for more systematic control, the Company divided its territories into three departments - the Northern (west of Hudson Bay), the Southern (south of James Bay), and the Montreal (Upper and Lower Canada, and later Labrador); and subdivided these into eleven districts. Each department was under the direct supervision of a council composed of the local governor and the chief factors. Final authority of course still rested with the Governor and Committee in London, but in actual practice immediate control was exercised by a local official known as the Governor-in-Chief of Rupert's Land; a position filled with great ability by Sir George Simpson for many years. The Red River Colony, or Assiniboia, had its own governor and council, who were subject to the authority of the Governor-in-Chief.<sup>33</sup>

During this period the Company extended its trading area in the North considerably, partly as a result of the explorations of the Hudson's Bay Company men Peter Dease, Thomas Simpson, and John Rae, and the British expeditions conducted by Franklin, Richardson, and Back. Fort Enterprise was built near the Coppermine in 1820, Fort Reliance on Great Slave Lake in 1833, Fort Confidence on Great Bear Lake in 1837, Fort McPherson on the Peel River near the Arctic Ocean in 1840, Forts Pelly and Selkirk on the Pelly River in 1846 and 1848 respectively, Fort Hope on Repulse Bay in 1846, and Fort Yukon far to the northwest, actually within the Alaskan boundary, in 1848. Meanwhile Fort Chimo on Ungava Bay, built in 1830, and Northwest River House on the Hamilton River, built in 1832, opened up trade in Northern Quebec and Labrador.<sup>34</sup> Thus by 1850 there was no sizeable region in the northern half of continental North America whose fur wealth was not being exploited by the Hudson's Bay Company.

Undoubtedly the period from 1821 to 1869 marks the height of the Company's power and prestige. It was virtual ruler of half a continent during these years, and had it been able to maintain its position, there is no telling what its future might have been. But time was not in its favor, and it was impossible that a charter company could continue to monopolize a half-continent and keep it reserved for the fur trade. The Oregon controversy, culminating in the settlement of 1846, had shown how land-hungry settlers will take effective possession of an empty region,

<sup>31</sup> A. S. Morton, *op. cit.*, p. 624; D. MacKay, *op. cit.*, pp. 162-164; H. A. Innis, *The Fur Trade in Canada* (New Haven: Yale University Press, 1930), pp. 285-286.

<sup>32</sup> A. S. Morton, *op. cit.*, p. 806; B. Willson, *op. cit.*, pp. 437-439.

<sup>33</sup> A. S. Morton, *op. cit.*, p. 695; D. MacKay, *op. cit.*, pp. 159-162; H. A. Innis, *op. cit.*, pp. 287-289; B. Willson, *op. cit.*, pp. 436-437.

<sup>34</sup> A. S. Morton, *op. cit.*, pp. 708-709.

and it was feared in Canada that the entire area between British Columbia and Assiniboia might be lost to the United States. Heavy pressure was put upon the Company to surrender its territorial rights by both Canadian and British Governments. A clause was included in the British North America Act to permit such a transfer to take place, and on November 19, 1869, the Hudson's Bay Company gave up the charter rights to Rupert's Land that it had held since 1670 in favor of the new Dominion of Canada.<sup>35</sup>

The surrender of 1869 thus took away from the Company the rights of administration it had formerly been privileged to exercise. Since that time it has continued its existence, at first primarily in its traditional role as a fur trading concern, and more recently as a huge modern business organization which has branched out to include a variety of activities besides the fur trade. It has disposed of most of its land, but its trading posts and stores are still scattered from the Atlantic to the Pacific and from the Arctic Islands to the American boundary; and it remains to many northern inhabitants almost the only manifestation of the civilized world.

The headquarters of the Company has remained in London, in spite of a number of efforts since 1884 to centralize it in Canada.<sup>36</sup> In 1931 the Governor and Committee deputized a portion of their authority to a Canadian Committee, which was to have its headquarters at Hudson's Bay House in Winnipeg. From this local headquarters a small group of experienced men direct the activities of the three major departments, retail stores, land, and fur trade, as well as two smaller ones, wholesale and wines and spirits.

Fundamental matters of principle and policy are still determined in London. The Governor, Deputy Governor, and Committee of nine elected members from a directorate which meets regularly in Hudson's Bay House there for this purpose. Approximately thirteen thousand people hold shares in the Company, the majority of them being in Great Britain.<sup>37</sup>

Although the Company's organization and status have changed greatly during the past hundred years, it still operates under a charter. The original Charter of 1670 survived as the instrument of incorporation until 1884, but since then there have been four supplemental charters, in 1884, 1892, 1912, and 1920.<sup>38</sup>

The three major departments have fluctuated in respect to their relative earning power, with the retail stores department emerging in recent years as the leader.<sup>39</sup> Most of the land which was left to the Company in 1869 has since been sold by the land department, especially during the settlement boom of the late nineteenth and

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<sup>35</sup> The transfer of the Hudson's Bay Company lands to the Dominion Government is discussed in more detail in the next chapter.

<sup>36</sup> D. MacKay, *op. cit.*, p. 312.

<sup>37</sup> *Ibid.*, p. 311.

<sup>38</sup> *Ibid.*, p. 282.

<sup>39</sup> *Ibid.*, p. 312.

early twentieth centuries, when Lord Strathcona was at the helm.<sup>40</sup> About a million and a half acres of the original seven million remained in 1941, according to an estimate of that year, and the Company also held mineral rights in four and a half million acres of land, which included a number of producing coal mines and oil wells.<sup>41</sup>

The Company began solely as a fur trading organization, and it is this activity, now forming one of the three major departments, which gives continuity to its long story, although it is not now relatively as important as it used to be before the surrender. It was feared that the fur trade would cease entirely after 1869, and the fact that it has survived as a major enterprise is due to a number of factors, among them the never-ceasing demand for furs and the spread of activity northwards to new, untapped regions of the Arctic. The chain of posts already in existence along the Mackenzie River was tightened after 1869, with new posts being added at Fort Fitzgerald in 1872, Fort Smith in 1874, Fort Wrigley in 1877, Arctic Red River in 1891, Aklavik in 1912, and Herschel Island in 1916.<sup>42</sup> In the Eastern Arctic posts were opened beginning with that at Wolstenholme in 1909, and followed by others, at Lake Harbour in 1911, Cape Dorset in 1913, Stupart's Bay and Frobisher Bay in 1914, Pangnirtung and Pond Inlet in 1921, River Clyde in 1923, Arctic Bay in 1926 and then, after an interval, again in 1936, Fort Ross in 1937 and again in 1944, and Dundas Harbour in 1934.<sup>43</sup> It will be seen that most of these last-named posts are in the Eastern Arctic Islands. The last-named was the Company's most northerly post while it was in operation, being located on the coast of Devon Island, but it was closed in 1936, leaving Arctic Bay at the northern tip of Baffin Island as the most northerly one. The Company has numerous other posts in the Yukon, Central Arctic, and Eastern Arctic, among the latter being those which formerly belonged to Revillon Freres. This was a French-Canadian fur trading company which established posts in the Eastern Arctic during the 1920's, but it was bought out by the Hudson's Bay Company in 1936.<sup>44</sup> The Company had over two hundred posts in all Canada in 1946, of which forty-one were in the Territories and nine in northern Quebec.<sup>45</sup> In 1935 there were eighteen Company posts within the Arctic Circle.<sup>46</sup> The activities and the locations of the fur department thus span the entire northern regions of Canada, except some of the more remote islands.

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<sup>40</sup> *Ibid.*, pp. 304-305.

<sup>41</sup> Clifford Wilson, "Milestones in the Progress of the Hudson's Bay Company," *The Beaver*, Dec., 1941, p. 34.

<sup>42</sup> M. J. and J. L. Robinson, "Exploration and Settlement of Mackenzie District, N.W.T.," *Canadian Geographical Journal*, June-July, 1946, p. 14.

<sup>43</sup> M. J. and J. L. Robinson, "Fur Production in the Northwest Territories," *Canadian Geographical Journal*, Jan., 1946, p. 3. Also *The Beaver*, Sept., 1947, p. 10.

<sup>44</sup> M. J. and J. L. Robinson, "Fur Production in the Northwest Territories," *op. cit.*, p. 3.

<sup>45</sup> *Ibid.*, p. 7.

<sup>46</sup> *The Polar Record*, No. 9, Jan., 1935, p. 55.

The fur department has a great many responsibilities besides the trading posts themselves, but most of these are closely connected with the fur trade. It operates the Eastern Arctic supply ship, and in 1941 had also four motor schooners, an airplane, numerous dog teams, canoes, and small boats, and, in the Mackenzie area, four stern-wheelers, ten tugs, and thirty barges.<sup>47</sup> It has several beaver sanctuaries, in the parts of Quebec and Ontario bordering on James Bay, on the islands of James Bay, and near Cumberland House, Saskatchewan. It also has several muskrat preserves, and operates domestic fur farms in Prince Edward Island, Quebec, Manitoba, and Baffin Island.<sup>48</sup>

One of the best-known activities of the fur trade department is the operation of the supply ship, which makes an annual summer visit to each Company post in the Eastern Arctic. This expedition was for years undertaken by the Company's steamship "Nascopie" which, following its initial voyage in 1912, made almost annual trips to the Arctic, or thirty-four in all, missing only 1931 and 1932.<sup>49</sup> The "Nascopie" was wrecked off Cape Dorset, Baffin Island, in 1947, while on her regular cruise, thus bringing her long career to a close. After two seasons during which supplies were delivered by a number of smaller boats, the "Nascopie" was replaced by the Company's new supply ship "Ruperts-land" in 1949.<sup>50</sup> Each year the supply ship carries food, trade goods, mail, and other essentials for the various posts visited, with changes or additions of company employees where required. In addition it has usually carried other personnel, such as private explorers, scientists, and missionaries, and also officials of the Dominion Government, scientists, technicians, and most important of all, the Eastern Arctic patrol. The patrol was inaugurated in 1922, and includes the Royal Canadian Mounted Police who see that law and order are maintained in this vast territory.

The enterprise of the Hudson's Bay Company has at times taken it into distant fields. It has engaged in businesses varying from oil-well drilling in Alberta to a whale oil refinery at Pangnirtung and a reindeer-raising experiment in southern Baffin Island, and from the operation of a fleet of steamers which handle most of the traffic and freight on the Mackenzie River to the mining of graphite, mica, and garnet in Baffin and nearby islands.<sup>51</sup>

Since 1869 the Hudson's Bay Company has had no administrative functions or

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<sup>47</sup> Clifford Wilson, *op. cit.*, p. 34.

<sup>48</sup> *Ibid.*, also D. MacKay, *op. cit.*, pp. 314-315, and D. E. Denmark, "James Bay Beaver Conservation," *The Beaver*, Sept., 1948, pp. 38-43.

<sup>49</sup> C. P. Wilson, "Nascopie, the Story of a Ship," *The Beaver*, Sept. 1947, pp. 3-11.

<sup>50</sup> *The Beaver*, Dec., 1949, p. 35.

<sup>51</sup> D. MacKay, *op. cit.*, p. 314; D. S. Robertson, *To the Arctic with the Mounties* (Toronto: Macmillan Co., Ltd., 1934), p. 218; C. Vining, "It Might Have Been (Baffin Island Reindeer Experiment)," *Toronto Star Weekly*, Aug. 11, 1928; J. L. Robinson, "Mineral Resources and Mining Activity in the Canadian Eastern Arctic," *Canadian Geographical Journal*, Aug., 1944, p. 20.

responsibilities in the Canadian Northland, but it has been of considerable assistance to the Government in this field. Before regular policing of the Arctic began there was a strong tendency among Indians and Eskimos to look upon the representatives of the Company as the law personified, and it was not easy to overcome this attitude. After Superintendent J. D. Moodie's tour of the Eastern Arctic in 1908 had been completed he wrote as follows: "The natives have until the last two years been entirely under the control of the company, and it is difficult to get them to understand that the company's orders are not the laws of Canada."<sup>52</sup> This statement shows that the authority of the Company, almost unquestioned among the natives before 1869, continued as a potent factor after it had actually ceased to exist in a legal sense, until it was effectively supplanted by that of the Mounted Police. The Company was, however, only interested in making regulations bearing on the fur trade, and there seems to be little evidence that it ever made serious attempts to establish a detailed form of government over the natives, either after 1869 or in earlier days when it was in charge of Rupert's Land. In recent years Hudson's Bay Company factors have cooperated effectively and willingly with the Dominion Government in a variety of activities designed to make more effective and beneficial Canadian administration in the Northland. From many lonely outposts they have sent regular weather reports to Ottawa, distributed treaty money and family allowances to the natives, dispensed mail and information, supplied needy Eskimos and Indians with food and clothing in emergencies, and helped in taking the census, relieving sickness, and other things too numerous to mention.<sup>53</sup> The day of company rule is gone, but the Company remains one of the leading institutions in the Canadian Arctic.

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<sup>52</sup> J. D. Moodie in *R. N. W. M. P. Annual Report*, 1909, p. 268.

<sup>53</sup> D. MacKay, *op. cit.*, pp. 314, 315, 316; Clifford Wilson, *op. cit.*, p. 34; S. G. L. Horner, "Atmospheric Defence," *The Beaver*, Dec., 1945, pp. 40-42.

## CHAPTER 9

### THE TRANSFER OF ARCTIC TERRITORIES TO CANADA

The attacks against the Hudson's Bay Company, which reached a crescendo after the middle of the nineteenth century and led to the surrender of its charter, came mainly from three sources. They came from Great Britain, from the united province of Canada, and from within the Company's own territories, especially the Red River Colony.<sup>1</sup> In all three there were powerful interests which protested loudly and strenuously against the Company's monopoly of the fur trade, maintaining that this monopoly, and the charter that granted it, were alike unfair and even illegal.<sup>2</sup> In all three, also, there were many people, mainly of British stock, who wanted to keep Rupert's Land and the Northwest under the British flag, and who consequently opposed the Hudson's Bay Company because they feared that by preserving a void it would enable the expansionist United States to take over these regions as it had recently taken over Oregon. In Canada the fertile belt of Rupert's Land and the Northwest was regarded as the logical area for westward expansion, and the feeling grew that the Hudson's Bay Company was preventing Canada from realizing its destiny.<sup>3</sup> This was especially true after the creation of the Crown Colony of British Columbia in 1858, as realization deepened that the Company's holdings formed a wedge that would, if preserved, prevent the scattered British North American colonies from ever uniting.<sup>4</sup> In the Red River Colony the Company's rule was oppressive to all three of the main elements of the settlement's population. The British settlers, mainly Scottish, objected to the Company's autocratic methods of government, and complained that it denied them the institutions and laws that were inherent rights of British subjects everywhere. The French-Canadian half-breeds, or metis, were not so interested in British institutions, but they did want self government, and also objected strongly to the Company's denial of their right to engage in fur trade and the buffalo hunt, and to the presence of soldiers hired to

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<sup>1</sup> Agnes C. Laut, *The Conquest of the Great Northwest* (New York: Outing Publishing Co., 1908), Vol. II, pp. 396-408; D. MacKay, *op. cit.*, chap. XVI, pp. 257-274; George Bryce, *The Remarkable History of the Hudson's Bay Company* (New York: Charles Scribner's Sons, 1900), chapters XLIII and XLIV, pp. 435-455; B. Willson, *op. cit.*, chapters XXXIV and XXXV, pp. 459-496.

<sup>2</sup> D. MacKay, *op. cit.*, pp. 258-259.

<sup>3</sup> D. MacKay, *op. cit.*, p. 257, 280.

<sup>4</sup> A. S. Morton, *op. cit.*, pp. 825 ff.

preserve order.<sup>5</sup> The Americans in the colony resented the Company's autocracy also, and plotted, apparently with help from south of the forty-ninth parallel, to end the Company's rule and bring the Red River Colony under the American flag.<sup>6</sup>

The flood of petitions and complaints bore some fruit in 1857, when a Select Committee of the British House of Commons was appointed to consider the general position of the Hudson's Bay Company and the lands under its control in North America. The final report of the committee, after examining twenty-nine witnesses including such notable men as Chief Justice Draper of Canada, Sir George Simpson, Sir John Richardson, and Dr. John Rae, advised that the fertile districts of the Red and Saskatchewan Rivers should be turned over to Canada, that regions where permanent settlement would be impossible should be left under the exclusive control of the Hudson's Bay Company, and that Vancouver Island, granted to the Company in 1849, should be taken from it and made into a colony which would also include the mainland west of the Rockies.<sup>7</sup> Nevertheless nothing was done to carry out the committee's recommendations for more than a decade, except the creation of British Columbia as a Crown Colony in 1858.<sup>8</sup>

In 1863 the interests of the Hudson's Bay Company were sold suddenly to a wealthy syndicate named the International Finance Association, for the sum of one and a half million pounds. The Company retained its name and charter under the new ownership, but there was an important change in policy, as the new proprietors wanted to build railway, highway, and telegraphic communications between Canada and British Columbia, and also proposed that the Crown should take over the government of the southwest portion of Rupert's Land.<sup>9</sup>

During the interval between the sale in 1863 and Confederation in 1867 there were several proposals respecting the surrender of Hudson's Bay Company rights, notably by Sir Edmund Head, the Company's new governor, William McDougall, Canada's Minister of Crown Lands, and the Duke of Newcastle, Colonial Secretary, but nothing was accomplished.<sup>10</sup>

In the British North America Act which brought the Dominion of Canada into being on July 1, 1867, provision was made for the admission of other colonies into the confederation, including Rupert's Land and the Northwest Territory. Clause 146 of that document reads in part as follows:

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<sup>5</sup> G. Bryce, *op. cit.*, pp. 435-437; A. Laut, *op. cit.*, pp. 398-399; A. S. Morton, *op. cit.*, p. 805.

<sup>6</sup> A. Laut, *op. cit.*, p. 402.

<sup>7</sup> D. MacKay, *op. cit.*, pp. 273-274; G. Bryce, *op. cit.*, pp. 448-449.

<sup>8</sup> D. MacKay, *op. cit.*, p. 275.

<sup>9</sup> *Ibid.*, pp. 275-280, also A. S. Morton, *op. cit.*, pp. 840-841.

<sup>10</sup> B. Willson, *op. cit.*, pp. 485-487.

It shall be lawful for the Queen, by and with the advice of her Majesty's Most Honourable Privy Council, on address ... from the Houses of Parliament of Canada, to admit Ruperts-land and the North-Western Territory, or either of them into the Union, on such terms and conditions in each case as are in the Addresses expressed and the Queen thinks fit to approve, subject to the provisions of this Act ...

The new federal government lost no time in taking the necessary steps to secure the admission of these territories. On December 4, 1867, William McDougall, then Dominion Minister of Public Works, brought in at the first session of parliament a series of resolutions advocating acquisition of them.<sup>11</sup> The House of Commons on December 16, and the Senate on December 17, passed an address praying the Queen to unite Rupert's Land and the Northwest Territory with Canada.<sup>12</sup>

The British Parliament responded in 1868 with the Rupert's Land Act, which gave the Imperial Government power to accept a surrender of Rupert's Land (making it Crown property), and provided that after an address from the Canadian Parliament Rupert's Land should become part of the Dominion of Canada.<sup>13</sup>

In the same year McDougall and Sir George E. Cartier were sent to Britain to arrange terms, and were informed by the British Government that since the Company had been lord-proprietor for two hundred years it would have to be treated as such for the purpose of the transfer.<sup>14</sup> It is clear that the British Government did not agree with the commonly held view that the Company's charter could be cast lightly aside.

A three-cornered discussion over terms took place, involving the Canadian representatives, company officials, and members of the British cabinet. There was little agreement, and finally Lord Granville, the new Colonial Minister, practically dictated the settlement to the other two warring sides.<sup>15</sup> It being considered necessary to have a fresh address to the Queen from the Canadian Parliament with respect to Rupert's Land, both Canadian Houses took this step in May, 1869, and terms for the transfer having been finally arranged, the Hudson's Bay Company signed the Deed of Surrender on November 19, 1869.<sup>16</sup> The Company now felt that it could not be held responsible for the government of Rupert's Land any longer, and the only remaining details were the order in council to legalize the transfer and the actual payment of the money which it had been agreed the

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<sup>11</sup> McDougall's resolutions are quoted in full in B. Willson, *op. cit.*, pp. 488-489.

<sup>12</sup> A. S. Morton, *op. cit.*, p. 846, maintains that the address was framed in such a way as to imply, in keeping with the typical Canadian view, that the H.B.C. Charter was invalid.

<sup>13</sup> Rupert's Land Act, *Great Britain, Statutes*, 31-32 Vict., c. 105 (1868).

<sup>14</sup> B. Willson, *op. cit.*, pp. 489-490.

<sup>15</sup> A. S. Morton, *op. cit.*, p. 849.

<sup>16</sup> *Ibid.*, pp. 850-852.

Company would receive. The date for the payment had been set for December 1, 1869, but, as it approached, the disturbances which had broken out in the Red River Colony reached such a height that the Canadian Government refused to accept the transfer until the colony was quiet again. Consequently the final transfer was not accomplished for another seven months.<sup>17</sup> It was not until June 23, 1870, that the Queen signed the order in council admitting Rupert's Land and the Northwest Territory into the Dominion of Canada, the entry to date from July 15.<sup>18</sup>

By the terms of the surrender, the Hudson's Bay Company gave up the charter rights to Rupert's Land which it had held since 1670, and also its rights in "any other part of British North America, not comprised in Rupert's land, Canada, or British Columbia," - i.e., in the Northwest Territory.<sup>19</sup> In return the Company received three hundred thousand pounds as payment from Canada, and in addition was granted the following privileges:

1. To claim, for fifty years after the surrender, blocks of land within the "fertile belt" totalling not more than one-twentieth of its area. The fertile belt was defined as that part enclosed by the United States boundary, the Rocky Mountains, the North Saskatchewan River, Lake Winnipeg, the Winnipeg River, and Lake of the Woods. The total thus granted was about seven million acres.
2. To retain around each of its approximately one hundred and twenty posts a block of land of limited size, the total acreage not to exceed 50,000 acres.
3. To be at liberty to carry on its trade without hindrance as a trading company.

Thus in 1869-1870 the Hudson's Bay Company passed from the scene as the administrative authority in Rupert's Land and the Northwest Territory, its place being taken by the recently created Dominion of Canada. The entire area, exclusive of the Province of Manitoba which was created in 1870, was henceforth known as the Northwest Territories.<sup>20</sup> There was no specific definition of boundaries, either of Rupert's Land, the old Northwest Territory, or the new Northwest Territories, a fact often remarked upon thereafter.<sup>21</sup>

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<sup>17</sup> *Ibid.*, p. 852.

<sup>18</sup> *Ibid.*, p. 916.

<sup>19</sup> See B. Willson, *op. cit.*, pp. 492-493, for the terms of the surrender, also D. MacKay, *op. cit.*, p. 283; B. Willson, *op. cit.*, p. 492.

<sup>20</sup> C. C. Lingard, *Territorial Government in Canada* (Toronto: University of Toronto Press, 1946), p. 3.

<sup>21</sup> See W. F. King, *op. cit.*, pp. 3-4, 7; also folder *Arctic Islands Sovereignty* in Public Archives [now Library and Archives Canada], Ottawa.

Canada's right to administer the Northwest Territories was not placed in doubt after 1870. What was uncertain was the northern limit of the lands granted to her, and particularly the status of the islands north of the mainland. An apparently innocent request made by an American citizen in 1874 initiated a tangled chain of constitutional and administrative developments which have in a sense extended to the present day.

On February 10, 1874, Lieutenant William A. Mentzer, of the Corps of Engineers, U.S. Navy, wrote a letter to George Crump, Acting British Consul at Philadelphia, applying for a grant of land twenty square miles in extent in Cumberland Sound, Baffin Island, for the purpose of carrying on a whaling business.<sup>22</sup> Mr. Crump forwarded this application to Lord Granville, Foreign Secretary, who passed it on to Colonial Minister Lord Carnarvon. On April 30, 1874, Lord Carnarvon sent it to the Canadian Governor General Lord Dufferin for his ministers' consideration, and raised the question whether or not "the territories adjacent to those of the Dominion ... should now be formally annexed to the Dominion of Canada," providing that the Canadian Government was willing to assume the responsibility of governing them.

Also, in 1874, a British subject named W. A. Harvey applied for a grant of land in Cumberland Sound for fishing and mining purposes, asking if the region belonged to Great Britain and if so, if it was under the government of Canada.<sup>23</sup> His question drew a rather indefinite answer from the British Government, although he was told that the territory in question had apparently not belonged to the Hudson's Bay Company before 1869, nor to Canada before confederation in 1867.

On November 4, 1874, Lord Dufferin replied to Lord Carnarvon saying that it was the wish of his government to include "within the boundaries of the Dominion all those Territories on the North American Continent with the Islands adjacent thereto which though taken possession of in the name of the British Empire have not hitherto been annexed to any Colony."

Three main facts would appear to emerge from the correspondence thus far - the willingness of the British Government to turn over to Canada all British territories "adjacent" to the Dominion which had not already been transferred, the willingness of the Canadian Government to accept them, and the doubts of both governments respecting the boundaries of these territories.

Lord Carnarvon's next dispatch, dated January 6, 1875, contained the admission that, from the evidence of a report drawn up in his own department

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<sup>22</sup> Information on this subject and the background of the Orders in Council of 1880, 1895, and 1897 is, unless otherwise specified, drawn from the folder *Arctic Islands Sovereignty* in the Public Archives, Ottawa.

<sup>23</sup> *Ibid.*

... it appears that the Boundaries of the Dominion towards the North, North East and North West are at present entirely undefined, and that it is impossible to say what British Territories on the North American Continent are not already annexed to Canada under the Order-in-Council of the 23rd June 1870, which incorporated the whole of the Territories of the Hudson's Bay Company, as well as the North Western Territory in the Dominion.

In the same dispatch Lord Carnarvon requested the advice of the Canadian ministers respecting the form of the proposed annexation, suggested an act of the British Parliament as the appropriate means of transfer, and asked that the Canadian ministers specify the territorial limits of those lands to be annexed.

Lord Dufferin replied on May 1, 1875, enclosing a copy of a Canadian order in council dated April 30, 1875, which stated that

... it would be desirable that an Act of the British Parliament should be passed defining the Boundaries East and North as follows:

Bounded on the East by the Atlantic Ocean, and passing towards the North by Davis Straits, Baffin's Bay, Smith's Straits, and Kennedy Channel, including such portions of the North West Coast of Greenland as may belong to Great Britain by right of discovery or otherwise. On the North by the utmost Northerly limit of the continent of America including the islands appertaining thereto.

Other correspondence followed, some of it dealing with an expedition to Cumberland Sound organized by the said Lieutenant Mentzer, which obtained fifteen tons of mica and some graphite, the total value approximating \$120,000.<sup>24</sup> Nothing was done by either the British or the Canadian Government, and on October 23, 1877, Lord Carnarvon again called Lord Dufferin's attention to the matter, this time urging that he place the matter before his ministers with a view to obtaining speedy action in the matter and placing Canada's title to the territories "upon a clear and unmistakeable footing."

The Canadian response was a joint address to the Queen from the Senate and House of Commons, passed on May 3, 1878, during the following session of parliament.<sup>25</sup> The address stated that doubts existed regarding the northern boundary of Canada, that these doubts should be removed as soon as possible, that

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<sup>24</sup> Whether the British government had done anything to comply with Mentzer's original request is not mentioned in the account in *Arctic Islands Sovereignty*.

<sup>25</sup> Quoted in full in W. F. King, *op. cit.*, pp. 9-10.

the British Government had offered to transfer the territories in question to Canada, that Canada had accepted, and consequently, to remove all doubts, it was desirable that

... an Act of the Parliament of the United Kingdom of Great Britain and Ireland should be passed defining the north-easterly, northerly, and north-westerly boundaries of Canada, as follows ...<sup>26</sup>

The description of the desired boundary following this passage was similar to that contained in the Order in Council of April 30, 1875, except that it did not mention specifically any claims in northwest Greenland, and also that it named Alaska and the 141st meridian of longitude west of the arctic islands as the desired northwestern boundary for Canada.<sup>27</sup>

The road had now been cleared for action on the part of Great Britain. On July 31, 1880, an order in council was passed which must be regarded as one of the key documents in the history of Canada's effort to acquire sovereignty in the Arctic. The potent parts of the Order in Council run as follows:

Whereas it is expedient that all British territories and possessions in North America, and the islands adjacent to such territories and possessions which are not included in the Dominion of Canada, should (with the exception of the Colony of Newfoundland and its dependencies) be annexed to and form part of the said Dominion ....

Now, therefore, it is hereby ordered and declared by Her Majesty, by and with the advice of Her Most Honourable Privy Council, as follows: -

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.<sup>28</sup>

There are at least three extremely strange aspects of the above action by the British authorities which require comment. In the first place, it will be recalled that Lord Carnarvon's communication of October 23, 1877, to Lord Dufferin requested speedy action. Canada replied with a joint address to the Queen in the next session

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<sup>26</sup> *Ibid.*, p. 9.

<sup>27</sup> *Ibid.*, p. 10.

<sup>28</sup> Quoted in W. F. King, *op. cit.*, p. 10.

of her parliament, on May 3, 1878 - late in the session, it is true, but still before the session was finished. Yet the British authorities waited for two years and three months longer before taking any action. In view of their former hurry, why the long delay, from May 3, 1878, to July 31, 1880? It is probable that their apparent inconsistency is partly, but perhaps not entirely, explained by two other considerations which occupied their minds during the interval, which are now to be described.

The second odd feature of the British Order in Council is its lack of precise territorial delimitation. Lord Carnarvon's dispatch of January 6, 1875, had mentioned "certain (territorial) limits which I should wish your Ministers to specify." The Canadian Government had actually complied twice, as a proposed northern boundary for the territories to be transferred was outlined both in the Order in Council of April 30, 1875, and the Joint Address of May 3, 1878. The two were not identical, and only the second was clearly understandable. It did not include the unspecified part of Greenland that was named in the first, leaving the dividing line to run through the channel west of Greenland, and, unlike the order in council, it named a definite northwestern boundary, which was to be Alaska and the 141st meridian. The northern boundary was to be far enough north to include "all the islands in the Arctic Ocean" within the above limits. This definition seems precise enough, but the British order in council of July 31, 1880, ignored it, and named "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 (except) Newfoundland and its dependencies," as those subject to the transfer. Why did the British authorities thus ignore the Canadian delimitation which they had themselves asked for? Did they disapprove for some reason of the boundary line proposed by the Canadian authorities? Several answers are possible, notably Dr. King's suggestion that the British were not sure that they owned all the lands within the proposed limits, and hence declined to make a more precise definition.<sup>29</sup> Hensley R. Holmden agrees with Dr. King, and adds that an exact definition could not be given of territories which were then still partly unknown, also that the language of the British order in council was undoubtedly made vague on purpose.<sup>30</sup> Whether such factors alone account for the peculiarity can hardly be stated conclusively, but it would at any rate appear safe to say that there was great uncertainty in the minds of British (and indeed of Canadian) statesmen in respect to many pertinent matters - the northern boundaries of the Northwest Territory of pre-Confederation days, of Rupert's Land, and of the new Northwest Territories, the southern boundary of the lands to be transferred, the validity of the British title to all the lands asked for, or perhaps to any of them, the

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<sup>29</sup> W. F. King, *op. cit.*, p. 6.

<sup>30</sup> In charge of the Maps Division of the Public Archives at Ottawa in 1921, and responsible for this portion of the folder *Arctic Islands Sovereignty*.

geography of the region, and so on. Another line of thought, not taken by either King or Holmden, is the possibility that Great Britain may not have wanted to give up all chance of a claim to part of Greenland, and so avoided precise geographical delimitation to keep that prospect open for the future. This last suggestion is pure surmise on my part, but could perhaps have some validity.<sup>31</sup> There is still another possibility, though hardly a likely one, that the British indecision was caused by the differences between the Canadian Order in Council of April 30, 1875, and the Joint Address of May 3, 1878. Whatever the reason or reasons may have been for the indefiniteness of the British order in council, it gave rise later to serious doubts as to what had actually been transferred to Canada, and how valid the transfer was.

A third peculiarity relating to the transfer is that although Lord Carnarvon's dispatch of January 6, 1875, had suggested an act of the British Parliament as the most suitable method of making the transfer, and although both the Canadian Order in Council of April 30, 1875, and the Joint Address of May 3, 1878 specifically requested such an act, the British authorities finally responded with, not an act of parliament, but an order in council. What was the reason for the change?

Holmden discusses this matter in some detail, and seems to throw a good deal of light upon it. He begins by quoting a letter written by Sir Michael Hicks-Beach to the Earl of Dufferin on July 17, 1878, in which the former acknowledges receipt of the Joint Address of May 3, 1878. Sir Michael's letter then continues as follows:

I have been in communication with the Law officers of the Crown on this subject and I am advised that it is competent of Her Majesty to annex all such territories to the Dominion by an Order-in-Council, but that if it is desired after the annexation has taken place to erect the territories thus newly annexed into Provinces and to provide that such Provinces shall be represented in the Dominion Parliament recourse must be had to an Imperial Act; since, as I am advised, the Crown is not competent to change the legislative scheme established by the British North America Act, 1867, (30 and 31 Vict. C. 3).

I therefore propose to defer tendering to Her Majesty any advice upon the subject of the address of the Senate and House of Commons until I am informed whether it will meet the views of your Government that letters Patent be passed for annexing these territories to the Dominion leaving the question of Imperial legislation for future consideration, if it should be thought desirable to erect any such territories, not now belonging to the Dominion, into Provinces....

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<sup>31</sup> In this connection it might be pointed out that the Nares expedition had been active in Greenland in 1875-1876, and had explored further along its northern coast than any other expedition. Greely of the United States did not sail until 1881.

Holmden implies that this letter was received somewhat doubtfully in Canada, as might be expected. Eventually, however, on November 3, 1879, the Canadian Government passed a minute of council accepting the proposal that a British order in council be used instead of an act of parliament, and it was sent on to Hicks-Beach by Lord Dufferin's successor Lord Lorne two days later. To understand the Canadian acceptance one must refer to certain circumstances, related by Holmden, which involve the British North America Acts of 1867 and 1871.

Section 146 of the Act of 1867 had provided for the annexation to Canada by order in council of the colonies of Newfoundland, Prince Edward Island, and British Columbia, and of the territories of Rupert's Land and the Northwest Territory. The Order in Council of June 23, 1870, had admitted the two territories into the Dominion. The Canadian Government however apparently did not consider the annexation complete, fearing that, although it possessed these lands as territories, it lacked constitutional authority to create provinces from them. On January 3, 1871, Governor General Lord Lisgar forwarded a minute of council asking for an act of the British Parliament to empower the Dominion Parliament to establish other provinces in the Northwest Territory. A joint address of the two Houses and a draft bill were sent on April 18, 1871. The British Parliament acceded by passing the British North America Act of 1871, clause two of which begins: "The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof...."

Thus, if the Act of 1867 failed to give Canada the power to create provinces from territories which had been or might be annexed to it, the Act of 1871 would seem to have remedied this deficiency.

Holmden maintains that the law officers consulted by Hicks-Beach in 1878 had only considered the provisions of the British North America Act of 1867, and had not referred to the Act of 1871 at all. Hence their conclusion that while an order in council would be sufficient to annex British arctic possessions to Canada, an act would be necessary if it should be desired later to create parts of these territories into provinces. On October 2, 1878, a report of the Canadian Minister of Justice was sent to England, in which he called attention to the Act of 1871, and suggested that if Rupert's Land and the Northwest Territory included the islands Canada was asking to have transferred, nothing further need be done. If not, the above act might permit the islands to be included as provinces when desired. The law officers, after studying the Act of 1871, decided that it would give Canada after annexation "full executive and legislative authority over the territories and Islands in question." This advice, received in Canada in April 1879, seemed to satisfy the Canadian authorities, and the next step was their acceptance note of November 3, 1879, already referred to.

Such were the rather complicated negotiations leading to the Order in Council

of 1880. Still unexplained, however, is the British abandonment of a parliamentary act in favor of an order in council. It has been established that it was believed an order in council would suffice to accomplish the transfer and any later incorporation of the territories into provinces, but what was the reason for resorting to an order in council, when a parliamentary act had at first been recommended? This question may be at least partially answered in a letter that Holmden quotes, written by Hicks-Beach to the Marquis of Lorne on April 19, 1879. The letter contains the following passage:

There are obvious reasons which make this course of action (i.e., having an order in council passed) preferable to attempting to secure the same object by the introduction of a Bill into the Imperial Parlt. Questions might be raised in the discussion of such a measure which might, in the great press of business, not improbably lead to the abandonment of the project; and I shall be glad to learn that your Gov't Concur in my proposal to obtain an Order in Council for the purpose.

Thus Sir Michael thought that an effort to secure a parliamentary act might fail, and so resorted to an order in council. Also, the mention of "obvious reasons" which made the order in council preferable and of "questions" which might be asked suggests that the order in council was used because it was a quieter device and one less apt to receive publicity than an attempt to secure an act of parliament.

In retrospect, one can hardly avoid a feeling of curiosity as to whether there were other reasons for the transfer than the obvious one, that the territories in question were adjacent to Canada and could be most conveniently administered from there. The decision to make the transfer was apparently initiated by an application from an American and a rather embarrassing question from a British citizen. Britain's obvious intention was to make Canada the proprietor over all British possessions in this northern area, which had not already been placed under Canadian ownership. There may be something to Holmden's suggestion that by transferring these territories to Canada Britain believed she could then appeal to the Monroe Doctrine for settlement in case of a dispute with European powers. It was an American, however, who made the original application for a concession, and so another answer would appear more likely. Britain may have felt that by quietly transferring her rights in this region to Canada she could perhaps forestall or defeat any American attempts, based upon the Monroe Doctrine, to deny British sovereignty there.

An interesting subsequent development was the passage of the Colonial Boundaries Act of 1895. A copy of this act was sent to Canada, accompanied by a copy of a circular by the Right Honourable Joseph Chamberlain which read in part as follows:

The Law Officers of the Crown having recently reported that where an Imperial Act has expressly defined the boundaries of a Colony, or has bestowed a Constitution on a Colony within certain boundaries, territory cannot be annexed to that Colony so as to be completely fused with it ... it followed that certain annexations of territory to Colonies falling within the above category which had been effected by Order in Council and Letters Patent, accompanied by Acts of Colonial Legislature, were of doubtful validity, and this Act has been passed to validate these annexations and to remove all doubts as to Her Majesty's powers in future cases.

The act itself is very short. The enacting part reads as follows:

Where the boundaries of a colony have, either before or after the passing of this Act, been altered by Her Majesty the Queen by Order in Council or letters patent, the boundaries as so altered shall be, and be deemed to have been from the date of the alteration, the boundaries of the colony.<sup>32</sup>

The act also provides that the consent of a self-governing colony must be obtained in the alteration of its boundaries.

W. F. King discusses the Colonial Boundaries Act, and seems to conclude that it was passed because doubts remained respecting the validity of the transfer in 1880.<sup>33</sup> He also says that Canada took no steps to incorporate the added territory between 1880 and 1895, and suggests that doubt as to Canadian ownership may explain the lack of action on the part of the Canadian government.<sup>34</sup> Holmden, commenting that King did not have access to all the relevant correspondence, disagrees with the above conclusions. Referring to the letters discussed above, he says that by the time the Order in Council of July 31, 1880, was passed, the authorities in both Britain and Canada were satisfied that the transfer was legal, although unquestionably there were doubts regarding territorial boundaries of the lands transferred. He believes that, although the Colonial Boundaries Act would clear up any doubts about the legality of the transfer of 1880, yet it was probably passed in reference to colonies other than Canada. Regarding Canadian inaction between 1880 and 1895, he refers to a correspondence, with which King was apparently not acquainted, between the Canadian Minister of Justice and officials of the Hudson's Bay Company, after July 31, 1880, but before September 25, 1882. In this correspondence the minister tried to get information about the northern regions in question and their inhabitants, but the company men could give him little. Finally the minister recommended that no

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<sup>32</sup> Quoted in W. F. King, *op. cit.*, p. 11.

<sup>33</sup> W. F. King, *op. cit.*, p. 5.

<sup>34</sup> *Ibid.*, p. 8; *ibid.*, pp. 6, 8.

action be taken to legislate for these regions until they had become sufficiently populated to make this step necessary. The government concurred, and a minute of council to this effect was forwarded to Great Britain on September 25, 1882. Consequently, according to Holmden, and contrary to King, Canada had accepted charge of these territories before 1895, and failed to legislate for them, not because of doubts as to the validity of the transfer, but because she could find no need for any legislative or other action.<sup>35</sup>

In this connection it might be pointed out that A. E. Millward in his work on southern Baffin Island would appear to be on shaky ground when he interprets the voyages of A. R. Gordon in 1884, 1885, and 1886 as being connected with the assumption of responsibility in the transferred territories by Canada.<sup>36</sup> As Millward's own quotations and comments make clear, Gordon's voyages were designed primarily to gather information about navigation in Hudson Strait, and they penetrated no further north. There is of course the possibility that the Canadian Government desired this information so as to facilitate later voyages which would be administrative in nature.

An odd coincidence, if it actually was that, lies in the time sequence of the Colonial Boundaries Act of 1895 and a Canadian order in council of the same year.<sup>37</sup> The latter made the first attempt to delimit the northern parts of the Northwest Territories after the transfer of 1880, dividing them into the provisional districts of Ungava, Mackenzie, Yukon, and Franklin, the last-named including the Arctic Archipelago. The Colonial Boundaries Act was dated July 6, 1895, and the order in council followed a few months later, on October 2. King, in line with his belief that Canada regarded the transfer of 1880 as incomplete until the Colonial Boundaries Act had been passed, seems to believe that the order in council was a direct consequence of this act, and that it was moreover Canada's first official manifestation of interest in the transferred territories.<sup>38</sup> Holmden on the other hand maintains his view that Canada in 1880 regarded the transfer as legal, that she gave signs of administrative interest between 1880 and 1882, that the Colonial Boundaries Act of 1895 was not passed in reference to Canada, and thus he concludes that the close relationship in time between the act and the order in council was pure coincidence.

Holmden also points out an additional feature about this time relationship which is indeed remarkable. Although the Colonial Boundaries Act was dated July

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<sup>35</sup> *Ibid.*, pp. 6, 8.

<sup>36</sup> A. E. Millward, *Southern Baffin Island* (Ottawa: King's Printer, 1930), p. 13. See also A. R. Gordon, *Reports of the Hudson's Bay Expeditions of 1884, 1885, and 1886* (Ottawa: Department of Fisheries, 1886). I can find nothing in Gordon's narrative to justify the supposition that his voyages were intended to be administrative, or to assert Canadian sovereignty, as were those of Captain Bernier twenty years later.

<sup>37</sup> Quoted in W. F. King, *op. cit.*, pp. 11-13.

<sup>38</sup> *Ibid.*, p. 8; *ibid.*, p. 6.

6, 1895, a copy of it was not sent to Canada, apparently, until July 26, 1895, at which time it was accompanied by Chamberlain's circular, referred to above. Also, although the Canadian order in council organizing the territories was not passed until October 2, 1895, it was preceded by, and probably resulted from, a report submitted earlier by the Honourable T. M. Daly, Canadian Minister of the Interior, in which he requests that this organization be made. The odd feature pointed out by Holmden is that this report is also dated July 26, 1895 - in other words, the same date that Mr. Chamberlain's circular and the copy of the Colonial Boundaries Act were sent to Canada. In other words, if the order in council was a consequence of Mr. Daly's report, as seems likely, and Mr. Daly's report was in turn a consequence of the Colonial Boundaries Act and Mr. Chamberlain's circular, then the latter must have been sent hastily to Canada by trans-Atlantic telegraph, and Mr. Daly must have handed in his report on the same day. This seems improbable to Holmden, and he prefers to believe that remarks about the question of Canadian sovereignty in Hudson Bay by the Honourable David Mills and Sir Charles Hibbert Tupper may have occasioned Mr. Daly's report and the passage of the order in council.<sup>39</sup> These remarks were made a year earlier, however, and one wonders if Holmden's belief is any more probable than Dr. King's apparent supposition that the order in council was a consequence of the Colonial Boundaries Act.

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<sup>39</sup> *House of Commons Debates*, Canada, 1894, pp. 3276-3278.

## CHAPTER 10

### THE ORGANIZATION AND DELIMITATION OF THE NORTHWEST TERRITORIES

We have seen how Canada was granted Rupert's Land and the old Northwest Territory in 1870, and all remaining British possessions in America north of these lands in 1880. Efforts to organize the territories acquired in 1870 began almost immediately, with the creation of the Province of Manitoba, but as Dr. King points out, Canada did not formally incorporate the territories gained in 1880 into the Dominion until 1895.<sup>1</sup> Readjustments of boundaries have been made from time to time since that date, and new provinces and territories have been created, so that organization of the northern lands handed over to Canada in 1870 and 1880 was not completed until well into the present century.

Although these territories were not formally incorporated until 1895, their delimitation had begun a considerable number of years before that time, in fact even before they had been turned over to Canada. An important early step was the Treaty of 1825 between Russia and Great Britain, respecting the northwest coast of America.<sup>2</sup> Article Three of this treaty established the meridian of 141° west longitude as the dividing line between British North American possessions and Russian Alaska, from the beginning of the Panhandle north along the said line "as far as the Frozen Ocean." Another important early step was the fixing of British Columbia's northern boundary line. The colony of British Columbia was formed in 1858, enlarged by the addition of the Stikine country in 1863, united with the neighboring colony of Vancouver Island in 1866, and, with boundaries approximately the same as today's, taken into Confederation as a sixth province in 1871.<sup>3</sup> Only minor adjustments were made in its boundaries thereafter, the most important being those made in the Alaska Boundary Settlement of 1903.<sup>4</sup> The important facts in connection with northern boundaries emerging from these events are that the 141st meridian has remained as the Yukon's western boundary and the western limit of Canada's sector claim; while the sixtieth parallel of latitude,

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<sup>1</sup> W. F. King, *op. cit.*, p. 8.

<sup>2</sup> L. Hertslet (ed.), *Treaties and Conventions Between Great Britain and Foreign Powers* (London, 1827), Vol. III, pp. 362-366. See also James White, *Boundary Disputes and Treaties* (Toronto: Glasgow, Brook and Co., 1914), pp. 917-928.

<sup>3</sup> A. S. Morton, *op. cit.*, pp. 768-772, 789-801; *Imperial Order in Council*, May 16, 1871.

<sup>4</sup> *Treaties and Conventions Between Great Britain and Foreign Powers*, Vol. XXV, pp. 1183-1187. See also F. W. Howay, W. N. Sage, and H. F. Angus, *British Columbia and the United States* (Toronto: Ryerson Press, 1942), pp. 363-375.

established as British Columbia's northern boundary in 1866, became the dividing line which later marked off all four western provinces from the Northwest Territories.<sup>5</sup>

After Confederation, the organization of the Northwest Territories proceeded in successive steps. Manitoba became Canada's fifth province in 1870, with boundaries much smaller than at present.<sup>6</sup> It included the area between the 96th and 99th meridians of longitude, from the 49th parallel north to 50° 30' north latitude, and thus was not as large as New Brunswick today.<sup>7</sup> During the following eleven years it was enlarged by the Dominion Government on two different occasions; westward about fifty miles 1877, and westward an additional sixty-five miles, northward about 160 miles, and eastward to Port Arthur in 1881.<sup>8</sup> A successful Ontario appeal to the Privy Council in 1884 caused Manitoba to lose about 90,000 square miles of disputed territory, and fixed its eastern boundary approximately 265 miles west of Port Arthur, where it has remained.<sup>9</sup> Manitoba was thus the first part of Rupert's Land to win provincial status.

In 1876 the Provisional District of Keewatin was created, with rather indefinite boundaries, and withdrawn from the control of the Government of the Northwest Territories.<sup>10</sup> It occupied an ill-defined area between the Province of Manitoba, the Arctic Ocean, the rest of the Northwest Territories, and Hudson Bay; and apparently was intended to have for its western boundary a line drawn along the 100th meridian of longitude.<sup>11</sup>

In 1882 the four provisional districts of Alberta, Saskatchewan, Assiniboia, and Athabaska were carved from the Northwest Territories.<sup>12</sup> Roughly speaking, the District of Alberta comprised approximately the southern half of the Province of Alberta as it is today, and Athabaska the northern half. What is now the southern half of Saskatchewan was divided into the Districts of Saskatchewan and Assiniboia, with the latter being the more southerly of the two. What is now the northern half

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<sup>5</sup> L. J. Burpee, *An Historical Atlas of Canada* (Toronto: Thomas Nelson and Sons, Ltd., 1927), p. 21, also map p. 20.

<sup>6</sup> *Statutes of Canada*, 32-33 Vict., c. 3 (May 12, 1870).

<sup>7</sup> *Ibid.*, s. 1, also James White, *op. cit.*, map facing p. 894.

<sup>8</sup> *Statutes of Canada*, 44 Vict., c. 14 (June 13, 1881).

<sup>9</sup> *Imperial Order in Council*, Aug. 11, 1884; Shortt and Doughty (eds.), *Canada and Its Provinces*, Vol. VI, pp. 93-95; *ibid.*, Vol. VIII, pp. 905-907, and map facing p. 894; cited in C. C. Lingard, *Territorial Government in Canada* (Toronto: University of Toronto Press, 1946), p. 200. Also see James White, *op. cit.*, map facing p. 894, and pp. 896-897.

<sup>10</sup> *Statutes of Canada*, 39 Vict., c. 21 (April 12, 1876).

<sup>11</sup> L. J. Burpee, *An Historical Atlas of Canada*, p. 22, maps p. 21; F. H. Kitto, *op. cit.*, p. 24; C. C. Lingard, *Territorial Government in Canada*, maps pp. 259-260; C. C. Lingard, "Administration of the Northland," in C. A. Dawson (ed.) *The New North-West* (Toronto: University of Toronto Press, 1947), p. 4.

<sup>12</sup> *Dominion Order in Council*, May 8, 1882.

of Saskatchewan was left within the Northwest Territories; otherwise the four provisional districts created in 1882 occupied all the lands between Manitoba, Keewatin, and British Columbia, from the forty-ninth to the sixtieth parallels of latitude.<sup>13</sup> These four districts continued to be governed by the lieutenant governor and council provided by the Northwest Territories Act of 1875, but between 1875 and 1888 they gained an elective assembly, and had a considerable measure of autonomy when they were given provincial status in 1905.<sup>14</sup>

The remaining, more northerly regions were not subdivided into provisional districts until 1895. Following a report of July 26, 1895, by the Minister of the Interior, recommending that this step be taken, an order in council was passed on October 2, creating the four additional provisional districts of Ungava, Yukon, Mackenzie and Franklin.<sup>15</sup> Ungava included the territory enclosed by Hudson Strait, Hudson Bay, Quebec, and Labrador. Yukon included the territory enclosed by the Arctic Ocean, the eastern boundary of Alaska (141st meridian), the sixtieth parallel of latitude east to 123° 30' west longitude, and an irregular line from that point in a northwesterly direction to the Arctic Ocean just west of the westernmost channel of the Mackenzie delta. A small portion of the southwestern boundary was in dispute, and was not fixed until the Alaska Boundary Settlement in 1903. Mackenzie District was the area between the Arctic Ocean, Yukon, the sixtieth parallel of latitude, and the hundredth meridian of longitude. The District of Franklin, which was stated to be "of indefinite extent," was to be bounded as follows:

Beginning at cape Best, at the entrance to Hudson strait from the Atlantic; thence westerly through said strait, Fox channel, gulf of Boothia, Franklin strait, Ross strait, Simpson strait, Victoria strait, Dease strait, Coronation gulf, and Dolphin and Union strait, to a point in the Arctic sea, in longitude about 125°30' west, and in latitude about 71° north; thence northerly including Baring Land, Prince Patrick island and the Polynea islands; thence northeasterly to the 'farthest of Commander Markham's and Lieutenant Parr's sledge journey' in 1876, in longitude about 63½° west, and latitude about 83° north; thence southerly through Robeson channel, Kennedy channel, Smith sound, Baffin bay and Davis strait to the place of beginning.<sup>16</sup>

The Order in Council also recommended the enlargement of the already

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<sup>13</sup> L. J. Burpee, *An Historical Atlas of Canada*, p. 22, map no. 57, p. 21.

<sup>14</sup> *Statutes of Canada*, 38 Vict., c. 49, (1875); *Journals, Legislative Assembly*, N.W.T., 1888, cited in C. C. Lingard, *Territorial Government in Canada*, p. 5.

<sup>15</sup> Cited in W. F. King, *op. cit.*, p. 11; *Dominion Order in Council*, Oct. 2, 1895, cited and quoted in W. F. King, *op. cit.*, pp. 11-13. Also see *Canada Gazette*, Vol. XXIX, p. 685.

<sup>16</sup> Quoted in W. F. King, *op. cit.*, p. 12.

existing Districts of Athabaska and Keewatin, by adding to them the large remaining areas north of Saskatchewan and Ontario respectively. It concluded as follows: "Should the foregoing recommendations be adopted, the whole of the unorganized and unnamed portions of Canada will have been divided into provisional districts."<sup>17</sup>

The desired change in the boundaries of Athabaska was accomplished, but the recommendation regarding the enlargement of Keewatin was not carried out.<sup>18</sup> Dominion legislation had been requested to bring it about, but it was not enacted, as deficiencies were found in the descriptions of several of the district boundaries soon after the 1895 order in council was passed. These deficiencies were considered serious enough to cause the passing of another order in council two years later, on December 18, 1897, which was intended to correct them.<sup>19</sup>

Although the Order in Council of October 2, 1895, was considered to have completed the formation of all unorganized Canadian territory into provisional districts, it developed that some small islands off the arctic coast had been left out. The Order had stated that the new districts of Yukon, Mackenzie, and Ungava included all islands in the Arctic Ocean, Hudson Bay, James Bay, and Hudson Strait within three geographical miles of their coasts. The islands more than three miles from the Ungava coast, in Hudson Bay and Strait and James Bay, had been accounted for, as the Order stated specifically that these were to remain under the control of the Dominion Government. But this was not the case with the islands more than three miles from the Yukon and Mackenzie coasts. Franklin District extended west only as far as 125° 30', and also might be presumed to extend south only as far as the middle of the channel separating the islands from the mainland. Since Yukon extended west as far as 141°, there were obviously islands more than three miles from the coast, between 125° 30' west and 141° west, which had not been included in any of the new provisional districts. Also, since the channel between the islands and the mainland east of 125° 30' was in most cases much more than six miles in breadth, it could be argued that the many small islands between the middle of the channel and the three-mile limit had again been included in no provisional district.<sup>20</sup> It was to remedy these deficiencies that the Order in Council of December 18, 1897, was passed.

By this Order in Council, Mackenzie District east of 125° 30' west longitude, and also Keewatin, were extended northwards to include all islands up to the middle of the channel; that is, to the southern limit of Franklin District. West of 125° 30', as far as 141°, Mackenzie and Yukon Districts were made to include all islands within twenty miles of the coast. The western boundary of Franklin District was

<sup>17</sup> *Ibid.*, p. 13.

<sup>18</sup> L. J. Burpee, *An Historical Atlas of Canada*, p. 22; maps no. 57, 58 (p. 21).

<sup>19</sup> *Dominion Order in Council*, Dec. 18, 1897. Quoted in W. F. King, *op. cit.*, p. 14.

<sup>20</sup> See W. F. King, *op. cit.*, pp. 16-17, for a clear discussion of these omissions.

extended to the west as far as the 141st meridian, and the district was stated to include all islands "which are not included in any other provisional district" between this meridian and Davis Strait, Baffin Bay, Smith Sound, Kennedy Channel and Robeson Channel.<sup>21</sup> The larger islands, as known at that time, were specified by name, including Baffin, Devon, Ellesmere, Victoria, Banks, and the Parry Group, but it is noticeable that no northern limit was mentioned. Franklin District was also made to include Melville and Boothia Peninsulas.

No changes were made in the boundaries of Alberta, Saskatchewan, Assiniboia, and Athabaska by the Order in Council of 1897. The changes made in Yukon, Mackenzie, and Franklin have already been described. Keewatin was granted the territory between western Ontario and Hudson Bay that the Order in Council of 1895 had recommended should be added to it, and besides losing Boothia and Melville Peninsulas and gaining the islands north of its arctic coast to the middle of the channel, it also gained the islands in the western part of Hudson and James Bays. Ungava was extended so that it included not only the islands within three miles of its coast, but also those up to the middle of Hudson Strait (the southern boundary of Franklin) and those in the eastern boundary of Keewatin. Thus the Order in Council of 1897 accomplished what the Order in Council of 1895 purported to do, by organizing into provisional districts all previously unorganized lands and islands to which Canada laid claim.<sup>22</sup>

The next step in the organization of the territories was the passage of the Yukon Territory Act by the Dominion Government on June 13, 1898.<sup>23</sup> This measure, passed while the Klondike Gold Rush was at its height, was made necessary by the great influx of people and the need for local supervision. It separated Yukon from the rest of the Northwest Territories, and constituted it a separate unit with a local government of its own, under a commissioner and council. As Dr. King pointed out, however, the Act of 1898 in defining the boundaries of Yukon reverted to the terminology of the defective Order in Council of 1895, and included only those islands which were located within three miles of the Yukon coast.<sup>24</sup> Since the measure of 1898 was an act of parliament, it might be considered to supersede the Order in Council of 1897 and might perhaps annul it altogether, not only for Yukon Territory but also for the other districts bordering upon the arctic coast. The act of 1898 made no mention of the northern boundaries of Mackenzie, Keewatin,

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<sup>21</sup> *Order in Council* of Dec. 18, 1897; quoted in W. F. King, *op. cit.*, p. 16.

<sup>22</sup> See W. F. King, *op. cit.*, pp. 16-17. L. J. Burpee, *An Historical Atlas of Canada*, p. 22, points out that the Order in Council of 1897 also asked for enacting legislation which did not materialize, and remarks that the districts, except insofar as they were created in 1882, perhaps had no legal existence. Nevertheless, he says, the Dominion authorities when re-defining districts in 1918 apparently considered the Orders in Council of 1895 and 1897 to be legal.

<sup>23</sup> *Statutes of Canada*, 61 Vict., c. 6 (June 13, 1898).

<sup>24</sup> W. F. King, *op. cit.*, pp. 17-19.

and Ungava, but if it annulled the Order in Council of 1897 for the Yukon it would seem possible that it might annul it for these districts also.

Another Yukon Territory Act was passed in 1901, which was intended to remedy this deficiency, but again it could be doubted whether the object had been achieved.<sup>25</sup> By this Act the northern boundary of Yukon was extended to include the islands within twenty rather than within three miles of the coast, as the Order in Council had done previously. Dr. King suggests that the Act of 1901 had no re-enacting effect upon the Order in Council of 1897, and if the latter were completely annulled by the Act of 1898, then all the islands east of the Yukon coast and beyond the three-mile limit (except those which might be included in Franklin District) would be left outside Canadian jurisdiction, because the Act of 1901 reaffirmed the twenty-mile limit only for Yukon itself.<sup>26</sup>

Thus, as matters stood after this act had been passed, the Canadian Government had tried by means of two orders in council and two acts of parliament to delimit its northern territories, and had left the situation in 1901 probably at least as confused as in 1895.

The Northwest Territories were again reduced in size in 1905, when the Provinces of Alberta and Saskatchewan were created from the former territories of Alberta, Athabaska, Assiniboia, and Saskatchewan.<sup>27</sup> The two new provinces assumed their present form, extending up to the sixtieth parallel and being separated by the 110th meridian. The boundary line between former Assiniboia and Manitoba was prolonged northwards to the sixtieth parallel to form the eastern boundary of Saskatchewan, thus cutting off small portions of former Saskatchewan and Athabaska. The parts cut off were added to Keewatin, which was re-annexed to the Northwest Territories a few days after the Alberta and Saskatchewan Acts were passed.<sup>28</sup>

On the same day that the Provinces of Alberta and Saskatchewan were created, a Northwest Territories Amendment Act was passed, which again defined the remaining Northwest Territories, this time in the following terms:<sup>29</sup>

The Northwest Territories shall hereafter comprise the territories formerly known as Rupert's Land and the Northwestern Territory, except such portions thereof as form the provinces of Manitoba, Saskatchewan, and Alberta, the district of Keewatin and the Yukon Territory, together with all British territories and possessions in North America and all islands adjacent to any such territories or possessions except the colony of Newfoundland and its

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<sup>25</sup> *Statutes of Canada*, 1 Edw. VII, c. 41 (May 23, 1901).

<sup>26</sup> W. F. King, *op. cit.*, pp. 17-19.

<sup>27</sup> *Statutes of Canada*, 4-5 Edw. VII, c. 3 and c. 42 (July 20, 1905).

<sup>28</sup> *Dominion Order in Council*, July 24, 1905.

<sup>29</sup> *Statutes of Canada*, 4-5 Edw. VII, c. 27 (July 20, 1905).

dependencies.<sup>30</sup>

Thus the Canadian Government made still another attempt to define its northern possessions. The definition would appear to have eliminated the point which was in doubt in 1895, 1897, 1898, and 1901, but it was doubtful in other respects. It raised again the question of just what should be included in "all British territories and possessions in North America," and, since only Newfoundland and its dependencies were excluded from the Northwest Territories, besides the Canadian provinces, Yukon, and Keewatin, one might infer that Jamaica or the Bahamas were to be included. Also, one might wonder how close an island had to be to a possession to be considered "adjacent".<sup>31</sup>

In 1912 the Northwest Territories were further reduced, when the Provinces of Quebec, Ontario, and Manitoba were all enlarged at their expense.<sup>32</sup> The northern boundary of Quebec, which had already been adjusted in 1898, was now extended northwards to swallow up the entire Ungava Peninsula, as far as Hudson Bay and Strait.<sup>33</sup> Ontario and Manitoba divided southern Keewatin between them, Ontario being extended northwards to James and Hudson Bays, and Manitoba to Hudson Bay and the sixtieth parallel of latitude. The sixtieth parallel was thus prolonged to form the dividing line between provinces and territories all the way from the northwestern extremity of British Columbia to Hudson Bay. Manitoba and Ontario had by 1912 boundaries essentially the same as today, but Quebec, by an opinion of the Imperial Privy Council in 1927, lost a considerable amount of disputed territory in the northeast to Labrador.<sup>34</sup> The elimination of the District of Ungava in 1912 left Mackenzie, Keewatin, and Franklin as the only remaining units of the Northwest Territories, and the only parts of Canada, except the Yukon Territory, without provincial status.

The three provisional districts of Mackenzie, Keewatin, and Franklin were again officially defined by an order in council of March 16, 1918, which became effective on January 1, 1920.<sup>35</sup> By its terms the three provisional districts were to comprise the following territories. Mackenzie was to be bounded on the west by the Yukon Territory, on the south by the sixtieth parallel, on the east by the second meridian, and on the north by the Arctic Ocean. Keewatin was to be bounded on the west by the second meridian, on the south by the provinces of Manitoba and Ontario, on the east by the east coast of Hudson Bay, and on the north by the Arctic Ocean

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<sup>30</sup> *Ibid.*, s. 3.

<sup>31</sup> Since Dr. King's "Report" was written in 1904, it of course does not discuss the N.W.T. Act of 1905.

<sup>32</sup> *Statutes of Canada*, 2 Geo. V, c. 32, c. 40, and c. 45 (April 1, 1912).

<sup>33</sup> *Ibid.*, 61 Vict., c. 3 (June 13, 1898).

<sup>34</sup> *Report of the Judicial Committee of the Privy Council*, delivered March 1, 1927 (London, 1927). See 2 *Dominion Law Reports*, 401 (1927).

<sup>35</sup> *Dominion Order in Council*, P. C. 655 (March 16, 1918).

excluding Boothia and Melville Peninsulas. Franklin was to comprise, in addition to Boothia and Melville Peninsulas, the entire arctic archipelago, excluding, of course, the islands in Hudson Bay, which formed part of Keewatin. The islands of Hudson Strait were also to be included within Franklin District.<sup>36</sup> The adoption of this order in council, as L. J. Burpee points out, indicates that the Dominion authorities were still of the opinion that districts could be created and defined by order in council.<sup>37</sup> The delimitation of the three provisional districts adopted in 1918 is apparently the accepted one today, as research has failed to indicate any significant later adjustments.<sup>38</sup>

A map in the Canadian Public Archives, Ottawa, which accompanied a report of the Minister of the Interior dated two days before the adoption of the order in council, shows the three districts as above described. An interesting point is that the western limit of Franklin District is shown to be the 141st meridian, and the eastern limit the middle of the channel west of Greenland, which would appear to indicate that the Dominion authorities were upholding a sector claim on Canada's behalf.<sup>39</sup> These sector lines are to be seen on many subsequent Canadian maps, and one of the most recent ones, which is very complete in detail, shows these sector lines extending all the way to the North Pole.<sup>40</sup>

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<sup>36</sup> *Ibid.* See also L. J. Burpee, *An Historical Atlas of Canada* p. 22; C. C. Lingard in C. A. Dawson (ed.), *The New North-West*, p. 6; W. C. Bethune, *Canada's Eastern Arctic* (1935), p. 12.

<sup>37</sup> L. J. Burpee, *An Historical Atlas of Canada*, p. 22.

<sup>38</sup> C. C. Lingard, writing in 1947, says that the three districts were revised and delimited "as now existing" by the order in council. See C. A. Dawson (ed.), *The New North-West*, p. 6.

<sup>39</sup> "Map of Canada, Showing Proposed Limits of Provisional Districts," to accompany *Report of the Minister of the Interior*, March 14, 1918, in Map Room, Public Archives, Ottawa.

<sup>40</sup> This map is entitled "Northwest Territories and Yukon," and was issued by the Surveys and Mapping Bureau of the Mines, Forests, and Scientific Services Branch, Department of Mines and Resources, Ottawa. It was compiled, drawn, and printed in 1939, and reprinted in 1948.

## CHAPTER 11

### CANADIAN GOVERNMENT EXPEDITIONS TO THE ARCTIC

When the Canadian Government began to take an interest in the arctic territories it had acquired in 1870 and 1880, an early manifestation of this interest was in government voyages to northern waters. These voyages, intermittent at first and hazy in purpose, became a regular event, specifically intended to assert and maintain Canadian sovereignty. Since World War 1 their administrative and scientific aspects have become increasingly important. It is the purpose of this chapter to give a brief survey of these voyages and outline their significance.

The first voyages were a series of three—in 1884, 1885, and 1886—commanded by Lieutenant A. R. Gordon. A committee of the House of Commons had conducted an inquiry in February and March of 1884 into the possibilities of using Hudson Bay and Strait as a navigation route, and in its report had advised making observations there over a period of three years.<sup>1</sup> Consequently Lieutenant Gordon's three voyages were primarily concerned with carrying out the recommendations of the report. Using the chartered steamer "Neptune" in 1884 and Sir George Nares's "Alert" in 1885 and 1886, he visited a number of points in Hudson Strait and Hudson Bay, including Port Burwell, Chesterfield Inlet, Marble Island, Churchill, York Factory, and Digges Island. Meteorological observers were left at several points along the route in 1884, visited in 1885, and brought home in 1886. They noted currents, tides, temperatures, natural resources, natives, flora and fauna; and Dr. Robert Bell, who accompanied the expeditions, also furnished a detailed geological report. Gordon examined the mouth of the Nelson River for a prospective harbor, and also made a survey and plan of the mouth of the Churchill. In the last of his three yearly reports he advised that Churchill was the best site for a port that he had seen in this locality, and that a navigation season of nearly four months could be expected, from the beginning of July until sometime in October.<sup>2</sup>

While Lieutenant Gordon apparently made no proclamations of Canadian sovereignty during his three voyages, he did protest that the waters of Hudson Bay were within Canadian territory and that fisheries there should be controlled by the

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<sup>1</sup> *Report of the Select Committee of the House of Commons to Enquire into the Question of the Navigation of Hudson's Bay* (Ottawa, 1884), p. vii.

<sup>2</sup> A. R. Gordon, *Report of the Hudson's Bay Expedition of 1886* (Ottawa: Department of Fisheries, 1886), p. 9, pp. 90-91. See also P. D. Baird, *op. cit.*, Sept. 1949, p. 46, and J. E. Bernier, *Cruise of the "Arctic" 1908-1909* (Ottawa: Government Printing Bureau, 1910), pp. 324-327.

Canadian Government. A passage in his report of 1885 reads in part as follows:

The waters of Hudson's Bay are wholly within the Dominion, and the right of Canada to protect these waters and keep them for her own citizens is, I think, unchallenged ... I would strongly urge the advisability of protecting these fisheries ... and under any circumstances, our Government should retain the right to prescribe the methods which may be used.<sup>3</sup>

A fourth Canadian Government expedition was sent to investigate more fully navigation possibilities in Hudson Bay and Strait, but not until 1897, after a lapse of eleven years. This one was commanded by William Wakeham, of the Marine and Fisheries Department, and he was directed to find out how early and also how late a passage might be made through Hudson Strait.<sup>4</sup> Wakeham made three round trips through Hudson Strait, and also went to Cumberland Sound (Baffin Island), and to Churchill. Meanwhile geological parties from the ship under Dr. Bell and A. P. Low conducted investigations in southern Baffin Island and Ungava.

While at the Kekerten Islands Wakeham hoisted the Union Jack, and declared that Baffin Island "with all the territories, islands, and dependencies adjacent to it, were now, as they always had been since their first discovery and occupation, under the exclusive sovereignty of Great Britain."<sup>5</sup> Wakeham appears to have been the first leader of a Canadian expedition after the transfers of 1870 and 1880 to take this step, but whether he did it under government orders or upon his own initiative is not clear from his narrative. It is perhaps worthy of notice that it occurred only about two years after the Canadian Order in Council of October 2, 1895, was passed, including Franklin as a provisional district within the Northwest Territories.

About this time several land expeditions explored the vast but little known interior regions west of Hudson Bay. In 1893 the brothers J. B. and J. W. Tyrrell carried out a lengthy examination in this area for the Canadian Geological Survey and during the following year J. B. Tyrrell continued and extended the survey.<sup>6</sup> Several years later the private adventurer David Hanbury made a series of remarkable journeys through this part of the northland, reaching Baker Lake, the Coppermine River, and Great Bear Lake.<sup>7</sup> None of these expeditions had much significance, however, in connection with the Canadian assumption of responsibility

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<sup>3</sup> A. R. Gordon, *Report 1885*, p. 54.

<sup>4</sup> William Wakeham, *Report of the Expedition to Hudson Bay and Cumberland Gulf in the S. S. "Diana"* (Ottawa: Department of Marine and Fisheries, 1898), pp. 1, 3.

<sup>5</sup> *Ibid.*, p. 24.

<sup>6</sup> J. W. Tyrrell, *Across the Sub-Arctic of Canada* (Toronto: William Briggs, 1897); J. B. Tyrrell, *Report on Two Overland Routes from Hudson Bay to Lake Winnipeg* (Ottawa: Geological Survey of Canada, 1897).

<sup>7</sup> David T. Hanbury, *Sport and Travel in the Northland of Canada* (London: Edward Arnold, 1904).

in the Arctic.

With the voyage of A. P. Low in the "Neptune" in 1903 - 1904 Canadian administration of the arctic regions entered a new and definitive phase. This was a Canadian Government expedition that was intended to establish Canadian sovereignty over the archipelago, and as such it constitutes one of the important landmarks in Canada's effort to bring this region under effective control. A primary aim was to regulate fishing and whaling, and to collect customs dues from the whalers, chiefly American, who were active in Hudson Bay and close to Baffin Island.<sup>8</sup> However other reasons for the voyage suggest themselves. The discovery of the Sverdrup Islands and the claim to them made by the Norwegian Otto Sverdrup in 1898-1902 created a new problem for the Canadian Government, and suggested that there would be additional problems in the future if other such discoveries were made. Robert Peary had used Ellesmere Island as a winter camp and as a base from which to attempt to reach the Pole in 1898-1902. It seems likely that Sverdrup's and Peary's activities were matters of some concern to the Canadian Government. Amundsen's voyage through the Northwest Passage might also have been a cause of Low's expedition, although he did not leave Norway until June 1903 - obviously after Low's expedition had been planned.<sup>9</sup> It is of interest and perhaps of significance to note that Chief Astronomer W. F. King's "Report upon the Title of Canada to the Islands North of the Mainland of Canada" - one of the most important documents upon this subject that has ever appeared - was printed in 1905, and had been in preparation at least since January 23, 1904, since that is the date of its first memorandum.<sup>10</sup>

The official minute of council confirming Low's appointment to command the expedition was not passed until August 13, 1903, but he had actually been appointed early in June.<sup>11</sup> His own account throws much light upon the scope and purpose of the voyage:

The Dominion government, in the spring of 1903, decided to send a cruiser to patrol the waters of Hudson Bay and those adjacent to the eastern Arctic islands; also to aid in the establishment, on the adjoining shores, of permanent stations for the collection of customs, the administration of justice and the

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<sup>8</sup> It will be remembered that A. R. Gordon had recommended this step. (*Report of 1885*, p. 54). Wakeham had apparently not been so impressed with the need for it. (W. Wakeham, *op. cit.*, pp. 77-78.) Captain Bernier claimed that he had been urging the Canadian Government for many years to take possession of the islands before anything was done. See J. E. Bernier, *Master Mariner and Arctic Explorer* (Ottawa: Le Droit, 1939), p. 307.

<sup>9</sup> Amundsen had, in fact, at some time before or during his voyage, been notified of Low's cruise. See A. P. Low, *Cruise of the Neptune 1903-1904* (Ottawa: Government Printing Bureau, 1906), p. 54.

<sup>10</sup> W. F. King, *op. cit.*, p. 3.

<sup>11</sup> A. P. Low, *op. cit.*, p. x; *ibid.*, p. 4.

enforcement of the law as in other parts of the Dominion.

To perform these last duties, Major J. D. Moodie, of the Northwest Mounted Police, was appointed Acting Commissioner of the unorganized Northeastern Territories.<sup>12</sup>

Apparently most of Low's instructions were verbal, but the written instructions given by Colonel Fred White, Comptroller of the N. W. M. P., to Major Moodie as acting commissioner were extremely explicit as to the intentions of the Canadian Government; and show that its purpose was gradually but effectively to bring these arctic territories under Dominion control.<sup>13</sup>

The expedition left Halifax August 23, 1903, and returned on October 12, 1904. Besides Commander Low and Skipper S. W. Bartlett, the ship's company included the crew of twenty-nine, Major Moodie and five other Northwest Mounted Police, a scientific staff of five, and an Eskimo interpreter picked up at Port Burwell. The "Neptune" proceeded in turn to Port Burwell, Cumberland Sound, Hudson Strait, and Fullerton Harbor at the northwest of Hudson Bay, where the expedition wintered. In the summer of 1904, it passed out again through Hudson Strait and northwards to Ellesmere Island, then back to Devon, Somerset, Bylot and Baffin Islands, making frequent stops to visit settlements, explore, and collect scientific data.

The activities of Low and Major Moodie during the voyage show how they undertook to carry out their assignment. Low gathered for the Canadian Government a great deal of information about the whaling industry in the regions visited, engaged in mostly by Scottish and American whalers, and incorporated it in his account of the voyage.<sup>14</sup> On September 4, 1903, a landing was made at Blacklead Island in Cumberland Sound, and next day Major Moodie explained the intentions of the Canadian Government to the Anglican missionaries and the agent of the Scottish whaling establishment located there.<sup>15</sup> A station at Cyrus Field Bay established by Potter and Wrightington of Boston was visited a few days later.<sup>16</sup> In accordance with instructions Low searched for Captain Comer of the American whaler "Era," and wintered with him at Fullerton, maintaining good relations throughout their stay together.<sup>17</sup> Major Moodie decided this place would be a good location for a police post, and erected a building there, leaving several members of

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<sup>12</sup> *Ibid.*, p. 3.

<sup>13</sup> H. R. Holmden, *op. cit.*, says that Low's instructions had been given verbally; Colonel White's instructions are reproduced in both A. E. Millward, *op. cit.*, and H. R. Holmden, *op. cit.* I have quoted them in somewhat condensed form in Chapter 13, *The Royal Canadian Mounted Police in the Arctic*.

<sup>14</sup> A. P. Low, *op. cit.*, pp. 248-282.

<sup>15</sup> *Ibid.*, p. 8.

<sup>16</sup> *Ibid.*, p. 12.

<sup>17</sup> *Ibid.*, p. 20 ff.

the Mounted Police in charge when the "Neptune" departed in the spring of 1904.<sup>18</sup> At Cape Herschel on Ellesmere Island, near Greeley's last camp at Cape Sabine, a document was left by Low claiming the island for Canada. Low describes the formalities in the following words:

It took little time to attend to the duties of the landing at Cape Herschel, where a document taking formal possession in the name of King Edward VII., for the Dominion, was read, and the Canadian flag was raised and saluted. A copy of the document was placed in a large cairn built of rock on the end of the cape.<sup>19</sup>

A similar procedure was followed at Beechey Island, August 15, and at Port Leopold, Somerset Island, on August 17.<sup>20</sup> Low did not claim any of the more westerly islands because his instructions limited the cruise westward in Lancaster Sound to Beechey Island.<sup>21</sup> The document left at Port Leopold read as follows:

Proclamation.

In the name of His Most Gracious Majesty, King Edward VII., and on behalf of the Government of the Dominion of Canada, I have, this day, taken possession of the Island of North Somerset, and of all the smaller islands adjoining it.

And in token of such formal possession, I have caused the flag of the Dominion of Canada to be hoisted upon the land of North Somerset; and have deposited a copy of this document, in a sealed metal box, at Leopold Harbour, on the said island.

A. P. Low

Officer in Charge ...<sup>22</sup>

The 1903-1904 voyage of Low and Major Moodie may be regarded as the first deliberate, comprehensive attempt on the part of the Canadian Government to take effective possession of the archipelago and to bring Eskimos and whites alike under Canadian law. The pattern of activity initiated by Low was followed closely by his successor Captain J. E. Bernier, who was present in the archipelago as a government agent each year between 1904 and 1911.

Captain Bernier had already had a long and adventurous career at sea, and after years of effort had just organized an expedition which was to drift across the North Pole, when he was first called upon by the Canadian authorities to command a

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<sup>18</sup> *Ibid.*, p. 25; *ibid.*, p. 69.

<sup>19</sup> *Ibid.*, p. 48.

<sup>20</sup> This incident is mentioned in J. E. Bernier, *Cruise of the "Arctic" 1906-1907* (Ottawa: King's Printer, 1909), p. 22. Low himself gives no account of it; A. P. Low, *op. cit.*, p. 56.

<sup>21</sup> *Ibid.*, p. 54.

<sup>22</sup> Quoted in J. E. Bernier, *Cruise of the "Arctic" 1906-1907*, p. 13.

government cruise. He was directed to "proceed to Hudson bay, practically under the orders of the Mounted Police to ascertain whether a certain well-known and highly respected ship captain was engaged in selling liquor to the natives."<sup>23</sup> Bernier's autobiography tells of his disappointment at this change, but he soon found consolation in the decision to "devote my efforts in the Arctics to what after all may be regarded as a more important object, that is to say to securing all the islands in the Arctic archipelago for Canada," an object he had "consistently urged upon the Canadian government for many years before it was finally undertaken."<sup>24</sup>

In fact Bernier claimed credit for planning the system which was adopted, of visiting and taking possession of the islands. In the work already quoted from, which was printed nine years after the Canadian Government had bought out Captain Sverdrup's rights as explorer, he says:

This payment (i.e. to Captain Sverdrup) may be regarded as partly in the nature of a quit claim to Norway. My plan therefore of systematically visiting all the Arctic islands and taking formal possession of them for Canada undoubtedly saved the country many thousands of dollars, which otherwise might have been required in settling claims of obligations arising in the course of years, as in the case of the Sverdrup expedition.<sup>25</sup>

The voyage of 1904-1905 was devoted mainly to investigation and report in Hudson Bay, with Captain Bernier in charge of the "Arctic" and Major Moodie commanding the government detachment of ten mounted policemen who accompanied the expedition. The "Arctic" wintered at Fullerton, as the "Neptune" had done the previous year, and returned to Quebec in 1905.<sup>26</sup>

She was sent northwards again in 1906, with Captain Bernier in charge. The purpose of the voyage was to "assert Canadian sovereignty in the insular part of the Arctic north of Canada, by formally taking over the territory ceded to Canada by the Imperial government in 1880," and Bernier had additional authority as fishing officer to issue licenses to whalers and to collect customs duties.<sup>27</sup> The "Arctic" visited in turn Navy Board Inlet (west of Bylot Island), Somerset, Cornwallis, Bathurst, Melville, and Baffin Islands. Winter quarters were established on northern Baffin Island, and next summer calls were made at Ellesmere and Coburg Islands before the "Arctic" returned via Cumberland Sound and Port Burwell to Quebec.

<sup>23</sup> J. E. Bernier, *Master Mariner and Arctic Explorer* (Ottawa: Le Droit, 1939), p. 305.

<sup>24</sup> *Ibid.*, p. 306; *ibid.*, p. 307.

<sup>25</sup> *Ibid.*, p. 308.

<sup>26</sup> The only detailed account of this voyage was Major Moodie's, in the Royal Northwest Mounted Police *Annual Report for 1906*. Bernier himself gave only a brief summary, included in *Cruise of the "Arctic" 1908-1909*. Neither makes further mention of the suspected captain who was a prime cause of the voyage.

<sup>27</sup> J. E. Bernier, *Master Mariner and Arctic Explorer*, p. 307; *ibid.*, p. 307.

Bernier landed upon and claimed the following islands in the course of his voyage - Bylot, Griffiths, Cornwallis, Bathurst, Byam Martin, Melville, Lowther, Russell, Baffin, Coburg, and Ellesmere.<sup>28</sup> He had cairns built at convenient places, in which documents of claim were deposited, similar in tone to the following example:

August 21st, 1906.

This island, Bylot Island, was graciously given to the Dominion of Canada, by the Imperial Government in the year 1880, and being ordered to take possession of it in the name of Canada, know all men that on this day the Canadian Government Steamer Arctic anchored here, and I planted the Canadian flag and took possession of Bylot Island in the name of Canada ...<sup>29</sup>

Some of the documents claimed not only the island landed upon but "all adjacent islands" too.<sup>30</sup> When he landed on Melville Island, for example, he left a document claiming also Prince Patrick, Eglinton, and other nearby islands.<sup>31</sup> The one left at King Edward VII Point in southern Ellesmere was even more sweeping. It ran as follows:

On this day (Aug. 12, 1907), we landed on this point, on North Lincoln (i.e. Ellesmere), and annexed the following land and islands: North Lincoln, Grinnell Land, Ellesmere Land, Arthur Land, Grant Land, King Oscar's Land, North Kent and several islands, namely, Axel Heiberg Land, Ammund (sic) Ringnes Land, Ellee (sic) Ringnes Land, King Christian Land, formerly named Finlay Land; North Cornwall, Graham Land, Buckingham Island, Table Island, and all adjacent islands as forming part of the Dominion of Canada.

J. E. Bernier, Commanding Officer.<sup>32</sup>

It is noticeable that Bernier did not mention Devon and Somerset Islands, which had already been claimed by Low. He seems throughout to have been impressed with the finality of the claims Low and he were making - an assumption that many contemporary international lawyers might have questioned, especially when the assumption was based upon such sweeping claims as that illustrated by the last quotation.

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<sup>28</sup> J. E. Bernier, *Cruise of the "Arctic" 1906-1907*, pp. 12-49.

<sup>29</sup> *Ibid.*, p. 12.

<sup>30</sup> *Ibid.*, pp. 18, 21.

<sup>31</sup> *Ibid.*, p. 18.

<sup>32</sup> *Ibid.*, p. 50.

Various whalers met with on the voyage were notified that licenses must henceforth be paid, and two licenses were sold to each of five Scottish whalers, for the years 1906 and 1907.<sup>33</sup> No American whalers were found.<sup>34</sup> Customs duties were collected from the Scottish whalers, for goods brought into the area, and an inventory of the goods belonging to the Moravian missionaries at Port Burwell was taken.<sup>35</sup> The Eskimos of Baffin Island were told that they must obey the laws of Canada.<sup>36</sup> From the winter base at Arctic Bay several fairly long sledge patrols were made. Altogether, in spite of the dubious value of his proclamations, Bernier's voyage of 1906-1907 seems to have been a comprehensive attempt to actually establish Canadian law in the archipelago, insofar as anything could be found to administer or govern.

He returned to the Arctic in 1908-1909, with a commission "to patrol the waters contiguous to that part of the Dominion of Canada already annexed, and for the further purpose of annexing territory of British possessions as far west as longitude 141 degrees."<sup>37</sup> Just before leaving Quebec he was called into the presence of the Prince of Wales (later George V), and, as he himself says,

(I) took advantage of the occasion to indicate to his Royal Highness my plan to take possession for Canada of all the islands discovered and annexed by British explorers, and was warmly commended for my persistence in urging this matter upon the Canadian government.<sup>38</sup>

On this voyage, from his winter headquarters at Winter Harbour, on Melville Island, Bernier sent sledge parties which took possession of Banks and Victoria Islands.<sup>39</sup> Then, on Dominion Day, July 1, 1909, Bernier had a memorial tablet erected at Winter Harbour which claimed the whole archipelago.

At dinner we drank a toast to the Dominion and the Premier of Canada; then all assembled around Parry's rock to witness the unveiling of a tablet placed on the rock, commemorating the annexing of the whole of the Arctic archipelago. I briefly referred to the important event in connection with the granting to Canada, by the Imperial Government, on September 1, 1880, all the British territory in the northern waters of the continent of America and Arctic ocean, from 60 degrees west longitude to 141 degrees west

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<sup>33</sup> *Ibid.*, pp. 11, 28; *ibid.*, p. 72.

<sup>34</sup> *Ibid.*, p. 71.

<sup>35</sup> *Ibid.*, p. 43; *ibid.*, p. 62.

<sup>36</sup> *Ibid.*, p. 30.

<sup>37</sup> J. E. Bernier, *Cruise of the "Arctic" 1908-1909*, p. xix.

<sup>38</sup> Bernier, *Master Mariner and Arctic Explorer*, p. 325.

<sup>39</sup> Bernier, *Cruise of the "Arctic" 1908-1909*, p. xix.

longitude, and as far north as 90 degrees north latitude.<sup>40</sup> That we had annexed a number of islands one by one and a large area of territory by landing, that we now claimed all islands and territory within the degrees 141 and 60 west longitude as Canadian territory, and now under Canadian jurisdiction.<sup>41</sup>

Thus Captain Bernier felt that after the 1908-1909 voyage was completed he had annexed for Canada all the islands within the above limits, small as well as large.<sup>42</sup> It is interesting to recall that Senator Poirier's speech enunciating the sector principle was made during the session of 1906-1907, and it seems likely that this speech may have been a factor in causing the change from Bernier's piecemeal annexations of 1906-1907 to the sweeping claim of 1908-1909.<sup>43</sup>

A number of other events of significance occurred during the voyage. Again whaling licenses were sold to the whalers who were met with, including some Scotsmen and also a Mr. Harry Whitney of New York. The encounter with the latter, who was found at Scott Inlet, Baffin Island, on September 5, 1909, was described by Bernier as follows:

I informed Mr. Whitney that I was patrolling Canadian waters, and, as he had on board his vessel a motor whaleboat, it would be necessary for him to take out a fishery license, and that I would issue it. He stated that if it was a regulation, he would pay the legal fee of \$50, and take the license. I accordingly issued the license and received the fee.<sup>44</sup>

Bernier had visited Cape York and Etah in northwestern Greenland while on his way to Winter Harbour in 1908, and in his narrative complained that the Greenland Eskimos and the Sverdrup, Peary, and Dr. Cook expeditions had killed unnecessarily large numbers of Ellesmere Island musk oxen, so that there was danger that all of them would be wiped out.<sup>45</sup> No official action by the Canadian Government appears to have been taken at the time, in respect to this matter.

Captain Bernier's last trip on behalf of the Canadian Government before World War 1 was made during 1910-1911. Since the task of formally claiming all the islands of the archipelago had been completed, this voyage was primarily a patrol to

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<sup>40</sup> Bernier was evidently mistaken here. The British grant mentioned no specific boundaries of latitude or longitude.

<sup>41</sup> Bernier, *Cruise of the "Arctic" 1908-1909*, p. 192. See picture of memorial tablet in *ibid.*, p. 195.

<sup>42</sup> "There are numerous small islands on the coasts of the large islands, all of which were annexed at the same time as the large divisions." *Ibid.*, p. 321.

<sup>43</sup> *Debates*, Canadian Senate, 1906-1907, pp. 266-273.

<sup>44</sup> J. E. Bernier, *Cruise of the "Arctic" 1908-1909*, p. 273.

<sup>45</sup> *Ibid.*, pp. 16-17.

see that Canadian laws were being observed. However, there was no indication of a “get tough” policy, as the following passage from Captain Bernier’s instructions makes clear:

You will acquaint any persons whom you may find engaged in the whale fishery in these northern waters that you are patrolling these waters as the duly accredited officer of the Canadian Government, and you will, where necessary, demand payment of license fees for such fishing. If payment be refused, you will make a request that such refusal be put in writing. It is not desirable that you should take any action in this regard which would be likely to embarrass the Government.<sup>46</sup>

This voyage was rather routine in nature. The “Arctic” called at most of the places visited in previous trips, and spent the winter at Arctic Bay in Admiralty Inlet, Baffin Island. From there several sledge parties were sent out, one proving that Admiralty Inlet and Prince Regent Inlet were not connected.<sup>47</sup>

Captain Bernier made another trip to the Arctic before the First World War, as captain of the “Minnie Maud,” but this was a private gold-hunting expedition, which was not sponsored by the Canadian Government. Its most noteworthy feature was a series of remarkable journeys by a member of the expedition, Alfred Tremblay, who explored much of northern Baffin Island and Melville Peninsula, covering 4000 miles on foot and mapping 3000 miles of coastline.<sup>48</sup>

Canadian efforts to administer the Arctic went into decline during the years of World War I. Bernier says that “the war temporarily put an end to Arctic voyages,” and there can be little doubt that the cause of inactivity was the shortage of shipping and the pressing need to use all available men, money and materials to win the war.<sup>49</sup> Of course, Stefansson’s most important expedition, which had been planned, organized and dispatched before the outbreak of war, was active during all of the war years. It was however exploratory and scientific in character rather than administrative, and it need only be reiterated here that Stefansson, authorized to do so by the Canadian Government, took possession of the islands he discovered for Canada.

It may be mentioned at this point that Stefansson planned another expedition for 1919 or 1920, which was to have been sponsored by the Canadian Government, but it never materialized. He had his eye on the possibilities offered by the Arctic for future air routes, and wanted to find out if there were any undiscovered islands

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<sup>46</sup> W. W. Stumbles and others, *Cruise of the “Arctic” 1910-1911* (Ottawa: Department of Marine and Fisheries), Instructions, p. 3.

<sup>47</sup> *Ibid.*, p. 42.

<sup>48</sup> Alfred Tremblay, *Cruise of the Minnie Maud*, translated by A. B. Reader (Quebec: Arctic Exchange and Publishing Co., 1921), Preface, pp. xi-xii.

<sup>49</sup> Bernier, *Master Mariner and Arctic Explorer*, p. 371.

north of Canada which would be suitable for air bases and weather stations. Also he wanted to do something to solidify Canada's rights in the islands already discovered and claimed, particularly Ellesmere and the Sverdrup group, which had been explored by foreign as well as British and Canadian explorers. He felt that the Canadian claim to Ellesmere was especially weak if the sector principle were rigidly maintained, since it could be argued that the easternmost part of it would under this principle fall to Greenland.<sup>50</sup> But a split occurred in the Canadian Cabinet, apparently over the question of whether Stefansson or Sir Ernest Shackleton should lead the proposed expedition, and since an agreement could not be reached the whole idea was finally abandoned.<sup>51</sup>

Voyages such as those of Captain Bernier were not resumed after the war until 1922, when they began again, on an annual basis. It seems certain that the major cause of their resumption was the refusal of Knud Rasmussen, Danish director of the Greenland settlement at Thule, to comply with a Canadian request that he prevent the killing of Ellesmere musk oxen by Greenland Eskimos, and his assertion that Ellesmere was actually "No Man's Land."<sup>52</sup> This happened in the spring of 1920, and the following winter an investigating committee advised that Canada should take prompt action to assert her sovereignty in Ellesmere and the other northern islands.<sup>53</sup> It was feared that Rasmussen might try to establish Danish sovereignty in Ellesmere or at least infringe upon Canadian claims of sovereignty, and he was also known to be planning an expedition which would take him right across northern Canada to Alaska.<sup>54</sup> A Canadian expedition was organized to sail to northern waters, but it did not sail until 1922.

The voyage of 1922 was organized by the Northwest Territories Branch of the Department of the Interior, and the command was given to J. D. Craig, who had served on the International Boundary Commission. The venerable C. G. S. "Arctic" was again pressed into service, after several years of duty as a lightship, and when the appointed ship's captain, H. C. Pickels of Nova Scotia, died suddenly, the seventy-year-old Captain Bernier was again invited to take charge of this veteran of northern service. The immediate object of the voyage was to establish several police stations at strategic locations in the archipelago, along with customs houses and post offices, the intention being "to establish additional similar posts from year to year until there is assurance that Canadian laws and regulations will be well administered in

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<sup>50</sup> See Chapter 16: *The Sector Principle*.

<sup>51</sup> V. Stefansson, *The Friendly Arctic*, 1943 ed., pp. 688-692.

<sup>52</sup> *Report of Advisory Technical Board*, in folder *Arctic Islands Sovereignty* (Ottawa: Public Archives), pp. 1-2.

<sup>53</sup> *Ibid.*

<sup>54</sup> Rasmussen got permits and passports to enter Canadian territory before embarking on this expedition (Fifth Thule, 1921-1924). See J. D. Craig, *Canadian Arctic Expedition 1923* (Ottawa: King's Printer, 1927), p. 23.

the regions controlled by these outposts of civilization.”<sup>55</sup>

The personnel of the expedition totalled forty-three men, including the Royal Canadian Mounted Police detachment of Inspector Wilcox and nine others, Doctor L. D. Livingstone, and Major R. A. Logan of the Air Board. The last-named was to investigate possible sites for airplane landing fields at the places visited.

The work of the expedition may be briefly summarized. Two police posts were established, at Craig Harbour on the south coast of Ellesmere Island and at Pond Inlet in northern Baffin Island. The ten members of the R.C.M.P. were divided between the two posts, six remaining with Inspector Wilcox at Craig Harbour, while the other three were sent to Pond Inlet to reinforce Staff Sergeant Joy, who had been there since the previous year investigating the murder by some Eskimos of a white trader named Janes. Each of the two posts was to serve triple duty as police station, post office, and customs house. Dundas Harbour in Devon Island was examined carefully as a possible location for a third post. Major Logan found good sites for air landing fields at both Craig Harbour and Pond Inlet, and advised that airplane flying in the north was feasible during most of the year, using wheels in summer and skis in winter. In his report he recommended that an experimental air station be established at a central point in the islands.<sup>56</sup> A call was made at Godhaven, Greenland, on the way home, permission to land having been obtained first. Of this landing Craig wrote as follows: “His (i.e., Inspector Wilcox’s) letters from the Danish authorities, granting permission to land and make purchases, he had handed to us, and ... we went ashore in our launch and presented our credentials and letters.”<sup>57</sup> It seems apparent that Canada showed no inclination to deny Denmark the rights of sovereignty in Greenland that the Danish authorities had refused to concede Canada in Ellesmere.

The 1922 expedition set the pattern for what has followed since. It became an annual undertaking, and each year since 1922 a Canadian Government party has regularly made a patrol of the eastern Arctic Islands, supplying and relieving police stations, administering justice among whites and Eskimos alike, seeing that customs regulations and other Canadian laws are observed, distributing and collecting mail, carrying on a variety of scientific and medical work, and generally looking after Canadian interests in the Far North. These voyages have become quite routine, and since little purpose would be served by describing in detail approximately thirty similar voyages, only a brief summary will be given.

The “Arctic” was used until 1925 and then, the loads having become heavier

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<sup>55</sup> J. D. Craig, *Canada’s Arctic Islands: Log of Canadian Expedition 1922* (Ottawa: King’s Printer, 1923), p. 8. On the same page Craig mentions the investigations conducted by the Reindeer and Musk Ox Commission in 1920, and the Commission’s recommendation that game in the far north be protected.

<sup>56</sup> *Ibid.*, pp. 24-27. Major Logan’s report was included at the end of Craig’s, in the form of an appendix.

<sup>57</sup> *Ibid.*, p. 20.

than she could easily carry, it was decided to obtain a larger and more powerful vessel. In 1926 the 2700-ton "Beothic" was chartered from a Newfoundland company, and used each year until 1931. The "Ungava" was used for the single year 1932, and then it was decided to change the policy of chartering a vessel solely for government work. It was arranged with the Hudson's Bay Company that the latter would transport government officials and supplies in their 2500-ton icebreaker and supply boat "Nascopie." The "Nascopie," already a veteran in Hudson's Bay Company supply work, served in its new dual role until its long career ended on a rocky reef off Cape Dorset in 1947. The "North Pioneer" finished the 1947 patrol, and in 1948 a number of small vessels were sent out, including the "Terra Nova," the "Regina Polaris," and the "McLean."

Captain Bernier remained active as ship's captain until the "Arctic" made her last cruise in 1925. He was then retired, since the agreement with the Newfoundland sealing company which owned the "Beothic" provided that the company should also furnish captain and crew.<sup>58</sup>

The commanders of the expeditions have been as follows: J. D. Craig in 1922 and 1923, F. D. Henderson in 1924, G. P. Mackenzie from 1925 to 1930 inclusive, L. T. Burwash in 1931, D. L. McKeand from 1932 to 1944 inclusive, J. G. Wright from 1945 to 1947, and A. Stevenson and S. J. Bailey in 1948. The expeditions have generally included, besides commander, ship's captain, and crew, a considerable variety of other personnel, such as medical doctors, surveyors, wireless operators, botanists, geologists, and historians, as well as the yearly relief party of Royal Canadian Mounted Police. More unusual visitors have been stipendiary magistrates, cinematographers, photographers, artists, astronomers, and archaeologists. In recent years dentists, oculists, and nurses have been present in increasing numbers; and there have been officials of the Canadian Broadcasting Corporation, the National Research Council, the National Film Board, and various government departments, including the Post Office, Treasury, External Affairs, Justice, and Transport Departments.

Besides the more or less routine jobs of inspection, investigation, administration, and supply, some rather special undertakings have been carried on. There has been a steady outflow of botanical, zoological, geological, meteorological, astronomical, archaeological, ethnological, anthropological, and other scientific information. A considerable amount of surveying has been done. Censuses have been taken, registrations made under the wartime National Registration Act, and family allowances distributed. Medical check-ups have been given, with dental, chest, and eye examinations, and treatment where necessary. A number of trials have been held, and punishment meted out in some cases, including jail sentences to be served in southern Canada. At various times supplies have been provided for needy

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<sup>58</sup> G. P. Mackenzie, *Canada's Arctic Islands, Canadian Expedition 1926* (Ottawa: King's Printer, 1927), p. 49.

Eskimos. During World War II provisions were taken to American weather and ionospheric stations in the Arctic.

The number of calls made each summer has gradually increased, and the trip has steadily become longer. In 1924, for example, the "Arctic" made eight calls and travelled about 7,000 miles, while in 1946 the "Nascopie" made eighteen calls and covered about 21,500 miles. At the present time an increasing amount of administrative and other work in the north is done by airplane, and radio, but the annual ship patrol is still one of the most important means by which the Canadian Government maintains contact with and control over the Eastern Arctic.

## CHAPTER 12

### CANADIAN ADMINISTRATION OF THE ARCTIC

The Rupert's Land Act of 1868, which provided for the admission of Rupert's Land into the Dominion of Canada, also specified that

it shall be lawful for the Parliament of Canada from the date aforesaid to make, ordain, and establish within the Land and Territory so admitted as aforesaid, all such Laws, Institutions, and Ordinances, and to constitute such Courts and Officers, as may be necessary for the Peace, Order, and good Government of Her Majesty's Subjects, and others therein....<sup>1</sup>

On June 22, 1869, a year before the transfer became final, the Canadian Government passed an "Act for the temporary government of Rupert's Land and the Northwest Territory when united with Canada," which provided for the government of the Northwest Territories by an appointed lieutenant governor and a council of from seven to fifteen members.<sup>2</sup> After the creation of the Province of Manitoba in 1870, the Lieutenant Governor of Manitoba, besides performing his functions in his own province, acted as Lieutenant Governor of the Territories also.<sup>3</sup> He had the so-called Northwest Council to assist him, while the Department of the Interior in Ottawa exercised general supervision.<sup>4</sup>

The Territories were given a more distinct form of government by the Northwest Territories Act of 1875, which provided for a separate, resident Lieutenant Governor of the Territories, and a Northwest Council of five appointed members.<sup>5</sup> The Governor in Council was to have charge of all matters of strictly local significance. A clause of the Act arranged for the gradual transformation of the appointed council into an elective assembly, a step that was accomplished by 1888, when an assembly of twenty-two elected members finally replaced the old Northwest Council. The Northwest Territories Act of that year also empowered the Lieutenant Governor to select from this assembly four members to serve as an advisory council.<sup>6</sup> The seat of government, moved from Winnipeg in 1875, was first

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<sup>1</sup> Rupert's Land Act, *Great Britain, Statutes*, 31-32 Vict., c. 105 (1868); *ibid.*, s. 5.

<sup>2</sup> *Statutes of Canada*, 32-33 Vict., c. 3 (June 22, 1869).

<sup>3</sup> *Statutes of Canada*, 32-33 Vict., c. 3, s. 35 (Manitoba Act, May 12, 1870).

<sup>4</sup> C. C. Lingard, *Territorial Government in Canada*, p. 4.

<sup>5</sup> *Statutes of Canada*, 38 Vict., c. 49 (April 8, 1875).

<sup>6</sup> *Ibid.*, 51 Vict., c. 19 (May 22, 1888).

at Livingstone, on the Swan River, then at Battleford, and after 1882 at Regina, which was located on the new Canadian Pacific Railway.

The Act of Parliament creating the separate District of Keewatin in 1876 placed its administration under the jurisdiction of the Lieutenant Governor of Manitoba.<sup>7</sup> A Council of Keewatin was created at the same time.

The Northwest Territories Assembly fought vigorously for increased powers, and was rewarded by the passage of several Northwest Territories Amendment Acts by the Dominion Parliament, notably those of 1891 and 1897. An ordinance passed by the Territorial Assembly in 1891 provided for an executive committee to assist the Lieutenant Governor and Assembly, and after the Act of 1897 had been passed, the Northwest Territories had, for all practical purposes, a completely responsible form of government.<sup>8</sup> Thus the four provisional districts which became the Provinces of Alberta and Saskatchewan - the only parts, incidentally, with representation in the territorial assembly - were able to assume provincial autonomy in 1905 with a minimum of difficulty.<sup>9</sup>

Between the separation of Keewatin from the Northwest Territories in 1876 and the formation of Alberta and Saskatchewan in 1905 there had been enacted the Yukon Territory Act of 1898, which separated the Yukon from the rest of the Territories, and gave it a local government of its own.<sup>10</sup> Yukon, created a provisional district in 1895, was now to be governed by a local commissioner and an appointed council of not more than six members, who were to be responsible to the Minister of the Interior in Ottawa. There was no provision in this act for popular representation on the Yukon Council, but the following year an amending act was passed by the Federal Government giving male British subjects the right to elect two additional representatives to the Council.<sup>11</sup> In 1902, after considerable agitation, the Yukon Territory Representation Act was passed, making the Yukon an electoral district with the right to return one member to the Dominion House of Commons.<sup>12</sup> In 1908 the Yukon was given a wholly elective council of ten members, with something less than full powers of responsible government.<sup>13</sup>

Until 1908 the autonomy of the Yukon had been steadily increasing. The system set up that year lasted until 1918, when, owing to the fact that the population of the Territory was declining steadily, it was decided to simplify its administrative machinery. Two Yukon Acts, of 1918 and the following year, abolished many of the offices previously created, reduced the Council from ten to three members, who were still to be elected however, and gave to the Commissioner

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<sup>7</sup> *Statutes of Canada*, 39 Vict., c. 21 (April 12, 1876).

<sup>8</sup> *Ibid.*, 54-55 Vict., c. 22 (1891) and 60-61 Vict., c. 28 (1896-1897).

<sup>9</sup> C. C. Lingard, *Territorial Government in Canada*, p. 7.

<sup>10</sup> *Statutes of Canada*, 61 Vict., c. 6 (June 13, 1898).

<sup>11</sup> *Ibid.*, 62-63 Vict., c. 11 (Aug. 11, 1899).

<sup>12</sup> *Ibid.*, 2 Edw. VII, c. 37 (May 15, 1902).

<sup>13</sup> *Ibid.*, 7-8 Edw. VII, c. 76 (July 20, 1908).

the duties of most of the offices done away with.<sup>14</sup> The system of government established during those two years has lasted, with only minor changes, until the present day.<sup>15</sup>

The territorial government of the Yukon is now composed of the Commissioner of the Yukon Territory, and an elective legislative council of three members, having a term of office of three years' duration. The seat of local government is at Dawson. The territory is divided into three electoral districts, Dawson, Mayo, and Whitehorse, each of which elects a councillor. Under the Yukon Act the Commissioner in Council administers the government through instructions given him by the Governor in Council at Ottawa or the Minister of Resources and Development.<sup>16</sup>

The Commissioner in Council has authority to make ordinances dealing with the imposition of local taxes, sale of liquor, preservation of game, establishment of territorial offices, maintenance of prisons and municipal institutions, issuing of licenses, incorporation of companies, solemnization of marriage, property and civil rights, administration of justice, and generally all matters of a local nature.<sup>17</sup>

The Commissioner is stationed at Dawson, and represents the Department of Resources and Development and other federal departments having responsibilities in the Yukon.<sup>18</sup> In addition to being head of the territorial administration, he is ex-officio Mayor of Dawson and Registrar of Land Titles for the Yukon.

Important business arising from the local administration of Yukon Territory is taken care of by the Development Services Branch of the new federal Department of Resources and Development. This branch is also responsible for the disposal of lands and timber under regulations authorized by the Dominion Lands Act, for the administration of the Yukon Placer and Quartz Mining Acts, and for the collection of revenue therefrom.<sup>19</sup>

Since 1902 the territory has retained the right to elect a member to the Canadian House of Commons. In 1947 the electoral district of Yukon was enlarged by the addition of that part of the Northwest Territories sub-division of Mackenzie which lies west of the 109th meridian of west longitude. The electoral district is

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<sup>14</sup> *Ibid.*, 8-9 Geo. V, c. 50 (May 24, 1918); *ibid.*, 9-10 Geo. V, c. 9 (April 3, 1919).

<sup>15</sup> C. C. Lingard, "Administration of the Northland," in *The New North-West* (ed. C. A. Dawson), pp. 11-12; Department of Resources and Development, *The Yukon Territory*, 1950, p. 12.

<sup>16</sup> Department of Resources and Development, *The Yukon Territory*, 1950, p. 12.

<sup>17</sup> *Ibid.*, p. 12.

<sup>18</sup> *Ibid.*, p. 13. The Department of Resources and Development, formed in January 1950, took over from the now-defunct Department of Mines and Resources the administration of the Yukon.

<sup>19</sup> *Ibid.*, p. 13.

now known as Yukon - Mackenzie River, and the present member, elected in 1949, is J. A. Simmons.<sup>20</sup>

The Northwest Territories, having lost the Yukon in 1898, were further reduced in 1905, when the Provinces of Alberta and Saskatchewan were created. The Northwest Territories Amendment Act which was passed on the same day as the Alberta and Saskatchewan Acts were enacted, besides delimiting what was left of the territories, also made provisions for their administration.<sup>21</sup> When Keewatin was re-annexed to the Territories four days later, it also came under these provisions. Under the Act the Northwest Territories were to be governed by a commissioner and a council not exceeding four in number, who were to be appointed by the Governor General in Council. An amendment passed in 1921 raised the maximum number of the council to six, and provided for the appointment of one of them to be a deputy commissioner, who would replace the Commissioner when the latter should be absent.<sup>22</sup> Aside from this change the Act of 1905 defined the organization and powers of the Commissioner in Council largely as they now exist.<sup>23</sup>

After 1905 the consolidated ordinances of the old Northwest Territories remained in force in what was left of the Territories, subject to alteration or repeal by the Territorial Council or the appropriate federal authorities. Previous statutes of the Canadian Parliament were to remain in force, and future ones would be effective also, insofar as they were applicable or unless otherwise was provided. Aside from federal legislation and over-all supervision, administration of the Northwest Territories was to be handled by the Commissioner and Council. The latter were to have the same power to make ordinances, as vested in the Legislative Assembly of the former Territories on August 31, 1905, but were not to have greater powers than those given to provincial legislatures under the British North America Act of 1867. A number of subjects of a local nature were specified, that might be considered to come within the Council's jurisdiction. The Federal Government retained the right to disallow ordinances for a period of time up to two years.<sup>24</sup>

Although machinery had been provided, as outlined above, for the government of the Northwest Territories, no council was appointed after 1905 until 1921. The first Commissioner of the Northwest Territories was Lieutenant Colonel Fred White, who was also Comptroller of the Royal Northwest Mounted Police, and

<sup>20</sup> *Ibid.*, p. 13.

<sup>21</sup> *Statutes of Canada*, 4-5 Edw. VII, c. 27 (July 20, 1905).

<sup>22</sup> *Ibid.*, 11-12 Geo. V, c. 40 (June 4, 1921).

<sup>23</sup> C. C. Lingard, "Administration of the Northland," in *The New North-West* (ed. C. A. Dawson), p. 19.

<sup>24</sup> *Statutes of Canada*, 4-5 Edw. VII, c. 27 (July 20, 1905); W. C. Bethune, *Canada's Western Northland: Its History, Resources, Population and Administration* (Ottawa: Department of Mines and Resources, 1937), p. 11; F. H. Kitto, *op. cit.*, pp. 25-26; C. C. Lingard, "Administration of the Northland," in *The New North-West* (ed. C. A. Dawson), pp. 19-20.

during his term of office most administrative work in the Territories was done by the police force. White was succeeded in 1920 by W. W. Cory, Deputy Minister of the Interior. In 1921 the development of the Territories, particularly in relation to the new oil industry in the Mackenzie River district, made necessary a more comprehensive form of local administration, and a Northwest Territories Council was appointed for the first time. At the same time a branch of the Department of Interior, the Northwest Territories and Yukon Branch was organized to supervise territorial matters more closely from the federal viewpoint.<sup>25</sup>

In 1936 the Departments of the Interior, of Indian Affairs, of Mines, and of Immigration were amalgamated, the resulting department being the Department of Mines and Resources. In the new department the former Northwest Territories and Yukon Branch became the Northwest Territories and Yukon Administration of the Lands, Parks, and Forests Branch. Later the Lands, Parks, and Forests Branch became the Lands and Development Services Branch, remaining however, within the Department of Mines and Resources.<sup>26</sup> The most recent change occurred in January, 1950, when the Department of Reconstruction and Supply and the Department of Mines and Resources were formed into three new departments, of Citizenship and Immigration, Revenue and Mines and Technical Surveys, and Resources and Development. Responsibility for the Northwest Territories and Yukon was left with the Department of Resources and Development, under a new branch called Northern Administrations.<sup>27</sup>

These varied reorganizations are somewhat confusing, but actually the basic structure of territorial administration has changed little since 1921. Since that time a Northwest Territories Council has functioned continuously, in cooperation with a responsible branch of a federal department, the latter being the Department of the Interior and its successors. The Council has handled matters of local importance in the Territories, under the general supervision of the federal department, which it advises and receives instructions from when necessary. The Canadian Parliament of course reserves the right to legislate for the Territories, either separately or as an integral part of the rest of Canada.

Since Colonel White and Mr. Cory the Commissioners of the Northwest Territories have been H. W. Rowatt (1931-1934), R. A. Gibson (Deputy and Acting Commissioner 1934-1936), Charles Camsell (1936-1947), and H. L. Keenleyside (1947-1951). The Northwest Territories Council in 1949 was

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<sup>25</sup> C. C. Lingard in *The New North-West*, as cited previously, p. 20; W. C. Bethune, *op. cit.*, p. 10; F. H. Kitto, *op. cit.*, pp. 25-26.

<sup>26</sup> W. C. Bethune, *op. cit.*, pp. 10-11; Department of Mines and Resources, *The Northwest Territories 1948*, pp. 5-6; also information supplied by officials of the Department of Mines and Resources in Ottawa. I am indebted to the latter for some of the material contained in the remainder of this chapter.

<sup>27</sup> *Edmonton Journal*, Jan. 18 and 19, 1950; *New York Times*, Jan. 18, 1950; also Department of Resources and Development, *The Yukon Territory, 1950*.

composed of the following officials: Commissioner, Dr. H. L. Keenleyside, Deputy Minister of the Department of Mines and Resources, Ottawa; Deputy Commissioner, Mr. R. A. Gibson, Director of Lands and Development Services Branch, Department of Mines and Resources; Members of Council, Brigadier S. T. Wood, Commissioner of R.C.M.P.; Mr. D. M. Mackay, Director of Indian Affairs, Department of Mines and Resources; Air Commodore H. B. Godwin, R.C.A.F.; Mr. L. C. Audette, Canadian Maritime Commissioner; and Mr. J. G. McNiven. Mr. J. G. Wright of the Department of Mines and Resources served as secretary.<sup>28</sup>

The seat of government for the Northwest Territories is at Ottawa, and all of the council members but one live in Ottawa. The appointment in 1947 of Mr. McNiven, a resident of Yellowknife, marks the first occasion upon which a resident of the Territories as now constituted has been a member of the Council.

Although the Northwest Territories are divided into the three districts of Mackenzie, Keewatin, and Franklin, this division has not been a factor of much importance in administration. Fort Smith is an administrative center for Mackenzie District, but there is no corresponding center for either of the other two districts. It has apparently been found more convenient to concentrate administrative direction in Ottawa.

The various Northwest Territories Acts and Amendments still define the framework of government in the Territories and the scope of the Council's activities.<sup>29</sup> The Commissioner in Council has power to make ordinances for the government of the Territories, subject to instructions from the Governor General in Council or the Minister of Resources and Development, in such specified fields as the following: direct taxation for revenue, establishment and tenure of territorial offices, appointment and payment of officials, maintenance of prisons, municipal institutions, licenses, property and civil rights, solemnization of marriages, administration of justice, and generally all matters of a local nature.

A survey of departmental work in the Arctic shows that numerous departments have been involved, but the Department of the Interior with its successors has had the most important role. This department has since 1884 been one of those primarily responsible for scientific research in the Arctic, and since 1921 it has been in charge of actual administration. It has also, in addition to other responsibilities, carried out the Eastern Arctic Patrol and taken care of Eskimo affairs.

A detailed account of the scientific investigations conducted by this department, often in cooperation with others, would consume many pages, and can be only briefly summarized here. The investigations have included geological, magnetic, hydrographic, lithologic, topographic, geodetic, botanical, zoological, biological, ethnological, anthropological, astronomical, and archaeological researches, and have

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<sup>28</sup> Department of Mines and Resources, *The Northwest Territories 1948*, p. 5.

<sup>29</sup> E.g., those of 1875, 1905, and 1921, as previously cited. See also *Revised Statutes of Canada*, 1927, c. 142. (The Northwest Territories Act.)

added greatly to knowledge of northern regions. Recently air photography and mapping have become increasingly important activities, in which the R.C.A.F. plays a leading role.<sup>30</sup> Much of the scientific work in the Eastern Arctic has been done in conjunction with the annual patrol, but there as well as in the Western Arctic a great deal has been accomplished by small parties working independently. Research of this kind continues at an accelerated pace, and from the scientific point of view offers an unusually fruitful field.

The Department of the Interior and its successors have had charge of the Eastern Arctic Patrol since it was organized on an annual basis in 1922. Until 1933 the Department used specially chartered ships, but in that year a change of policy occurred, and from then until 1947 the government cruise was combined with the annual Hudson's Bay Company supply cruise, using the latter's "Nascopie." Since the wreck of the "Nascopie" in 1947 the combined voyages have apparently ceased, as the Government and the Hudson's Bay Company both use newly constructed vessels of their own, the former the "C. D. Howe" and the latter the "Rupertsland."<sup>31</sup>

The lands of the Territories have been administered by the Department of the Interior and its successors under the Dominion Lands Act.<sup>32</sup> The very limited amounts which have been disposed of have been used mainly for residential or business purposes in the settlements, and otherwise for mining and prospecting. Small amounts of surveyed land may be purchased for various purposes, including agriculture, but actually little has been surveyed, and little has been available for purchase or homesteading. Leases have been granted for grazing, hay-cutting, and in connection with such operations as fishing and lumbering.

The Department of Mines and Resources (in this case preceded by the Department of Mines) has done much to aid discovery and development of minerals in the Territories, largely through its Geological Survey Division. Besides the extensive survey and geological work done by the Department's employees, it has assumed an increasing degree of administrative responsibility, and has exercised

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<sup>30</sup> The R.C.A.F. has air photographed the following areas in recent years - 403,000 square miles in 1947, 911,400 in 1948, 870,500 in 1949, 869,000 in 1950, and 112,000 in 1951. This represents a total of 3,165,900 square miles. A considerable portion of this total is in southern Canada, but nevertheless, practically all of western Canada north of 60°, Quebec and Labrador north of 52°, and the archipelago, have now been air photographed. (The above information was contained in a letter to the author from Lt. Col. C. H. Smith, Director of Military Survey, Ottawa, dated May 7, 1952.)

<sup>31</sup> F. H. Kitto, *op. cit.*, pp. 120-125; Department of Mines and Resources, *The Northwest Territories 1948*, p. 17; *Ottawa Journal*, July 7 and Sept. 8, 1949.

<sup>32</sup> Department of Mines and Resources, *The Northwest Territories 1948*, p. 61.

close control over the granting of miners' licenses and permits, the recording of claims and the enforcement of mining regulations.<sup>33</sup>

A sub-branch of the Department entitled the Dominion Wildlife Service has administered the various Northwest Game Acts and the Migratory Birds Convention Act, the purpose being to regulate hunting and prevent the destruction of valuable species of wildlife.<sup>34</sup> To this end trading posts are licensed, fur export royalties collected, game laws enforced, and game preserves established.

In 1927 the responsibility for Eskimo affairs was transferred from the Department of Indian Affairs to the Department of the Interior.<sup>35</sup> Since then the Department has had this additional duty, although the medical care and hospitalization of Eskimos were handed over to the Department of Health and Welfare in 1945.<sup>36</sup> The program of the Department for the welfare of the Eskimos includes the provision of food, supplies, and equipment when their natural supply fails, assistance for the sick, aged, or injured, provision of and contributions towards medical and educational facilities, the establishment of game preserves for the exclusive use of the natives and other measures of game conservation, and the development of a domestic reindeer industry. A census of the Eskimos was taken in 1941, and is being kept up to date.<sup>37</sup>

It was on October 12, 1945, that the Department of Health and Welfare assumed responsibility for all health matters in the Arctic.<sup>38</sup> Shortly afterwards, on November 1, a Directorate of Indian and Eskimo Health Service was set up under this department. Government doctors have regularly accompanied the Eastern Arctic Patrol, and in recent years other medical personnel including dentists, oculists, x-ray technicians and nurses have been present also, enabling a much greater variety of work to be done.<sup>39</sup> There are also resident doctors at all northern hospitals. Except for the private doctors kept by mining companies, these are all government doctors also, from the Department of Health and Welfare. In 1947 government doctors were located at Fort Smith, Fort Resolution, Fort Simpson, and Aklavik, in Mackenzie District, at Chesterfield in Keewatin, and at Pangnirtung in Franklin. Company doctors were maintained at Yellowknife, Norman Wells, and Port Radium. In addition there are a number of nursing stations, maintained by the

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<sup>33</sup> *Ibid.*, pp. 43-49, p. 62; also C. C. Lingard in *The New North-West*, as previously cited, pp. 24-25.

<sup>34</sup> E.g., *Statutes of Canada*, 57 Vict., c. 31 (July 23, 1894) 7-8 Geo. V, c. 36 (Sept. 20, 1917).

<sup>35</sup> *Order in Council*, P. C. 789 (Aug. 31, 1927).

<sup>36</sup> *Order in Council*, P. C. 6495 (Oct. 12, 1945).

<sup>37</sup> Department of Mines and Resources, *The Northwest Territories 1948*, p. 24.

<sup>38</sup> *Order in Council*, P. C. 6495 (Oct. 12, 1945).

<sup>39</sup> Dr. L. D. Livingstone, the first doctor to make the regular patrol, has had a long and outstanding arctic career. He travelled regularly with the patrol for several years after 1922, was appointed Medical Health Officer for the District of Franklin in 1925, and gave many years of service at the hospitals at both Pangnirtung and Aklavik.

Department of Health and Welfare. Except for the three mining company hospitals, all the hospitals mentioned above are operated by either Anglican or Roman Catholic missions. The Government has contributed towards their construction, however, and also helps pay for their maintenance at a fixed rate per patient. The Department of Health and Welfare serves as a consulting agency, and gives advice when required. It also provides funds for paying family allowances to Eskimos under the Family Allowances Act, although the Northwest Territories Administration has done much of the work in connection with registration and distribution.<sup>40</sup>

Education in the Northwest Territories has been largely in the hands of Anglican and Roman Catholic mission schools, where Indian, Eskimo, and white children are all educated. The Dominion Government maintains over-all supervision, and assists in the construction and maintenance of these schools, giving liberal grants of money, textbooks, and supplies. While very remote areas resort to correspondence courses from Edmonton, Alberta, a number of non-denominational schools have recently been built in such growing centers as Fort Smith and Yellowknife.<sup>41</sup> A new program plans government schools even in remote areas.<sup>42</sup>

In recent years other departments besides the one most directly concerned have become increasingly active in arctic administration. These include, besides the Department of Health and Welfare, the Departments of Marine and Fisheries, Post Office, Transport, and Defense.

The Department of Marine and Fisheries administers the Fisheries Act and regulates whaling and walrus hunting.<sup>43</sup> A small number of whaling licenses were issued formerly, for example each year between 1906 and 1912, but in recent years the tendency has been to discourage whaling or prohibit it entirely. In 1928 walrus hunting in northern waters was prohibited except by natives, although explorers and scientists were permitted to kill a few under license.<sup>44</sup> In 1931 even the number that natives could kill was limited, and the regulations were tightened still further in 1934.<sup>45</sup> On October 21, 1949, the Federal Department of Fisheries announced that henceforth sealing in Canadian waters and territories north of 60° north latitude and in Ungava, Hudson, and James Bays would not be permitted, except for Eskimos and other permanent residents, and scientists doing research work.<sup>46</sup>

The Post Office Department maintains post offices at all of the larger settlements populated by whites in the Canadian Arctic, and at many of the smaller settlements also. Post Offices were opened at the same time as the R.C.M.P. detachments were established, unless already in being, and the first postmasters were

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<sup>40</sup> Department of Mines and Resources, *The Northwest Territories 1948*, pp. 6-7.

<sup>41</sup> *Ibid.*, p. 8.

<sup>42</sup> Article in *New York Herald Tribune*, Nov. 4, 1949.

<sup>43</sup> *Revised Statutes of Canada*, c. 73 (1927); *Statutes of Canada*, 4 Geo. V, c. 8 (1914).

<sup>44</sup> *Order in Council*, P. C. 1036 (June 20, 1928).

<sup>45</sup> *Order in Council*, P. C. 1543 (July 3, 1931).

<sup>46</sup> *Arctic Circular* (Nov. 1949), p. 88.

the resident members of the R.C.M.P. In some cases, as at Bache Peninsula, which was the most northerly post office in the world when opened, the presence of the post office was almost the only manifestation of Canadian Government department representation.<sup>47</sup> Some of the more isolated posts receive only one or two regular mail deliveries a year, for example some of those which depend mainly upon the Eastern Arctic Patrol, while Yellowknife, a more populated, southerly center, has almost daily service.<sup>48</sup>

A network of weather stations is operated throughout the Canadian Arctic, mainly by the Meteorological Division of the Department of Transport. In addition, both the Hudson's Bay Company and the R.C.M.P. have had meteorological facilities and have maintained observation stations at some of their remote outposts. Since the days of World War II the United States has cooperated in this work, and it has become a joint enterprise between the two governments, although the Canadian Government maintains its authority over the stations and has one of its representatives in charge of each. In 1949, besides a large number of stations on the northern mainland, island stations were located at Pond Inlet, Pangnirtung, Nottingham Island, Cambridge Bay, Lake Harbour, Resolution Island, Dundas Harbour, Arctic Bay, Clyde River, Coral Harbour, Holman Island, Eureka, Resolute, Isachsen, Mould Bay, Padloping Island, and Upper Frobisher. Most of these were entirely a Canadian responsibility and the United States was concerned only with the last six named.<sup>49</sup>

The Royal Canadian Corps of Signals of the Canadian Army operates a radio communication system in the Arctic, which includes a number of radio stations and sub-stations. The Royal Canadian Air Force has another such system, and the Department of Transport another, the three systems working sometimes individually and sometimes in unison. The Air Force also maintains an organized search and rescue service, both in the Arctic and in southern Canada. It is the outcome of a search and rescue organization developed during World War II, which has since been retained for civilian use. Most of the bases are in southern Canada, but a number of notable arctic flights and rescues have been made.<sup>50</sup>

There have been a number of acts and ordinances having particular significance in the Arctic. Of those enacted by federal authorities some date back a considerable period of time, for example some of those respecting fishing, whaling, and hunting,

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<sup>47</sup> D. S. Robertson, *To the Arctic with the Mounties* (Toronto: The Macmillan Co. of Canada, Ltd., 1934), p. 84.

<sup>48</sup> Department of Mines and Resources, *The Northwest Territories 1948*, pp. 18-19. The joint Canadian-American weather stations mentioned in the next paragraph are also official Canadian post offices. *Edmonton Journal*, Jan. 30, 1950.

<sup>49</sup> *Polar Record*, July, 1950, pp. 602-605; *Edmonton Journal*, Jan. 30, 1950; *Ottawa Journal*, Sept. 8, 1949.

<sup>50</sup> E.g., the evacuation of Canon J. H. Turner from northern Baffin Island in 1947, and Mrs. S. Dodds from the same area in 1948.

and (in the Yukon) mining. On the other hand most of the important territorial ordinances have been passed during the last thirty years. This might be expected, since before 1905 the territorial councils and assemblies were primarily interested in what is now Alberta and Saskatchewan, and from 1905 until 1921 no Northwest Territories Council was appointed.

One of the important territorial ordinances was that of 1926 laying down requirements to be met by scientists and explorers entering the Territories.<sup>51</sup> A new ordinance was enacted in 1949, replacing the former.<sup>52</sup> Both made it compulsory for explorers and scientists to secure a license before entering the Territories, to comply with certain stated conditions, and to supply the Commissioner with detailed information about their expeditions when these were completed.

An ordinance of February 5, 1930, was designed to protect Eskimo ruins and archaeological sites, and outlined regulations governing the work of scientists interested in this type of research. The ordinance of 1930 was superseded by another on January 30, 1945, which in turn was replaced by one dated February 17, 1949. The latest one makes it necessary to obtain permits for doing such work, and to report details to the Commissioner when finished.<sup>53</sup>

Hunting in the Northwest Territories has been regulated by a number of Northwest Game Acts, notably those of 1894, 1902, 1906, and 1917, and by various regulations issued under the authority of the Acts.<sup>54</sup> The most important provisions of all of these were embodied in the sweeping Game Ordinance of July 1, 1949, which set forth in detail the laws respecting hunting, trapping, fur-farming, licensing, close seasons, and other related matters. A number of new provisions were added, the most important of which forbade hunting from aircraft, required Indians and Eskimos to take out general hunting licenses (free of charge however), raised hunting license fees for whites, and under certain circumstances gave holders of general hunting licenses exclusive trapping rights in their areas.<sup>55</sup>

Other Territorial Ordinances in recent years have dealt with a multitude of subjects, as settlements have grown up and a measure of supervision has become necessary. Among these are a medical profession licensing ordinance (1936), another respecting chemists and druggists (1938), another respecting businesses,

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<sup>51</sup> *Ordinance of the Northwest Territories Respecting Scientists and Explorers* (June 23, 1926). Quoted in *The Polar Record* (July, 1942), pp. 575-576.

<sup>52</sup> *New Ordinance Affecting Scientists and Explorers in the Northwest Territories* (April 21, 1949). Quoted in *The Polar Record* (July, 1950), pp. 630-632.

<sup>53</sup> *The Polar Record* (July, 1950), pp. 632-633; also C. C. Lingard in *The New North-West*, as previously cited, p. 21.

<sup>54</sup> *Statutes of Canada*, 57 Vict., c. 31 (July 23, 1894); *ibid.*, 2 Edw. VII, c. 12 (May 15, 1902); *ibid.*, 6 Edw. VII, c. 16 (June 1, 1906); *ibid.*, 7-8 Geo. V, c. 36 (Sept. 20, 1917).

<sup>55</sup> *Ordinances of the Northwest Territories*, c. 12 as amended by c. 27 (July 1, 1949). Quoted in *The Arctic Circular* (Nov. 1949), pp. 89-94; also *The Polar Record* (July, 1950), pp. 627-630.

trades, and professions (1938), a mine owners' ordinance (1937), and others respecting sale of liquor, workmen's compensation, and protection against the spread of venereal diseases.<sup>56</sup>

A few miscellaneous topics related to Canadian administration in the Arctic are also worthy of mention. One of these is the government reindeer herd which has been established just east of the Mackenzie delta. Three thousand reindeer were purchased in Alaska and brought from there between 1930 and 1935. A grazing reserve of 6,600 square miles was provided for them, they have been cared for by government employees, and under favorable conditions had increased from about 2,400 in 1935 to over 6,000 in 1948, although a number have been killed each year to provide food and clothing for needy Eskimos. In 1944 a subsidiary herd was established near the Anderson River, a short distance eastwards. This enterprise has proved so successful, and so beneficial to the natives, that efforts are being made to get numbers of these people to transform from a hunter's to a herder's mode of life, and assume responsibility for the care of the reindeer themselves.<sup>57</sup>

In order to help in the preservation of wild life, particularly in the case of animals keenly desired by the hunter and trapper, a considerable number of game preserves and sanctuaries have been established in both the Northwest Territories and the Yukon.<sup>58</sup> These include, in the Yukon, the Peel River Native Game Preserve (for natives only), the Kluane Game Sanctuary (protecting both game animals and birds) and the McArthur Game Sanctuary. In the Northwest Territories there are, besides the reindeer preserves, the Peel River Preserve (joining the preserve of the same name in the Yukon Territory and also for the use of natives only), the Mackenzie Mountains Preserve, the Yellowknife Preserve, the Slave River Preserve, the Wood Buffalo Park (primarily to maintain a large herd of buffalo), the Thelon Game Sanctuary (to protect musk oxen), the James Bay Twin Islands Game Sanctuary, and the Arctic Islands Preserve. In addition there are a number of beaver preserves in and around James Bay, including the Rupert's House, Charlton Island, Akimiski Island, and Kapisko Preserves. The Wood Buffalo Park, which is partly in Alberta, and the Thelon Sanctuary for musk oxen are of particular importance, because each shelters a thriving herd of a species of animal which is in danger of becoming extinct.

<sup>56</sup> Cited in C. C. Lingard, in *The New North-West*, p. 21.

<sup>57</sup> Erling Porsild, "The Reindeer Industry and the Canadian Eskimo," *The Geographical Journal* (July, 1936). (Originally read as a paper at a meeting of the Royal Geographical Society in London, Feb. 17, 1936). See also Department of Mines and Resources, *The Northwest Territories 1948*, pp. 54-56.

<sup>58</sup> Department of Mines and Resources, *The Northwest Territories 1948*, p. 53; and Department of Resources and Development, *Yukon Territory 1950*, p. 54, describe briefly the game preserves and sanctuaries. See also Brian Roberts, "Game Conservation in Arctic Canada," *The Polar Record* (Jan., 1942), pp. 499-509.

It may be noted that the entire archipelago is included in the Arctic Islands Preserve, with the exception of the Hudson Bay Islands, Bylot, part of Baffin, and the small coastal islands west of Coronation Gulf. This preserve, which was created in 1926, also includes a part of the northern Keewatin and Mackenzie mainland east of Coronation Gulf, and Boothia and Melville Peninsulas.<sup>59</sup>

It is evident from the foregoing that, as far as government is concerned, Canada regards the entire Northwest Territories as a single administrative unit, and makes little distinction between island territories and mainland. This remains essentially true, in spite of the fact that the Territories are divided into three sub-units, of which two, Mackenzie and Keewatin, are mainly continental, and the third, Franklin, is largely insular. As a matter of fact, as has been pointed out, Mackenzie and Keewatin include some islands, and Franklin includes two large peninsulas of the mainland - Boothia and Melville. Dominion statutes and orders in council affecting the Northwest Territories apply to the entire area unless otherwise specified, as do ordinances of the Northwest Territories Council. This would appear to be a matter of some significance, as any doubts about or challenges to Canadian sovereignty in these regions that have been expressed have had reference to the archipelago and not to the mainland. As far as the Canadian Government is concerned, however, both the archipelago and the mainland part of the Northwest Territories form a single unit, and both are under Canadian law.

One may conclude, from the evidence given in this chapter, that Canada's administration of her arctic territories is sufficiently thorough to bear out the claim that they are actually under Canadian law, at least as far as inhabited regions are concerned. It must be admitted that this has not always been the case, as Canada took little notice of the genuinely arctic territories until they were formally delimited by order in council in 1895, and administration of the Northwest Territories was until 1905 primarily concerned with those southern regions which in that year became the new provinces of Alberta and Saskatchewan. Also, although provision was made in 1905 for the appointment of the Northwest Territories Council, none was appointed until 1921, administration during the intervening years being left largely in the hands of the Mounted Police. During the past thirty years, however, increasingly comprehensive efforts have been made to bring the entire Canadian Arctic, including the archipelago, under Canadian law; and today there is little reason to doubt that it forms an integral part of the Canadian Dominion, as much subject to the laws of Canada as any other part of the country.

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<sup>59</sup> *Order in Council*, P. C. 1146 (July 19, 1926).

## CHAPTER 13

### THE ROYAL CANADIAN MOUNTED POLICE IN THE ARCTIC

Maintenance of law and order in the Canadian Arctic is the responsibility of the Royal Canadian Mounted Police. The members of this famous force have always been few in number and widely scattered, but this has not impaired their efficiency or authority. At many northern posts they have been practically the only representatives of the white race, and certainly of organized government, yet they have effectively applied Canadian law throughout the entire inhabited area of the Canadian Arctic, since their field of jurisdiction was broadened to include this region. In addition they have made, and still make, frequent long patrols over many uninhabited parts, which are rarely seen by the eyes of men except on such occasions.

The Northwest Mounted Police, as they were originally known, were organized in 1873, primarily to establish law and order in that part of the Northwest Territories immediately north of the American boundary and between the newly created provinces of Manitoba and British Columbia. For about twenty exciting years their chief concern was with this rapidly developing region. During these stirring times the Mounted Police had conspicuous success in maintaining order in a region previously without law, and, incidentally, in building for themselves a solid reputation for justice, fair play, and devotion to duty. After 1890 their jurisdiction spread gradually to the Arctic, especially following the discovery of gold on the Klondike in 1896. In more recent times, and especially since World War I, a considerable number of posts have been established in the Arctic Islands.

In 1890 Inspector J. V. Begin carried the Force's flag for the first time to Hudson Bay, making a long patrol overland and by river from Norway House at the outlet of Lake Winnipeg to York Factory and back.<sup>1</sup> In 1893 Inspector D. M. Howard and eight constables were sent to establish a post at Athabaska Landing, on the Athabaska River, with subsidiary detachments at Lesser Slave River and Grand Rapids.<sup>2</sup> These three were the most northerly posts at that time, but were only kept open during the summer. In 1894 what Harwood Steele called the "northern battle-line" included Cumberland, Prince Albert, Battleford, Fort Saskatchewan, and St. Albert, counting only the permanent posts - none of which was farther north than

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<sup>1</sup> R. C. Fetherstonhaugh, *The Royal Canadian Mounted Police* (New York: Carrick and Evans, Inc., 1938), pp. 94-95.

<sup>2</sup> Harwood Steele, *Policing the Arctic* (London: Jarrolds Publishers, 1936), p. 24.

54°. <sup>3</sup> Of the summer detachments the most northerly, Grand Rapids, was only at 56°.

It was the Yukon Gold Rush which first took the Mounted Police to the Arctic. <sup>4</sup> Gold had been mined in the Yukon since 1864, but not in large quantities until the 1890's. In 1892 the Sixtymile field was located, and as the number of prospectors and the amount of crime were both on the increase, the Dominion Government in 1894 sent Inspector Charles Constantine to investigate. After studying his report the Government sent him back the following year as its representative, with nineteen other members of the Force to support him. Travelling through the Bering Sea, and up the Yukon River, the party reached the present site of Dawson City and built Fort Constantine nearby - at the time the most northerly post of the Mounted Police. <sup>5</sup> Then in August 1896 George Cormack, a placer miner, acting on a tip from one Robert Henderson, located a fabulously rich gold strike on Bonanza Creek, and the Klondike Gold Rush was on. The already large influx of prospectors, gamblers, merchants, thieves, and murderers promptly assumed hitherto unknown proportions, and Dawson, a collection of a few houses in 1896, by 1898 had mushroomed to a boom town of 25,000 people. It was necessary to increase greatly the number of Mounted Police assigned to the Yukon, and by the end of 1898 ten officers and 254 men were serving there under Superintendent S. B. Steele. <sup>6</sup> Local headquarters were moved from Fort Constantine to Dawson City, and a number of other detachments were opened, including Ogilvie, Fort Selkirk, Whitehorse, Tagish, Chilcoot Pass, and White Pass. <sup>7</sup> Thanks to the Mounted Police affairs in the Yukon were kept within reasonable control, although criminals were numerous and the detachments were always understaffed.

Most of the newcomers to the goldfields, police and civilians alike, went in either through one of the Rocky Mountain passes from the Pacific seaports, or else up the Yukon River. A number of attempts were made to cross over from the prairies, often with disastrous results, as this country was then practically unknown. Acting upon the Federal Government's request that the Mounted Police discover the practicability of such a route, Commissioner Herchmer picked Inspector J. D.

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<sup>3</sup> *Ibid.*, p. 24.

<sup>4</sup> See A. R. M. Lower and H. A. Innis, *Settlement and the Forest and Mining Frontiers* (Toronto: Macmillan Company of Canada Ltd., 1936), especially pages 173-269.

<sup>5</sup> R. C. Fetherstonhaugh, *op. cit.*, p. 70.

<sup>6</sup> S. B. Steele, *Forty Years in Canada* (London: Herbert Jenkins Ltd., 1915), pp. 288-337, gives an interesting account of conditions and personal experiences in the Yukon during the Gold Rush.

<sup>7</sup> *Ibid.*; also R. C. Fetherstonhaugh, *op. cit.*, pp. 71-84; Harwood Steele, *op. cit.*, pp. 28 ff.; A. L. Haydon, *The Riders of the Plains* (London: Andrew Melrose Ltd., 1914), pp. 188-206; T. Morris Longstreth, *The Silent Force* (London: Philip Allan and Co., Ltd., 1928), pp. 193-207.

Moodie to test it by leading a patrol overland from Edmonton to the Yukon.<sup>8</sup> Moodie's party, which included Constable F. J. Fitzgerald, successfully completed the patrol, but only after a perilous journey that took thirteen months, from September 1897 until October 1898. Meanwhile three supporting patrols had made successful trips to Fort Simpson, Fort St. John and Dunvegan. The obvious conclusion was that while there was a route from Edmonton to the Yukon, it was not suitable for the prospectors to attempt, especially if they were unfamiliar with the travel conditions which then prevailed in this region.<sup>9</sup>

In the same year Inspector A. M. Jarvis led a winter patrol from Fort Saskatchewan to Fort Resolution on Great Slave Lake, and "carried the Force in one great stride half-way to the Polar Sea".<sup>10</sup> Six years later, in 1903, Superintendent Constantine established the first police post north of the Arctic Circle, at Fort McPherson, on a small tributary of the Mackenzie River. A few weeks later his subordinate, Sergeant F. J. Fitzgerald, pushed on still further and opened the first detachment upon one of the Arctic Islands, at Herschel Island, west of the mouth of the Mackenzie. The reason for opening a post at Herschel Island was that an American whaling fleet wintered there, and, as Commissioner A. Bowen Perry stated in his report for 1903, the island had been "the scene of considerable lawlessness and violence."<sup>11</sup> Under Fitzgerald's firm but tactful administration much was done to restore order. As has been customary at northern police posts, a number of winter patrols were instituted in the locality, perhaps the most noteworthy being that between Fort McPherson and Dawson. This had been initiated by Corporal G. M. Skirving in 1899, when he travelled from Dawson to Fort McPherson via Fort Yukon in a search for several missing prospectors, and then, after finding the graves of two of them, returned to Dawson.<sup>12</sup> It later became one of the Force's most regular and most famous patrols, but it also occasioned one of its greatest tragedies, when in 1911 it took the lives of Fitzgerald, by then an Inspector, and three others.<sup>13</sup>

Thus the "northern battleline," which in 1895 had been extended to the Yukon, by 1903 had reached the Arctic Ocean. In the same year that Constantine and Fitzgerald carried the Force's supervision to the mouth of the Mackenzie, Superintendent J. D. Moodie was taking initial steps to bring the Hudson Bay region under control. He had been appointed "Acting Commissioner of the unorganized Northeastern Territories," and, with five other members of the

<sup>8</sup> L. W. Herchmer was N. W. M. P. Commissioner from 1886 to 1900.

<sup>9</sup> R. C. Fetherstonhaugh, *op. cit.*, pp. 96-99.

<sup>10</sup> Harwood Steele, *op. cit.*, p. 32.

<sup>11</sup> Commissioner's Report for 1903, in *Sessional Papers*, Vol. XXXVIII, No. 11, Paper No. 28. Perry was Commissioner from 1900 to 1923. The Commissioners' Annual Reports were published regularly in the Parliamentary Sessional Papers.

<sup>12</sup> R. C. Fetherstonhaugh, *op. cit.*, pp. 99-100.

<sup>13</sup> *Ibid.*, pp. 160-165.

Mounted Police under his command, accompanied A. P. Low on the government voyage to Hudson Bay in 1903. Moodie was given detailed instructions by Colonel Fred White, Comptroller of the N. W. M. P., which are so indicative of the purpose of the Canadian Government in dispatching the expedition and of the role assigned to the Mounted Police that they are worth reproducing in some detail. The most relevant parts of White's instructions were as follows:

The Government of Canada having decided that the time has arrived when some system of supervision and control should be established over the coast and islands of the northern part of the Dominion, a vessel has been selected and is now being equipped for the purpose of patrolling, exploring, and establishing the authority of the Government of Canada in the waters and islands of Hudson bay, and the north thereof ....

Any work which has to be done in the way of boarding vessels which may be met, establishing ports on the mainland of these islands and the introduction of the system of Government control such as prevails in the organized portions of Canada has been assigned to the Mounted Police, and you have been selected as the officer to take charge of that branch of the expedition.

You will have placed at your disposal a sergeant and four constables; you will be given the additional powers of a Commissioner under the Police Act of Canada, and you will also be authorized to act for the Department of Customs....

... wherever it is decided to land you will erect huts and communicate as widely as possible the fact that you are there as representative of the Canadian Government to administer and enforce Canadian laws, and that a patrol vessel will visit the district annually, or more frequently.

It may happen that no suitable location for a post will be found, in which case you will return with the vessel but you will understand that it is the desire of the Government that, if at all possible, some spot shall be chosen where a small force representing the authority of the Canadian Government can be stationed and exercise jurisdiction over the surrounding waters and territory.

It is not the wish of the Government that any harsh or hurried enforcement of the laws of Canada shall be made. Your first duty will be to impress upon the captains of whaling and trading vessels, and the natives, the fact that after considerable notice and warning the laws will be enforced as in other parts of Canada....<sup>14</sup>

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<sup>14</sup> Quoted in A. E. Millward, *op. cit.*, pp. 14-15; also in folder *Arctic Islands Sovereignty*, Public Archives, Ottawa.

Moodie established a police post at Fullerton, where the party wintered, and in 1904 returned to report to Ottawa, leaving some of his men at the new post. In his report he recommended that several additional posts be built on the shores of Hudson Bay and on the eastern Arctic Islands, that hunting and whaling be more strictly regulated, and that whites be prevented from exploiting the natives.<sup>15</sup> He returned to Fullerton the same autumn with Captain Bernier in the "Arctic," and again wintered there, sending successful winter patrols to Baker Lake and Churchill.<sup>16</sup> In 1905 a temporary detachment was established at Prefontaine, at the northern tip of Quebec, in Hudson Strait, and a year later a post was opened at Churchill.<sup>17</sup> Superintendent Moodie remained in charge in the Hudson Bay area until 1912, when he was transferred to the Yukon.

Between 1903 and the end of World War I the Mounted Police went no further northwards; but a number of new posts were opened in the arctic regions already reached, and most of the inhabited part of the northern mainland was brought under fairly close supervision. In the Hudson Bay area additional posts were opened at Port Nelson in 1913, at Baker Lake in 1915, and at Port Burwell in 1920. Along the Mackenzie River posts were opened at Smith's Landing (now Fitzgerald) in 1908, at Resolution and Simpson in 1913, and at Norman in 1916. Far to the northwest a post was opened at Rampart House, where the Porcupine River crosses the Alaska-Yukon frontier, in 1913, and another was opened at Tree River, near the mouth of the Coppermine, in 1919.<sup>18</sup> Thus by the end of the First World War the Mounted Police had, to match their concentration of posts in the Yukon, another concentration along the Mackenzie River, and still another around Hudson Bay, with several others placed strategically at or near the arctic coast. Aside from the post on Herschel Island, and except for occasional calls, no descent had as yet been made upon the Arctic Islands.

Whenever possible communication was established among the northern posts by means of regular summer and winter patrols, as had been done between Dawson and Fort McPherson. The various Yukon posts had already been linked up in this manner, and similarly the Mackenzie River posts were tied together, as were those of Hudson Bay. Among the most important patrols were those between Herschel Island, Fort McPherson, and Dawson, and between Nelson, Churchill, Fullerton, and Baker Lake. Another important one was the overland patrol from Norway House on Lake Winnipeg to Churchill, until it was rendered unnecessary by the building of the Hudson Bay Railway. In addition, irregular patrols were of frequent

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<sup>15</sup> R. N. W. M. P. Report for 1905, in *Sessional Papers*, Vol. XXXIX, No. 12, Paper No. 28.

<sup>16</sup> R. C. Fetherstonhaugh, *op. cit.*, pp. 135-136.

<sup>17</sup> *Ibid.*, pp. 137-138. See also R. N. W. M. P. Annual Reports for 1905, 1906, 1907.

<sup>18</sup> The R. N. W. M. P. Annual Reports for the years in question give details about the opening of these posts.

occurrence, usually to investigate reports of suffering or crime. In 1907 Inspector A. M. Jarvis made a trip with a whaler from Herschel Island to Banks and Victoria Islands to locate an American ship-captain accused of murder, but the latter had already been arrested at Kotzebue Sound, Alaska, by American officials.<sup>19</sup> In 1908 Inspector E. A. Pelletier led a long summer and winter patrol which started at Fort Saskatchewan, Alberta, and ended at Gimli, Manitoba, travelling via Resolution, Chesterfield Inlet, and Churchill - 3347 miles in all. Its purpose was to assert police control over the vast, thinly populated territory between the Mackenzie River and Hudson Bay.<sup>20</sup> The murder of two explorers named Radford and Street by some Eskimos at Bathurst Inlet in 1913 occasioned a number of investigating trips, notably those by Inspectors Beyts and French, during the next four years. When French finally found the Eskimos who had killed the men no action was taken, because it was found that the murders had been provoked.<sup>21</sup> In connection with this case French made what was up to that time the longest arctic patrol on record in the Force, covering 5153 miles.<sup>22</sup> Two other Eskimo murderers named Sinnisiak and Uluksak, who had killed the Roman Catholic fathers Rouvier and Le Roux in 1913 in order to steal their possessions, were dealt with more severely. Inspector C. D. La Nauze and Corporal W. V. Bruce travelled many miles to arrest them, finding one on Victoria Island and the other on a small island near the mouth of the Coppermine; and brought them back to trials which resulted in their being sentenced to life imprisonment at Fort Resolution. They were soon released, however, as the difference between their law and the white man's was recognized. Thoroughly penitent and reformed, they later actually became valuable police assistants.<sup>23</sup> In these and other early cases involving Eskimos who had become criminals by our standards, the Mounted Police and Dominion Government officials showed great patience and moderation, hoping that the natives would gradually come to understand and accept the white man's laws. This policy has met with considerable success, and the typical Eskimo attitude towards the policeman - a mingling of fear, respect, and affection - bears witness to the success the Mounted Police have generally had in winning their confidence. It should perhaps in fairness be stated that the police have themselves had to learn much about the Eskimos, in order to understand their at times seemingly peculiar behavior and customs.

At the close of the First World War the future status of the Force was extremely doubtful. During the early days of the war its members had been compelled to remain on duty in Canada, but in 1918 the Government decided to let them go overseas. As a result the entire Force volunteered for overseas service, almost to a

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<sup>19</sup> R. N. W. M. P. *Report for 1909*.

<sup>20</sup> H. Steele, *op. cit.*, p. 131 ff; R. C. Fetherstonhaugh, *op. cit.*, pp. 155-160.

<sup>21</sup> R. N. W. M. P. *Reports, 1915, 1916, 1917, 1918*.

<sup>22</sup> H. Steele, *op. cit.*, pp. 193-199.

<sup>23</sup> R. N. W. M. P. *Reports for 1915, 1916, 1917*; also H. Steele, *op. cit.*, pp. 174 ff.

man, and later that year two squadrons left Canada, one for France and one for Siberia. In addition the Force had in 1917 been relieved of its provincial duties in the Prairie Provinces, reducing its function considerably. As a result of these factors its numbers fell to 303, the lowest since its foundation, and comments were heard that the Force had outlived its usefulness and might as well be disbanded.

Nevertheless the Government decided, late in 1918, that it should be retained on a permanent basis, and a number of striking changes were made. It was to be the sole federal police force, absorbing the former Dominion Police, and was given authority as a federal force throughout all Canada. Its members still overseas were recalled, and its authorized strength was raised to 2,500. Its headquarters, except for training new recruits, was moved from Regina to Ottawa. Its official title, already changed once when King Edward VII in 1904 had bestowed upon it the prefix "Royal," was henceforth to be the Royal Canadian Mounted Police. As the official federal police force it was to have authority to carry out any Dominion law in the Northwest Territories and Yukon.<sup>24</sup>

The Force's permanent position in Canada having been assured, it embarked upon its last conquest in the North - the Arctic Islands. Some of the more southerly of these, such as Victoria and southern Baffin, had been visited by the police from time to time in the discharge of their duties; and upon one, Herschel Island, stood what was still the Force's most northerly post. Otherwise the archipelago was to the Mounted Police still unfamiliar territory. When the decision was made to send the government expedition under J. D. Craig to the archipelago in 1922, the authorities also decided that it would be expedient "to have the Canadian Government represented on the ground by members of the Royal Canadian Mounted Police."<sup>25</sup> For this purpose Inspector C. E. Wilcox, a veteran of northern service, was chosen to accompany the expedition, at the head of a detachment of nine men. The police were told by Commissioner Perry that they were to "exercise jurisdiction over all islands in the Arctic, north of the American continent, claimed as part of Canada."<sup>26</sup>

Inspector Wilcox opened a new post at Craig Harbour, in southern Ellesmere Island (the most northerly post established by the R.C.M.P. up till that time), and remained there during the winter, keeping six of his men with him.<sup>27</sup> The remaining three were left at Pond Inlet to reinforce Staff Sergeant A. H. Joy, who

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<sup>24</sup> For details about the changes in the Force's status, see *R. N. W. M. P. Reports for 1918 and 1919*, and *R.C.M.P. Report for 1920*; also R. C. Fetherstonhaugh, *op. cit.*, pp. 177-178, 185-187; J. P. Turner, "A Short History of the Force," *Royal Canadian Mounted Police Quarterly*, October, 1948, pp. 74-75; J. J. Weaver, "Evolution of the Force Since 1914," *Royal Canadian Mounted Police Quarterly*, July, 1940, p. 94.

<sup>25</sup> Quoted in H. Steele, *op. cit.*, p. 219.

<sup>26</sup> *Ibid.*, p. 220.

<sup>27</sup> Herbert Patrick Lee, *Policing the Top of the World* (London: John Lane The Bodley Head Ltd., 1928), tells of his experiences at Craig Harbour during this winter. He was one of the constables stationed there with Wilcox.

had been there since the summer of 1921, investigating the murder by some Eskimos of a white trader named Robert Janes. Pond Inlet, in northern Baffin Island, had been opened as a police post by Joy upon his arrival there, but buildings were not erected until the following year.

Thus by 1922 the Mounted Police were located at two points in the eastern Arctic Islands. In the following years a considerable number of other posts were added, Pangnirtung (Baffin Island) in 1923, Dundas Harbour (Devon) in 1924, Bache Peninsula (Ellesmere) in 1926, Lake Harbour (Baffin) in 1927, and on the mainland, Port Harrison (northern Quebec) in 1936, and Eskimo Point (on the Keewatin coast north of Churchill) in 1937. There was also a detachment on Southampton Island for a time, but it was closed in 1947. All together these posts formed a chain extending around Hudson Bay and up the western side of the water channel separating the islands from Greenland, as far as Bache Peninsula in Kane Basin.

In the Western Arctic posts were opened at Providence, Good Hope, Rae, and Aklavik in 1923, at Yellowknife in 1938, and, along the arctic coast, at Bernard Harbour and Maitland Point in 1926 and 1936 respectively. In the islands a post was opened at Cambridge Bay, Victoria, in 1926. Recently another was opened almost at the center of the archipelago, at Resolute Bay, Cornwallis, where one of the new weather stations is located.<sup>28</sup>

Some of the Force's busiest and most difficult years in policing the Arctic were those of the early 1920's, immediately following their entry into the archipelago. The main reasons were a large occurrence of crime among the Eskimos, and, as might be expected, the difficulty of convincing them that there was anything wrong with such practices as murder and infanticide. An outstanding case is the one already mentioned - the murder of the trader Janes, investigated by Staff Sergeant Joy. Joy succeeded in finding the body, although the murder had been committed some time before his arrival and at a considerable distance from Pond Inlet, and in arresting three Eskimos who had been involved in the case. A complete court went north with the "Arctic" in 1923, and a trial was held at Pond Inlet. Two of the Eskimos were found guilty, but, as has been usual in such cases, the sentences were light, the hope being that they would gradually and amicably become accustomed to our law.<sup>29</sup> Staff-Sergeant Joy, who had helped to investigate two murders on the Belcher Islands just before going to Pond Inlet, in 1922 had also to investigate another murder case on Baffin Island, in which three Eskimos were killed at Home Bay. Other cases in the Arctic in the early 1920's were two murder cases near Baker Lake, one on King William Island, one at Prince Albert Sound, and one at Tree River. The last-mentioned was tragic for the Force, as the Eskimo prisoner

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<sup>28</sup> For details about the opening of these various posts, see the appropriate R.C.M.P. Annual Reports.

<sup>29</sup> See *R.C.M.P. Reports for 1921, 1922, 1923*.

Alikomiak, while under treatment for frozen feet, murdered his captor Corporal W. A. Doak and the Hudson's Bay Company employee Otto Binder. These and other such cases were handled efficiently by the Mounted Police, but they usually involved much arduous travel, which meant, in winter, long and sometimes dangerous journeys by dog-team. It is noticeable that in recent years crime in the Arctic has been on the decline, among both Eskimos and whites, except for the occasional eruption such as the murder of nine Eskimos by seven others in the Belcher Islands during 1940-1941.<sup>30</sup>

As in early days, the Mounted Police have continued to carry on a great deal of patrol work in the Arctic. Since the early 1920's this has been true not only of mainland areas but also of the archipelago, which has been covered quite thoroughly by police patrols.<sup>31</sup> They have been undertaken chiefly in the carrying out of police duties, but they have added incidentally much to the geographical, geological, botanical, and other knowledge of these regions. Most of the patrols have been in the islands which are inhabited and upon which police posts are located, so that such islands as Baffin, Devon, Ellesmere, Southampton, Cornwallis, and Victoria have been most travelled. However patrols to other more remote islands have been frequent also. Worthy of special mention are the long patrols of Staff-Sergeant Joy, one of which, in 1926, took him from Craig Harbour west as far as Axel Heiberg Island. In 1929 this intrepid traveller, by then an inspector and in charge of eastern arctic posts, made a still longer one, from Dundas Harbour, Devon Island, west to Winter Harbour, Melville Island, and then back to the Bache Peninsula post, via Loughheed, Ellef Ringnes, and Axel Heiberg Islands.<sup>32</sup> Only slightly less noteworthy were the patrols of Corporal H. W. Stallworthy, who with Constable R. W. Hamilton in 1931-1932 searched western Ellesmere, Axel Heiberg, Amund Ringnes, and Cornwall Islands for the lost Krueger expedition, finding nothing but a single written record on Axel Heiberg.<sup>33</sup> In 1934-1935 Stallworthy was loaned in an advisory capacity to the Oxford University Ellesmere Land Expedition, and again travelled over much of Ellesmere. His presence on this expedition is explained by Commission J. H. MacBrien's report for that year, which stated that "it has been the policy of the Northwest Territories Council during recent years to have members of the Royal Canadian Mounted Police accompany expeditions to the Canadian far north to ensure that the laws of Canada respecting game and similar matters are not violated."<sup>34</sup>

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<sup>30</sup> *R.C.M.P. Reports for 1941, 1942.*

<sup>31</sup> Douglas S. Robertson, *To the Arctic with the Mounties* (Toronto: The Macmillan Co. of Canada Ltd., 1934) tells of many of these patrols prior to 1933.

<sup>32</sup> *R.C.M.P. Reports for 1926, 1929.*

<sup>33</sup> *R.C.M.P. Report for Eighteen Months Ended March 31, 1934.*

<sup>34</sup> *R.C.M.P. Report for Year Ended March 31, 1935*, p. 39. J. H. MacBrien was Commissioner from 1931 to 1938.

The above are only a few outstanding examples of the many patrols which are regularly undertaken by the northern personnel of the Force, and which have come to be looked upon by them as routine. To give some impression of the great distances covered, it may be cited that in 1938-1939 Superintendent T. B. Caulkin, in charge of "G" Division (Northwest Territories and Yukon), inspected all the posts in his command except two, and travelled 16,461 miles in doing so, while in 1947-1948 the personnel of "G" Division, 128 in number, covered 411,513 miles on patrol.<sup>35</sup> In recent years, airplanes, automobiles, and motor boats have been increasingly used, but much is still done on foot and by dog-team, especially in winter.

The Force gained a valuable asset for northern work in 1928, with the establishment of the floating detachment "St. Roch," an eighty-ton motor schooner which carries on regular summer patrols in arctic waters and usually spends the winter there also. This vessel has established some noteworthy records - the first negotiation of the Northwest Passage from west to east in 1940-1942, the first from east to west in a single year in 1944, and, in 1950, the first circumnavigation of the North American continent.<sup>36</sup> For his exploits the captain, Sub-Inspector H. A. Larsen, was made a Fellow of the Royal Geographical Society and awarded the Polar Medal and Bar.<sup>37</sup>

An important change in the Force's organization occurred in 1933, when the headquarters of "G" Division (Mackenzie River and Western Arctic) was transferred from Edmonton to Ottawa. At the same time the detachments in the Eastern Arctic, including Port Burwell, were transferred from "C" Division (Montreal) to the new "G" Division. In 1934 Chesterfield Inlet and Baker Lake posts were transferred to "G" Division from "D" Division (Winnipeg), and in 1938-1939 "B" Division (Yukon) was amalgamated with "G" Division.<sup>38</sup> The net effect of these changes was to put all Northwest Territories and Yukon posts under one command, with headquarters in Ottawa. They have remained as a single unit, although for administrative convenience they have been divided roughly into Eastern Arctic and Western Arctic areas.

Some idea of the scope and variety of the Force's duties in "G" Division may be gained from the following passage in Commissioner S. T. Wood's Report for the Year Ended March 31, 1946:

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<sup>35</sup> *R.C.M.P. Report for Year Ended March 31, 1939*, p. 46; *R.C.M.P. Report for Year Ended March 31, 1948*, p. 48.

<sup>36</sup> J. L. Robinson, "Conquest of the Northwest Passage by the R.C.M.P. Schooner St. Roch," *Canadian Geographical Journal*, Feb. 1945; *R.C.M.P. Quarterly*, Oct., 1950, pp. 120-140.

<sup>37</sup> *R.C.M.P. Report for Year Ended March 31, 1947*, p. 18.

<sup>38</sup> *R.C.M.P. Report for Eighteen Months Ended March 31, 1934*, p. 35; *R.C.M.P. Report for Year Ended March 31, 1939*, p. 25.

Our personnel are the Game Wardens for the Northwest Territories and Yukon Territory; the Registrars of Vital Statistics in the Northwest Territories; collectors of fur tax; issuers of game animal licenses in the Northwest Territories and Yukon Territory; issuers of business licenses in the Northwest Territories; collectors of poll tax; dog tax, in the Yukon Territory; issuers in some places of the Northwest Territories Liquor Permits....<sup>39</sup>

Commissioner Wood then remarks that “those are a few of the permanent duties carried out by our personnel,” lists a number of others, and adds that “almost every year some new duty is assigned to our members in the Northwest Territories.”<sup>40</sup> It is evident that much of the work in “G” Division is administrative, and that the Dominion Government depends upon its personnel to do many small jobs which could not readily be done by any others.

In summary, there would appear to be no valid reason for believing Mounted Police control of the Canadian Arctic to be defective. The police detachments are comparatively few in number, but they have been strategically placed, so that, with the aid of inter-communication and frequent patrols, no part of the region is beyond police supervision. In addition, old posts are continually moved, or new ones added, if the situation warrants such changes. The Bache Peninsula and Craig Harbour posts in Ellesmere Island have been closed in recent years, but the buildings and equipment are still there, and they could be reopened at any time if this were advisable or necessary. It is perhaps a little odd that while the Force at its founding had no function in the Arctic, yet its posts have spread gradually over this region, including the archipelago, and it has become one of the Force’s chief responsibilities. After about 1890 the Mounted Police began to move northwards; they had reached the arctic coast and the Hudson Bay area by 1903; by 1920 they had blanketed the northern mainland with posts; and during the thirty years since 1920 they have also brought the archipelago under control. Today the Royal Canadian Mounted Police maintain law and order throughout the Canadian Arctic, including the archipelago.

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<sup>39</sup> *R.C.M.P. Report for Year Ended March 31, 1946*, pp. 59-60.

<sup>40</sup> *Ibid.*

## PART IV

### PROBLEMS OF INTERNATIONAL RELATIONS AND INTERNATIONAL LAW

## CHAPTER 14

# OTHER NATIONS' CLAIMS AND INTERESTS IN THE CANADIAN ARCTIC

### France

French claims in the Canadian Arctic are now of only remote historical interest, and may be dealt with briefly.<sup>1</sup> The northern boundary of New France was never a well-defined one, and apparently the French themselves did not claim that it was in arctic regions until after the Hudson's Bay Company Charter had been granted in 1670. The following year Talon dispatched St. Simon and Father Albanel to Hudson Bay and St. Lussou to Lake Superior, the first two making an indefinite claim to the Hudson Bay region and St. Lussou and equally indefinite one to the entire Northwest as far as the "Seas of the North." France refused, naturally enough, to recognize either the Hudson's Bay Company's Charter or English sovereignty in Hudson Bay. During the Wars of the League of Augsburg and the Spanish Succession she almost succeeded in driving the English out of Hudson Bay, and between 1686 and 1713 she held most of the Company's posts. At the Treaty of Utrecht in 1713, however, she was compelled to recognize British sovereignty over Hudson Bay and Strait and the surrounding territories. Nevertheless she continued to dispute the boundary line between New France and Rupert's Land, maintaining that the British were only entitled to a narrow strip along the Bay where the Company's forts stood. France's arctic claims, if they can be classed as such, finally ended in 1763, when she surrendered New France and practically all the rest of her territories in the New World.

Since 1763 the French have been singularly inactive in arctic exploration, and have made no discoveries or claims in what is now Canadian territory. About the only French national who made a name for himself here was the naval officer Lieutenant Rene Bellot,<sup>2</sup> who served as a volunteer during the Franklin search and lost his life near Beechey Island in 1853. Since he served in a private capacity under British officers, his contribution to the search, while appreciated and considered a gallant gesture, could hardly have formed the basis for a territorial claim.

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<sup>1</sup> I have discussed the early French claims in the Hudson Bay region in more detail in Chapter 8, and consequently give only a brief summary here. See A. S. Morton, *op. cit.*, pp. 53-255.

<sup>2</sup> See J. R. Bellot, *Memoirs and Journal of Lieutenant Joseph Rene Bellot* (London: Hurst and Blackett, 1855).

## Russia

Russia was in contact with British North American arctic territories until 1867 through her ownership of Alaska, which was sold to the United States in that year.<sup>3</sup> In spite of this close geographic relationship there was remarkably little communication between the two peoples. Practically the only British Americans in the area before 1867 were fur traders, almost exclusively Hudson's Bay Company men after 1821, and they did not penetrate to the Alaskan neighborhood until shortly before Alaska became American property.<sup>4</sup> The Russian in Alaska, who were also fur traders, concentrated on the Alaskan coast between Nome and the Portland Canal at 55° north latitude, and left the interior alone. Even the Russian explorers in Alaska, including such famous names as Baranov, Shelikov, and Wrangel, did not stray far from the coast, although under Wrangel part of the Yukon River was explored.<sup>5</sup>

There was some contact between the two great fur companies, the Russian American Company and the Hudson's Bay Company, but this was mainly in the Panhandle region.<sup>6</sup> In 1847 Alexander Hunter Murray built Fort Yukon for the Hudson's Bay Company, far within Russian territory, and the Company held it until after the sale of Alaska. It was given up in 1869 after American objections had been raised, and moved up the Porcupine River about 125 miles to Old Rampart House. This was later found to be within American territory still, so, in 1889, the post was moved thirty miles further upstream to New Rampart House.<sup>7</sup>

The outstanding event emerging from British American and Russian American contact in the northwest, however, was the treaty of 1825 between Great Britain and Russia, which established where Canada's northwest boundary was to be.<sup>8</sup> The dividing line between British and Russian territories was set at the 141st meridian of longitude (except for the Alaskan Panhandle, which was not finally delimited until 1903), and this boundary was retained following the sale of Alaska in 1867. The Treaty stated that the said meridian should form the dividing line between Russian and British possessions "in its prolongation as far as the Frozen Ocean." How far this was intended to be is a question that was apparently not thought of or conclusively settled at the time, and it could be given varying interpretations. The line was obviously intended to extend at least the northern extremity of the

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<sup>3</sup> An outstanding reference is Heuert H. Bancroft, *History of Alaska* (San Francisco: The History Company Publishers, 1890). See also William H. Dall, *Alaska and its Resources* (Boston: Lee and Shepard, 1870), pp. 294-372; T. A. Richard, *Historic Backgrounds of British Columbia* (Vancouver: Wrigley Printing Co., Ltd., 1948), pp. 60-96.

<sup>4</sup> A. S. Morton, *op. cit.*, pp. 367-507, 710-801.

<sup>5</sup> William H. Dall, *op. cit.*, p. 338.

<sup>6</sup> *Ibid.*, pp. 337-340, p. 348. See also Thomas Riggs, "Running the Alaska Boundary," *The Beaver*, Sept., 1945, p. 40. Riggs was a former Governor of Alaska.

<sup>7</sup> Thomas Riggs, *op. cit.*, pp. 40-41.

<sup>8</sup> *Treaties and Conventions Between Great Britain and Foreign Powers*, Vol. III, pp. 362-366.

mainland, but was it, for example, to run only “as far as the beginning of the Frozen Ocean,” or “as far as the Frozen Ocean extends northwards”?<sup>9</sup>

This feature of the Treaty had no particular significance until Canada became interested in defining her arctic possessions, especially the archipelago, and might be looked upon as still more vital when sector claims began to appear. It may be recalled that the Order in Council of December 18, 1897, which was designed to correct that of October 2, 1895, claimed for Canada all “lands and islands” as far west as 141°, and named the chief islands then known to exist, as far north as Ellesmere. It did not however specify any northern limit.<sup>10</sup> When Senator Poirier proclaimed his sector principle in 1906-1907, he reaffirmed the 141st meridian as the western limit of Canada’s arctic claim, and extended the northern limit right up to the North Pole.<sup>11</sup>

It may be noted here that the Russian-American treaty which arranged for the transfer of Alaska to the latter country quoted verbatim the language of the British-Russian treaty of 1825, with respect to the 141st meridian, saying that the line of demarcation should follow the said meridian “in its prolongation as far as the Frozen Ocean.”<sup>12</sup> The wording with respect to the meridian forming the western boundary (approximately 169°) was even stronger, as this dividing line was stated to proceed north “without limitation, into the same Frozen Ocean.” The French version of this phrase ran as follows - “et remonte en ligne directe, sans limitation, vers le Nord, jusqu’à ce qu’elle se perde dans la Mer Glaciale.” The American jurist David Hunter Miller, in considering this part of the treaty, concluded that it fixed the American-Russian boundary, as far as these two countries could then fix such a boundary, right up to the North Pole, and that it, along with the treaty of 1825, provided at least part of the basis for the Canadian sector theory.<sup>13</sup>

The sale of Alaska placed a wedge between Canadian and Russian territory, one obvious result being that the contacts between these two nations in arctic regions since 1867 have been more limited than would otherwise have been expected. One important event, however, was the Wrangel Island episode, which, although it concerned Asiatic rather than North American territory, is worthy of mention, because it involved both sovereignty and the sector principle.<sup>14</sup>

<sup>9</sup> David Hunter Miller, “Political Rights in the Polar Regions,” *Problems of Polar Research* (New York: American Geographical Society, 1928), p. 246, said that it was at least arguable that the line ran as far as the 141st meridian ran, i.e., to the North Pole.

<sup>10</sup> See Chapter 10.

<sup>11</sup> Canada, *Senate Debates*, 1906-1907, pp. 266-273.

<sup>12</sup> United States Senate Documents, *Acts and Treaties Relating to Alaska 1867-1905*, Vol. XIII, No. 142, 1906, pp. 17-19.

<sup>13</sup> David Hunter Miller, *op. cit.*, p. 247.

<sup>14</sup> See Vilhjalmur Stefansson, *The Adventure of Wrangel Island* (London: Jonathon Cape Ltd., 1926); *The Friendly Arctic*, pp. 688-696; D. M. LeBourdais, *Northward on the New Frontier* (Ottawa: Graphic Publishers Ltd., 1931), for detailed accounts of the Wrangel Island affair.

As far as is known, Wrangel Island was discovered by the English Captain Kellett in 1849. Twenty years later the American Thomas Long sailed close by, but the first landing was made by another American, Captain Calvin Hooper, in 1881. Captain Hooper claimed the island for the United States, but nothing was done to cement the claim. Apparently no Russian set foot upon the island until 1911. In 1914 the crew of the wrecked "Karluk" of Stefansson's Canadian Arctic Expedition stayed on Wrangel Island for several months and claimed it for Canada. Stefansson himself believed that the island would be of future value to North Americans as the site for an air field and weather station, and after his expedition was finished undertook to establish Canadian, or failing that, American sovereignty. When official support was denied, by Canada, the United States, and Great Britain also, he attempted to hold the island himself, hoping that his action would be validated and supported later. But the two expeditions he sent to Wrangel Island both came to disaster. Four of the five members of the 1921-1923 expedition perished, three in attempting to reach the mainland. The twelve Eskimos and one American of the 1923-1924 expedition were compelled to leave the island when the Soviet government sent their ship "Red October" to remove them, by force if necessary, and claim Wrangel Island for Russia. Since 1924 the island has remained in Russian hands.<sup>15</sup>

"The Adventure of Wrangel Island" was thus brought to an abrupt end, and, from the viewpoint of those supporting it, an unhappy one, but it remains of some interest in international law. It constituted a deliberate violation of the sector principle, which Canada had, in some measure at least, endorsed. Stefansson believe that the sector principle was invalid, and wished to apply instead the principles of continuous occupation and administration, not only in Wrangel Island but throughout the Canadian Arctic.<sup>16</sup> Although the Canadian Government gave him a temporary measure of support, as indicated by remarks in the House of Commons that Wrangel Island was regarded as Canadian property, this support was later withdrawn.<sup>17</sup> It had been suggested that the desire of the new Labour Government in Great Britain to recognize Soviet Russia in 1924 may have turned Britain against the project, and may have had something to do with Russia's decisive action in the

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<sup>15</sup> See the references cited in the previous footnote for details.

<sup>16</sup> V. Stefansson, *The Adventure of Wrangel Island*, pp. 14, 90-91, and elsewhere; *The Friendly Arctic*, pp. 691-692.

<sup>17</sup> See excerpts from *Canadian House of Commons Debates* for 1922 and 1923, quoted in *The Adventure of Wrangel Island*, pp. 389-392. E.g., on May 12, 1922:

Mr. Meighen: Well, have we Wrangel Island?

Mr. Graham: Yes... and we propose to retain it....

Mr. Mackenzie King (Prime Minister): The Government certainly maintains the position that Wrangel Island is part of the property of this country;

V. Stefansson, *The Adventure of Wrangel Island*, p. 392, quoting *House of Commons Debates*, June 14, 1923, also D. M. LeBourdais, *op. cit.*, p. 38.

same year.<sup>18</sup> It may be noted that Russia had warned other nations in 1916 that she regarded the islands adjacent to her arctic coast as Russian territory, and that in 1926 she incorporated the sector principle into Soviet law.<sup>19</sup>

There is little else to tell regarding Russia's past connection with the Canadian Arctic. There have actually been no outstanding Russian voyages, discoveries, settlements, or claims in Canadian Arctic regions, either before 1867 or after, and the territories of the two nations are no longer adjacent, except that their sector claims touch at the North Pole. It is likely that the Wrangel Island episode left a bad flavor in Soviet mouths, but other than this there have been no arctic incidents to disturb relations between the two.<sup>20</sup> Several pioneering Russian flights over Canadian arctic territory occurred during the 1930's, notably those by Chekalov, Gromov, and Levanevski; and Wilkins helped in the search for Levanevski when the latter's plane went down. During World War II lend-lease planes were flown over the Great Circle Route, but most plane traffic, either peaceful or warlike, lies in the future.

There is no question that Canada's proximity to Russia in the Arctic will be of the utmost importance, in the future, either in peace or war. Relations have deteriorated during the past five years, and there has been a growing tendency for each to suspect the other of suspicious activities on the opposite side of the Pole. Respecting sovereignty it may be said, however, that since Russia is herself one of the strongest exponents of the sector principle, she could not question or violate Canadian claims of sovereignty in the Arctic without placing in jeopardy the validity of her own claims. Any Russian infringement of Canada's arctic sector would be extralegal, if not by international law, by Soviet law itself.

### Norway

It is quite possible that ancestors of the present Scandinavians were the first Europeans to penetrate the Canadian Arctic Archipelago.<sup>21</sup> According to the old sagas, Norsemen sailed westwards from Greenland to new lands which have never

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<sup>18</sup> D. M. LeBourdais, *op. cit.*, p. 38.

<sup>19</sup> David Hunter Miller, *op. cit.*, p. 241; Decree issued by Central Executive Committee of the Soviet Union, April 15, 1926. Quoted by Leonid Breifuss, "Territorial Divisions of the Arctic," (translation by M. B.A. and R. M. Anderson in *The Dalhousie Review*, 1929), p. 466.

<sup>20</sup> V. Durdenevsky, "The Problem of Legal Status of the Polar Regions," *The Current Digest of the Soviet Press*, Nov. 18, 1950, refers with some acerbity to the "imperialistic" attempts of the western Powers to take Wrangel Island; Obviously referring to these flights, a special news report sent from Ottawa to the *New York Times* on March 20, 1938, and printed in the latter paper on the following day, made the following comment: "Russia was punctilious about obtaining permission from Canada to fly across the North Pole and down the 120th meridian over Canadian territory."

<sup>21</sup> See Chapter 4.

been positively identified, but which could easily have been some of the Canadian islands west of Greenland. These voyages occurred in pre-Columbian days, however, if they occurred at all, and since no permanent occupation occurred they could hardly have formed the basis for a territorial claim in modern times. Of much more immediate interest was the claim to several islands in this region which was established on behalf of Norway by the explorer Otto Sverdrup in 1898-1902.

Sverdrup's voyage was privately sponsored by the consul Axel Heiberg and the firm of brewers, Ringnes Brothers; but the Norwegian Government loaned him the steamer "Fram" and donated 20,000 kroner towards necessary repair of it.<sup>22</sup> In these circumstances Sverdrup's expedition can hardly be classed as either wholly government sponsored or privately sponsored, and it is not quite clear whether he was authorized or instructed to claim land on behalf of his government. During the four years of the expedition Sverdrup worked westwards and northwards from several bases in Ellesmere, and discovered, explored, and named Axel Heiberg, Ellef Ringnes, and Amund Ringnes Islands. In addition he explored for the first time part of Cornwall and Devon Islands and also most of the western coast of Ellesmere. All the lands that he discovered he claimed for Norway, as the following excerpt from his *New Land* makes clear: "An approximate area of one hundred thousand square miles had been explored, and, in the name of the Norwegian King, taken possession of."<sup>23</sup>

It is interesting to recall that Sverdrup's claims occurred only a few years after the Canadian Orders in Council of 1895 and 1897 had purported to include the entire archipelago within the new provisional district of Franklin.<sup>24</sup> Neither order in council said anything specifically about the possibility of there being undiscovered islands in Franklin District, but from the wording one would judge that any islands within the prescribed limits were intended to be included. At any rate, it is obvious from later actions and declarations of the Canadian Government that it did not recognize Sverdrup's claim, and that it regarded the islands he discovered as Canadian property.<sup>25</sup>

After Sverdrup's expedition the Norwegian Government took no official action to secure possession of the islands he had discovered. The only subsequent voyage of importance undertaken by Norwegian nationals in the arctic waters north of Canada was that of Roald Amundsen, who navigated the Northwest Passage for the first time between 1903 and 1906. Although Amundsen's lieutenant Godfred

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<sup>22</sup> Otto Sverdrup, *New Land*, Vol. I, pp. 1-2, Vol. II, p. 451.

<sup>23</sup> *Ibid.*, pp. 449-450.

<sup>24</sup> *Dominion Orders in Council* of Oct. 2, 1895, and Dec. 18, 1897, quoted in W. F. King, *op. cit.*, p. 12, p. 16.

<sup>25</sup> E.g. The passing of the Northwest Territories Amendment Act of July 20, 1905, which included the whole archipelago within the Northwest Territories; and the dispatching of Captain Bernier on several voyages to claim all the islands individually and collectively for Canada.

Hansen explored for the first time the unknown eastern coast of Victoria Island as far north as 72°, no territorial claims seem to have been made as a result of the voyage, either by Amundsen or the Norwegian Government.<sup>26</sup>

While nothing was done on behalf of Norway in the years following the voyages of Sverdrup and Amundsen, the Canadian Government made some effort to make good its claim to the entire region in question, by various proclamations, regulations, expeditions, and patrols.<sup>27</sup> Bernier does not appear to have reached the Sverdrup Islands, and the Eastern Arctic Patrol inaugurated in 1922 did not either, since ice bars the way as a rule even in summer, but both Stefansson and Staff-Sergeant Joy of the Mounted Police travelled great distances in these islands. Nevertheless by 1930 there was still no police post or other habitation established by the Canadian Government in the Sverdrup Islands, and Sverdrup's original claim might still be regarded a threat to Canadian sovereignty in the archipelago.

In 1930, however, the matter was conclusively settled. On August 8, Daniel Steen, the Norwegian Charge d'Affaires in London, sent a note to Arthur Henderson, then the Secretary of State for Foreign Affairs, which read as follows:

Acting on instructions from my Government I have the honour to request you to be good enough to inform His Majesty's Government in Canada that the Norwegian Government, who do not as far as they are concerned claim sovereignty over the Sverdrup Islands, formally recognise the sovereignty of His Britannic Majesty over these islands.

At the same time my Government is anxious to emphasize that their recognizance of the sovereignty of His Britannic Majesty over these islands is in no way based on any sanction whatever of what is named "the sector principle."<sup>28</sup>

A later note of the same day from the same official added that the first note had been dispatched on the assumption that the Canadian Government would not "interpose any obstacles to Norwegian fishing, hunting, or industrial and trading activities in the areas which the recognition comprises."<sup>29</sup>

The British reply was not made until November 5. On that day the British Charge d'Affaires in Oslo handed the Norwegian Foreign Minister a note, drawing attention to the fact that it was the established policy of the Canadian Government, as laid down by the Order in Council of July 19, 1926, and subsequent orders, that

<sup>26</sup> See A. P. Low, *op. cit.*, p. 54. From Low's narrative one would gather that Amundsen had been notified of the official Canadian Government cruise which Low commanded, and which was in arctic waters at the same time as Amundsen's.

<sup>27</sup> V. K. Johnston, "Canada's Title to the Arctic Islands," *Canadian Historical Review*, March 1933, p. 36.

<sup>28</sup> Dominion of Canada, *Treaty Series 1-18*, 1930, No. 17.

<sup>29</sup> *Ibid.*

the entire archipelago except southern Baffin Island was reserved for native hunting and trapping, and that the prohibition applied to Canadian whites as well as nationals of foreign countries.<sup>30</sup> Otherwise, the note said, the Canadian Government "would have pleasure in according any possible facilities," and if the regulations should be altered at any time in the future, any application by Norwegians would be treated with "the most friendly consideration."<sup>31</sup>

This reply seemed to satisfy the Norwegian authorities, for on the same day (November 5, 1930) a note was returned to the British Charge d'Affaires, saying that the Norwegian Government was able to accede to the terms therein. The Norwegian notes of August 8 and November 5 thus renounced any official Norwegian claim to the Sverdrup Islands, but since there had been no second mention of the sector principle on either side it may be presumed that the Norwegian objection to it, expressed in the note of August 8, still stood.<sup>32</sup>

Whatever claims Sverdrup himself might have had were also terminated a short time later. For the sum of \$67,000, paid to him by the Canadian Government, Sverdrup gave up in return all of his original maps, notes, diaries, and other documents relative to the expedition. The Canadian Press Dispatch of November 11, 1930, carrying news of the transaction, also contained a statement by Gideon Robertson, Acting Minister of the Interior, which paid tribute to the geographic and scientific value of Sverdrup's work, and to the importance of his discoveries for Canada.<sup>33</sup> Commander Sverdrup, by that time seventy years old and one of the deans of arctic explorers, did not long survive the event, as he died on November 26, two weeks later.<sup>34</sup>

Sverdrup's was actually the only major discovery of islands in Canadian arctic waters which was not made by either a British or Canadian national, or by an explorer in the employ of the Canadian Government. Had this discovery been followed by occupation it could perhaps have been developed into a territorial claim which might have threatened Canadian sovereignty in those regions. However, as the foregoing account has clearly shown, the Norwegian Government did little or nothing to follow up the discovery, and the above-described events of 1930 conclusively terminated any semblance of a claim on behalf of Norway that might still have been existent.

## Denmark

Another significant foreign claim in the Canadian Arctic Archipelago was the one put forward by Denmark. As in the previous case, it was made initially by a

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Manitoba Free Press*, Winnipeg, Nov. 12, 1930.

<sup>34</sup> *Ibid.*, Nov. 27, 1930.

single outstanding figure, but the Danish Government, unlike the Norwegian, for the time at least gave official endorsement to the claim.

Before the twentieth century the only Danish national of importance in the Canadian Arctic was the seventeenth-century explorer Jens Munk, who spent the winter of 1619-1620 in great hardship near the present site of Churchill in Hudson Bay, and claimed the surrounding area for Denmark.<sup>35</sup> There was no sequel or outcome of this claim. In more recent times Canadian and Danish territories have come into close contact at the extreme north of the continent, where Ellesmere faces northwest Greenland across a narrow passage of water. The proximity of Ellesmere and Greenland, and their remoteness from thickly settled regions, led to the development of a territorial dispute which came to a head in 1919.

Canadian efforts to establish sovereignty throughout the arctic islands were disrupted by the First World War.<sup>36</sup> After the war's end little was done to renew activity in this direction for several years, and as Ellesmere had not been permanently occupied by Canadians, it is not surprising that the Danes and Eskimos in nearby Greenland looked upon it as a no man's land. The nearest permanently occupied habitation was the Danish settlement at Thule, and local Eskimos used to range freely up and down the northwest Greenland Coast, often straying across to Ellesmere to obtain their meat supply from the numerous musk oxen there.

Acting upon a recommendation of the Canadian Musk Ox-Reindeer Commission, the Canadian Government sent a note on July 31, 1919, to the Danish Government, asking that they restrain Greenland Eskimos in the killing of Ellesmere musk oxen.<sup>37</sup> No reply was received from Denmark until April 26, 1920. On that day a formal letter from the Danish Government arrived, with an enclosure prepared by Knud Rasmussen, the well-known Danish explorer and director of the station at Thule. The two letters showed that as far as Denmark was concerned Canada had not established her sovereignty in Ellesmere. Rasmussen's letter said in part:

It is well known that the territory of the Polar Eskimo falls within the region designated as "No Man's Land," and there is therefore no authority in the district except that which I exercise through my station....I venture to close with the observation that, in order to

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<sup>35</sup> Rev. B. M. Hofrenning, *Captain Jens Munk's Septentrionalis* (Pine Creek, Minnesota, 1942), p. 20.

<sup>36</sup> V. K. Johnston, *op. cit.*, p. 35.

<sup>37</sup> This commission, appointed in May, 1919, was composed of the following members: Dr. J. C. Rutherford (chairman), J. S. McLean of the Harris Abattoir Company, J. B. Harkin (Commissioner of Dominion Parks), and Vilhjalmur Stefansson; "Report of Advisory Technical Board," in folder *Arctic Islands Sovereignty*, Public Archives, Ottawa. See also V. K. Johnston, *op. cit.*, pp. 36-38.

carry out the protective measures indicated in this statement, I shall need no assistance whatever from the Canadian Government.<sup>38</sup>

The official letter of the Danish Government endorsed Rasmussen's stand in the following terms:

The Government therefore submitted the matter to the Director of the above mentioned Thule Station, Mr. Knud Rasmussen, who thereupon has handed to the Administration of the Colonies of Greenland a statement on the subject, in which he comes to the conclusion that he will not need the assistance of the Canadian Government in order to carry out the protective measure indicated in his statement. Having acquainted themselves with the statement in question my Government think that they can subscribe to what Mr. Rasmussen says therein, and have instructed me to submit a copy of it to his Britannic Majesty's Government.<sup>39</sup>

A third, private letter was sent by Rasmussen to Vilhjalmur Stefansson, who was a member of the Musk Ox-Reindeer Commission. In it Rasmussen wrote as follows: "There is no question of our breaking Canadian Game Laws because we are not coming into Canada but a part farther north. It is not under Canadian jurisdiction."<sup>40</sup>

Several other aspects of the situation caused the Canadian authorities some concern. One was the long time that elapsed before the Danish reply to the original note of July 31, 1919, was received. Another was Rasmussen's cancellation of an appearance he had agreed to make before the Musk Ox-Reindeer Commission in the summer of 1920, and his sudden departure afterwards for Greenland. Rasmussen was known to be planning a long expedition which would take him right across northern Canada to Alaska, and it was thought possible that he might attempt to start a colony in Ellesmere or establish a claim to it for Denmark.<sup>41</sup>

A strongly-worded protest was sent to the Danish Government, on July 13, 1920. This Canadian note insisted that Ellesmere was not a "no man's land," and maintained that the whole island was Canadian territory. As no reply was received from the Danish Government, the Canadian Government resolved to take active steps to re-assert the Canadian claim to the entire archipelago. The outcome, probably at the instigation of the Advisory Technical Board which had dealt with the case, was the inauguration of the annual Eastern Arctic Patrol to maintain Canadian sovereignty throughout the arctic regions she claimed.<sup>42</sup> The first of these

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<sup>38</sup> "Report of Advisory Technical Board," as previously cited.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.* Rasmussen's expedition eventually materialized (Fifth Thule, 1921-1924) but his route lay a considerable distance south of Ellesmere, through Baffin Island.

<sup>42</sup> *Ibid.*

voyages, originally planned for 1921 but postponed a year owing to a delay, took place in 1922, and it has been a yearly event ever since.

In discussing the Canadian-Danish dispute over Ellesmere it is necessary to refer also to the international status of Greenland.<sup>43</sup> Greenland was originally colonized by Norsemen from Iceland, and was a Norwegian colony from 1261 until 1397, when Norway herself became a province of Denmark. The King of Denmark-Norway continued to rule Greenland after 1397, but contact was cut off during the fifteenth, sixteenth, and seventeenth centuries, and the original colonies disappeared. Denmark-Norway nevertheless still looked upon herself as owner of Greenland, although there was no actual exercise of sovereignty for over two hundred years. In 1721 the pastor Hans Egede, of Bergen, Norway, founded a new colony in western Greenland, which grew slowly during the succeeding years. When Denmark ceded Norway to Sweden by the terms of the Treaty of Kiel, January 14, 1814, she was able to retain not only Greenland, but Iceland and the Faeroes, for herself. Henceforth Denmark regarded herself as the only legitimate authority in Greenland, but when between 1915 and 1921 she tried to get other nations to acknowledge that she had complete sovereignty throughout all Greenland, she encountered a certain amount of opposition from both Great Britain and Norway.<sup>44</sup>

The United States, which had been the first nation approached by Denmark in respect to this matter, agreed in 1916 not to raise any objections to the extension of Danish sovereignty over all Greenland.<sup>45</sup> The United States could perhaps have built up a fairly strong case for her own interest in Greenland, owing to the latter's relation to American security and the Monroe Doctrine, and because of the activities of American explorers such as Hall, Kane, Hayes, Greely, Peary, and MacMillan in the northwestern part of the island. Nevertheless the United States decided to give up these possible grounds for a counter claim, and to accept instead the Danish offer of the latter's West Indian islands, since known as the Virgin Islands.<sup>46</sup> The American example was followed in 1920 by France, Italy, and Japan, and in 1921 by Sweden, all of these nations stating that they would make no objection to Denmark's extending her sovereignty over all Greenland.<sup>47</sup>

The Norwegian Government did not prove to be so easy to deal with. Norway had declared herself independent of Sweden in 1905, and had developed commercial interests that she regarded as of some importance to her in east

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<sup>43</sup> Permanent Court of International Justice, *Series A/B, Judgments, Orders, and Advisory Opinions*, Fascicule No. 53, "Legal Status of Eastern Greenland," April 5, 1933.

<sup>44</sup> *Ibid.*, p. 22 ff. The case gives not only the Court's decision but also an excellent summary of the previous history of Greenland. See also M. Vahl (editor in chief), *Greenland*, 3 vols. (Copenhagen: C. A. Reitzel, 1928); and Vilhjalmur Stefansson, *Greenland*.

<sup>45</sup> "Legal Status of Eastern Greenland," *op. cit.*, p. 36. See also "Report of Advisory Technical Board" in folder *Arctic Islands Sovereignty*.

<sup>46</sup> "Legal Status of Eastern Greenland," *op. cit.*, p. 36.

<sup>47</sup> *Ibid.*, p. 37.

Greenland. In 1919 Denmark had acceded to Norway's claim to Spitsbergen, hoping that Norway would reciprocate in Greenland. In spite of a statement by the Norwegian Foreign Minister in 1919 that Norway would make no difficulties, the Norwegian Government later refused to comply with the Danish request.<sup>48</sup> A bitter and lengthy diplomatic dispute followed, with Norway in 1931 officially claiming for herself Erik Raudes' Land in eastern Greenland, and Denmark promptly turning the matter over to the League of Nations. Norway argued before the Permanent Court of International Justice that Denmark had not even made good her sovereignty over the one-sixth of Greenland which was not covered by ice, and maintained that Denmark in seeking confirmation of her sovereignty between 1915 and 1921 must have had doubts about its validity herself, but the Court refused to uphold Norway's claim.<sup>49</sup> By a vote of twelve to two, the Court on April 5, 1933, ruled that at the critical date in 1931 Denmark possessed a valid title to sovereignty over all Greenland.<sup>50</sup>

Great Britain, unlike Norway, did not attempt to establish a counter claim to part of Greenland, although, like both the United States and Norway, she could perhaps have found some grounds for doing so. British explorers had also played a considerable part in exploring Greenland and its coastal waters, among them Frobisher, Davis, Hudson, Bylot, Baffin, Scoresby, Sabine, Inglefield, and Nares, and at various times northwestern Greenland had been shown on British maps as British territory.<sup>51</sup> Britain and Canada were chiefly interested, however, in what Greenland's fate might be if Denmark should ever dispose of it. This question had come before the Imperial War Cabinet in 1917, and this body had declared

In the event of any possible sale or disposal of Danish territory in Greenland we should have a prior claim to its acquisition and at the first favourable opportunity an undertaking should be secured from Denmark to this effect.<sup>52</sup>

Consequently, when approached by Denmark during 1919-1920, Great Britain at Canada's request offered to recognize Danish sovereignty over all Greenland if Denmark would grant Britain a prior right to acquire possession.<sup>53</sup> The United States objected to this condition, and John W. Davis, American Ambassador, in a

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<sup>48</sup> *Ibid.*, p. 36 and 57.

<sup>49</sup> *Ibid.*, p. 44.

<sup>50</sup> *Ibid.*, p. 75. Judges Anzilotti and Vogt cast negative votes and wrote dissenting opinions.

<sup>51</sup> E.g., Sydney Hall's *Map of North America* (1830), and Keith Johnston's *Map of North America* (1869), both in the Public Archives, Ottawa, show northwest Greenland as British territory.

<sup>52</sup> "Report of Advisory Technical Board," in folder *Arctic Islands Sovereignty*; also V. K. Johnston, *op. cit.*, p. 36.

<sup>53</sup> "Report of Advisory Technical Board," as previously cited; also V. K. Johnston, *op. cit.*, p. 36.

note to the British Government stated that his country refused to recognize in a third party the pre-emptive right to acquire ownership, and reserved for itself the right to take a position in the matter in the future.<sup>54</sup> The Danish Government also made known its objections to the British proposal, in a note to the latter dated July 20, 1920.<sup>55</sup> Shortly afterwards the British Government acceded to the Danish request without formal reservations, but asking that in view of Greenland's proximity to Canada the British Government be consulted if a transfer should ever be contemplated.<sup>56</sup>

The British-Danish negotiations regarding Greenland, and the Canadian-Danish dispute over Ellesmere, occurred at about the same time. It would seem likely that there was some connection between them, yet no direct connection is apparent. Britain conceded Denmark's claim to Greenland without, apparently, receiving in return an acknowledgement of Canada's claim to Ellesmere. Later events have perhaps made this matter inconsequential, but if the above arrangement was the one that actually was made, it would seem to have been a surprising concession on Britain's part.

One may conclude that the decision of the Permanent Court of International Justice in 1933 settled Greenland's status definitely, at least for the time being. During the Second World War Greenland was cut off from Denmark for five years following the German invasion of the latter country in April, 1940.<sup>57</sup> Acting in concert Great Britain, Canada, and the United States took prompt steps to assure the safety of Greenland, but the primary responsibility fell to the United States after the negotiation of a United States-Greenland Defense Agreement in April, 1941.<sup>58</sup> This agreement, signed by Cordell Hull and the Danish Ambassador in Washington Mr. Henrik de Kauffmann (without the consent of the Nazi-dominated Danish Government), granted the United States the right to build air bases in Greenland and take whatever other steps might be necessary for the defense of that island from Germany. The agreement was to last until it was agreed that the danger to the American continent had passed, but the sovereignty of a free Denmark over Greenland was guaranteed.<sup>59</sup> During the war both the Canadian and American Governments established consulates at Godthaab; the Canadian consulate was

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<sup>54</sup> "Report of Advisory Technical Board," as previously cited.

<sup>55</sup> "Legal Status of Eastern Greenland," *op. cit.*, p. 59.

<sup>56</sup> *Ibid.*, p. 59; V. K. Johnston, *op. cit.*, p. 37; "Report of Advisory Technical Board," as previously cited.

<sup>57</sup> See Yvon Beriault, *Les Problèmes Politiques du Nord Canadien* (Ottawa: Université d'Ottawa, 1942). This doctoral dissertation discussed the international status of the Canadian Arctic Archipelago and of Greenland, when the fate of the latter appeared uncertain.

<sup>58</sup> M. J. Dunbar, "Greenland During and Since the Second World War," *International Journal*, Spring 1950, p. 128.

<sup>59</sup> *Ibid.*, p. 128.

closed in 1946 but the American consulate was kept open.<sup>60</sup> Denmark resumed her administration of Greenland after the war's end; and some of the American personnel were evacuated and at least one base closed.<sup>61</sup> Several bases were, however, left in American hands, causing a certain amount of nervousness among Danes and Greenlanders as to whether their future control of the island was secure.<sup>62</sup> Since the agreement of 1941 guaranteed Danish sovereignty these fears would appear to be groundless, but a certain amount of irritation at the semblance of occupation which remains is perhaps understandable.

The British acceptance of Danish sovereignty throughout Greenland in 1920, and the decision of the permanent Court of International Justice in 1933, settled the status of Greenland, as far as Canada is concerned. Although Denmark has apparently never formally conceded Canada's claim to Ellesmere, that question would seem to be of little consequence either. Both the Danish and Canadian Governments have established rigid rules for nationals of foreign countries to observe, regarding the obtaining of permits for entry, and the observance of hunting, fishing and other regulations. The Canadian regulations were observed by the Danes, for example, during the Fifth Thule Expedition, when both Rasmussen and the Danish Government were warned that any discoveries of new land would not affect Canadian sovereignty throughout the entire area, and Rasmussen's archaeologist Dr. Mathiasen presented permits and passports at Pond Inlet which satisfied Staff Sergeant Joy of the Mounted Police.<sup>63</sup> Likewise the Canadian Eastern Arctic Patrol observed regularly all Danish regulations before landing in Greenland, for example in 1922, 1923, 1924, and 1925.<sup>64</sup> These formalities were doubtless a source of irritation to both sides at times, but good relations were nevertheless established and maintained. In speaking of the call at Godhaven in 1925 G. P. Mackenzie, in charge of the Eastern Arctic Patrol for that year, was able to remark on the "kindness and courtesy" shown to the members of his expedition, and added later that "the visit...resulted in a continuation of the friendly understanding established with the Danish officials there on previous expeditions."<sup>65</sup>

Since 1920 Denmark has apparently made no attempt to press her earlier claim in Ellesmere, nor has she made any other visible effort to dispute Canadian

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<sup>60</sup> *Ibid.*, p. 138

<sup>61</sup> Erling Porsild, "Greenland at the Crossroads," *Arctic* (Journal of the Arctic Institute of North America), Vol. 1, No. 1, 1948; M. J. Dunbar, *op. cit.*, p. 138; Helmuth Gottschalk, "Greenland Question-Mark," (Copenhagen: Overseas News Agency, July 30, 1948).

<sup>62</sup> *Ibid.*

<sup>63</sup> D. H. Miller, *op. cit.*, p. 238; J. D. Craig, *Canadian Arctic Expedition 1923* (previously cited), p. 23.

<sup>64</sup> J. D. Craig, *Canadian Arctic Expedition 1922*, p. 20; J. D. Craig, *Canadian Arctic Expedition 1923*, pp. 13-14; F. D. Henderson, *Canadian Arctic Expedition 1924*, p. 33; G. P. Mackenzie, *Canadian Arctic Expedition 1925*, pp. 44-45.

<sup>65</sup> *Ibid.*, p. 44; *ibid.*, p. 48.

sovereignty there. Consequently it may be said that the Danish claim of 1919, even if it had any validity when originally made, had lapsed through Denmark's failure to maintain it.

### United States

Of foreign countries the United States had undoubtedly been the most closely associated with the Canadian Arctic, particularly in recent years. Until the advent of World War II American activity in the Canadian Arctic consisted mainly of private exploratory, commercial, and scientific expeditions. During and since the war the needs of defense and the mutual desire to further development and scientific research have led the two governments to cooperate on many large northern enterprises.

In the field of exploration no American expeditions of note took place until the middle of the last century, at the time of the Franklin search. Then Henry Grinnell, a wealthy New York business man, outfitted several private search expeditions, the first of which was commanded by Lieutenant De Haven in 1850.<sup>66</sup> Since that time the list of American explorers in this region has been an impressive one, including such outstanding names as Kane, Hartstein, Hayes, Hall, Schwatka and Gilder, Greely, Peary, Cook, MacMillan, and R. Bartlett, the last-named a naturalized American citizen although Newfoundland-born. Aside from DeHaven's voyage into Lancaster Sound, Hall's first and second expeditions to Baffin Island and Melville Peninsula respectively, and Schwatka's and Gilder's search for Franklin remains on King William Island, the American explorations down to Peary and Cook were almost exclusively in and around Ellesmere Island. MacMillan and Bartlett, who have also spent a great deal of time there, in addition have travelled extensively throughout much of the remainder of the archipelago. Collectively the American expeditions resulted in the discovery of no new islands of any size, and their chief contribution was in the exploration of much of central and northern Ellesmere.<sup>67</sup> Peary was the first to attain the North Pole, travelling across the ice north of Ellesmere, but the "Crocker Land" which he thought he had discovered northwest of Ellesmere was later shown by MacMillan to be a mirage.<sup>68</sup> MacMillan had claimed on several occasions to have discovered small islands.<sup>69</sup>

Most of these expeditions were privately sponsored, but a few, such as Kane's, had a semi-official flavor, and others, such as Hartstein's, Hall's third, and Greely's, were clearly official ones, sponsored by the American Government. Although these expeditions frequently built cairns, deposited written records, and raised their country's flag at places they visited, there appear to have been few definite territorial

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<sup>66</sup> E. K. Kane, *The United States Grinnell Expedition*, (*supra*). Also see Part II (*supra*).

<sup>67</sup> See P. D. Baird, *op. cit.*, and W. F. King, *op. cit.*, for good brief summaries of American exploration in these regions.

<sup>68</sup> Donald B. MacMillan, *Four Years in the White North*, p. 321 (*supra*).

<sup>69</sup> *Ibid.*, p. 321; *Evening Citizen*, Ottawa, Sept. 10, 1949.

claims.<sup>70</sup> Perhaps the most definite was Peary's claim to the icy waste surrounding the North Pole in 1909, but in neither this nor any other instance has the American Government shown any apparent inclination to give official support to such claims.<sup>71</sup>

During the latter part of nineteenth century American whalers were active in northern waters, especially around Baffin Island, in Hudson Bay, and in the Beaufort Sea. These whaling voyages were private and commercial, and apparently resulted in no territorial claims on behalf of the United States. They are important in another respect, however, as they played an important part in the initiation of Canadian attempts to control the Arctic. The request of an American citizen for a whaling concession on Baffin Island in 1874 had much to do with setting in motion the complicated chain of events attending the transfer of British rights in the Arctic to Canada.<sup>72</sup> The alleged misdeeds of an American whaling captain in Hudson Bay, and the desire to collect customs duties, sell licenses, and otherwise regulate fishing and whaling, were prime factors in the initiation of patrol voyages under Low and Bernier in 1903 and afterwards.<sup>73</sup> Also, it was the lawlessness that prevailed at the winter headquarters of the American Beaufort Sea whaling fleet that caused the Mounted Police to descend upon the Western Arctic and establish a post at Herschel Island in 1903.<sup>74</sup> Apparently Canadian efforts to bring the arctic whaling industry under government control met with success, but in any case, the American whaling industry, in this region at least, had been declining in importance for some time.<sup>75</sup>

Speaking generally, the relations between Canada and the United States in matters respecting the Arctic have been marked by consistent cordiality, the only noteworthy instance of disagreement being the Alaska Boundary Dispute, which was settled by arbitration in 1903.<sup>76</sup> This dispute affected only the southern "Panhandle," and the rest of the boundary line (the 141st meridian established by treaty between Great Britain and Russia in 1825) was not called into question.<sup>77</sup>

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<sup>70</sup> W. F. King, *op. cit.*, pp. 26-34.

<sup>71</sup> Robert E. Peary, *The North Pole*, p. 297 (*supra*). Gustav Smedal (*op. cit.*, p. 29) says that the United States did not support Peary's claim because it was felt that "the Pole, being situated in the sea, could not be the subject of sovereignty."

<sup>72</sup> H. R. Holmden in folder *Arctic Islands Sovereignty* (*supra*).

<sup>73</sup> A. P. Low, *op. cit.*, p. 3; J. E. Bernier, *Master Mariner and Arctic Explorer*, p. 305 (*supra*).

<sup>74</sup> N. W. M. P. Report for 1903.

<sup>75</sup> J. E. Bernier, *Cruise of the "Arctic" 1906-1907*, pp. 11, 28, 43, 72, *Cruise of the "Arctic" 1908-1909*, pp. 273, 277, 281-282; W. W. Stumbles and Others, *Cruise of the "Arctic" 1910-1911*, pp. 3, 83-84; W. F. King, *op. cit.*, pp. 27, 28, 34; A. P. Low, *op. cit.*, pp. 265, 277-278.

<sup>76</sup> Alaska Boundary Award, Oct. 20, 1903, in *Treaties and Conventions Between Great Britain and Foreign Powers*, Vol. XXV, pp. 1183-1187.

<sup>77</sup> *Ibid.*, Vol. III, pp. 362-366.

This meridian had still to be accurately surveyed - a task that was not accomplished until 1907-1913, when Thomas Riggs as the representative of the United States and J. D. Craig as Canada's successfully carried the job to completion.<sup>78</sup>

Although, as stated, the Alaska Boundary occasioned the only serious open dispute between Canada and the United States in regard to their northern territories, it is nevertheless apparent that some diplomatic correspondence between the two occurred in the early 1920's, concerning the matter of sovereignty over polar regions. Apparently this correspondence has never been made public, but it is possible to piece together the main details of the story from other sources. One matter discussed was the status of Wrangel Island, another was the MacMillan expedition of 1925, and another was the proposed construction of an American base in the Canadian Arctic.<sup>79</sup>

MacMillan, who about this time was making almost yearly trips to the Canadian Arctic, had reasserted the earlier unofficial American claims to central Ellesmere Island in 1914, but had nevertheless obtained research, hunting and trapping permits from the Canadian Department of the Interior in accordance with Canadian Government regulations, before making his 1921 - 1922 trip.<sup>80</sup> Apparently this formality was overlooked before the expedition of 1925 was begun, an omission which would seem significant for at least two reasons, first, because the expedition was, in part at least, sponsored by the American Government, and second, because it involved airplane flights and also, it would seem, the proposed establishment of an American base on Canadian arctic territory.<sup>81</sup> That the Canadian Government protested verbally and also took active steps to assert its own sovereignty is evident. While speaking in the Canadian House of Commons on June 10, 1925, about Canadian claims in the Arctic generally, Mr. Charles Stewart, Minister of the Interior, spoke as follows: "A dispatch dealing with the subject was

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<sup>78</sup> International Boundary Commission, *Joint Report Upon the Establishment of the Boundary Between the United States and Canada along the 141st Meridian* (Washington: Department of State, 1918); also T. Riggs, "Running the Alaska Boundary", *The Beaver*, Sept. 1945. Riggs later became Governor of Alaska and U. S. Commissioner of International Boundaries. Craig commanded the Eastern Arctic Patrol in 1922 and 1923.

<sup>79</sup> See Part B of this chapter (*supra*); David Hunter Miller, *op. cit.*, p. 238. See also T. A. Taracouzio, *Soviets in the Arctic*, p. 328 (*supra*).

<sup>80</sup> D. S. Robertson, *To the Arctic with the Mounties*, p. 284 (*supra*); V. Kenneth Johnston, "Canada's Title to the Arctic Islands," p. 35 (*supra*); A. E. Millward, *Southern Baffin Island*, p. 43 (*supra*): "In accordance with Canadian Government regulations Dr. MacMillan applied for a permit, from the Department of the Interior, to undertake certain scientific and ornithological researches in the northern regions. This permit was duly issued, and Dr. MacMillan also paid the necessary fee for a Non-Resident, Non-British Hunting and Trapping licence, for five of his men and himself."

<sup>81</sup> Cf. David Hunter Miller, *op. cit.*, p. 242: "The MacMillan expedition of 1925 must be regarded as in effect an official expedition of our Government."

sent to Washington, to which we have had no reply.”<sup>82</sup> It seems probable that “the subject” referred to was MacMillan’s expedition. The episode is also mentioned briefly in a recent article by Richard Finnie, who accompanied the annual Canadian Government cruise of that year, as follows:

Meanwhile the “Arctic” took a run over to Etah, which was partly for the purpose of asking Commander Donald B. MacMillan and Commander Eugene F. McDonald why they were letting Lieut.-Commander Richard Byrd fly over Ellesmere Island, or if and why members of the MacMillan Expedition were collecting zoological or archaeological specimens over there, without first having applied to the Canadian Government for an exploration permit.<sup>83</sup>

Apparently the Canadian protests had some effect, upon MacMillan at least, as he applied for and obtained the requisite permits before embarking on his voyages of 1926, 1927, and 1928.<sup>84</sup> It is also noticeable that the proposed American base was not established. Whether or not the United States formally acknowledged Canada’s claims to sovereignty at this time remains, however, an unanswered question. The Russian writer V. L. Lakhtine assumes that she did, and in discussing the episode writes as follows:

The Canadian Government declared in a sufficiently emphatic way, that in the event of any Polar attempted annexations by the United States of America, the Government would not fail to stand in defense of her indisputable rights to Polar lands. As a result of the diplomatic correspondence that ensued, the Government of the United States of America relinquished its claims in the Canadian sector, and acknowledged the sovereign rights of Canada there.<sup>85</sup>

It should be observed that Lakhtine was writing with the avowed purpose of justifying the sector principle, so beneficial from a Russian point of view, and this may have exaggerated the degree of American acquiescence in the Canadian claim. It does seem likely, however, that if the United States did not formally acknowledge Canadian sovereignty, she at least refrained from making an issue of it, as incidents such as that of 1925 do not appear to have occurred again.

A new era opened in both Alaska and the Canadian North with the onset of World War II. Following the establishment of the Permanent Joint Board of Defense in August, 1940, the Canadian and American Governments cooperated in

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<sup>82</sup> Canada, *House of Commons Debates*, Vol. LX, No. 84 (June 10, 1925), p. 4238. Noted by David Hunter Miller, *op. cit.*, p. 238.

<sup>83</sup> Richard Finnie, “First Short-Wave in the Arctic,” *The Beaver*, March 1951, p. 23.

<sup>84</sup> A. E. Millward, *Southern Baffin Island*, pp. 100-101 (*supra*).

<sup>85</sup> V. L. Lakhtine, “Rights Over the Arctic,” *American Journal of International Law*, Vol. XXIV, 1930, pp. 706-707.

a huge wartime program of northern development and preparation for defense.<sup>86</sup> The United States assumed most of the expense and did most of the work in these projects, with the approval of and some assistance from Canada, the general understanding being that American installations on Canadian territory would be returned to Canada after the war was over.<sup>87</sup> The projects included the building of the Alaska Highway and the Canol Pipeline, the development and expansion of the already-existing Northwest Staging Route, by means of which aircraft and lend-lease goods were flown to Russia via Alaska, the development of the "Crimson" and Northeast Staging Routes to Europe across northeastern Canada and Greenland and the construction of a system of weather stations in the Arctic.<sup>88</sup>

In all aspects of these vast schemes the accent was on cooperation, speed, and efficiency, the main purpose being to facilitate the war effort; and narrow rights of sovereignty were not stressed by either side. It was accepted practice for civilians and servicemen of each country to work and serve in the territory of the other, and although many more Americans were to be found in Canada than vice versa, Canadian military personnel were stationed in Alaska and a small force assisted in the recapture of Kiska in 1943.<sup>89</sup>

Hoping to continue northern development in the postwar period, the two governments in January 1943 jointly sponsored a North Pacific Planning Project, which was to include those territories bounded by the Arctic Ocean, the Pacific Ocean, the fifty-third parallel of latitude, and the Athabaska-Slave-Mackenzie River, or, in other words, Alaska, Yukon, northern British Columbia, northwestern Alberta, and Mackenzie District west of the Mackenzie River. When the United States withdrew from the project in June 1944, the Canadian government

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<sup>86</sup> The American-Canadian Permanent Joint Board of Defense was set up by the Ogdensburg Agreement in August, 1940. See *Department of State Bulletin III*, Aug. 24, 1940, p. 154.

<sup>87</sup> C. C. Lingard, "Administration of the Northland," in *The New North-West*, pp. 30-31 (*supra*); Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," in *Behind the Headlines* (*supra*).

<sup>88</sup> Raymond Arthur Davies, *Arctic Eldorado* (*supra*); *ibid.*, also Richard Finnie, *Canol* (San Francisco: Ryder and Ingram, 1945), also C. C. Lingard and R. G. Trotter, *Canada in World Affairs Sept. 1941- May 1944* (Toronto: Oxford University Press, 1950), pp. 24-34, 65-77; Eric Harrison, "Strategy and Policy in the Defence of Canada," *International Journal* (Toronto: Summer, 1949), p. 217.

<sup>89</sup> *The Polar Times*, Dec., 1943, p. 8. Also see Charles Camsell, "The New North," *Canadian Geographical Journal*, Dec., 1946, p. 267: "...the close interlocking of United States and Canadian interests in the defense of North America have called for equally close association in their military effort, in which the strict limitations of national sovereignty have not been insisted upon. This cooperation, however, is based upon and made possible by assurance and complete return to the original status." Camsell's article was originally published in the *Journal of the Royal Society of Arts* (London, June 1945).

continued its part of the scheme alone, adding to it northeastern Alberta and Mackenzie District east as far as 110° west longitude.<sup>90</sup>

At the war's end American projects in Canadian territory were gradually turned over to Canada, according to the agreements previously made. In 1946 Canada took over the part of the Alaska Highway within her territory.<sup>91</sup> The United States had already abandoned the Canol Project in 1945, and the pipeline was later dismantled and sold at a very small price.<sup>92</sup>

Canada paid for the various air fields and other installations constructed by the United States, and these and American weather stations were gradually taken over, one consideration being that Canadian personnel had first to be found to man them.<sup>93</sup> This process took a considerable amount of time. Fort Chimo and Mingan airfields were not taken over by the Royal Canadian Air Force until November 1949, for example, and at this date a few American personnel were still left on the Northwest Staging Route.<sup>94</sup> The slowness of such transfers aroused some comment as to the appropriateness of having American servicemen and installations on Canadian soil in peacetime.<sup>95</sup>

The day of huge northern projects is over, for the present at least, but the international situation and the need for scientific information have led the American and Canadian Governments to continue their wartime cooperation in the Arctic in a more modest postwar program. A policy of continued collaboration in such matters was announced in both Ottawa and Washington on February 12, 1947, Prime Minister King stressing that there was nothing in the arrangement which

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<sup>90</sup> C. Camsell (director), *Canada's New Northwest* (published under auspices of the North Pacific Planning Project, 1947), pp. 5-7.

<sup>91</sup> *The Polar Times*, Dec., 1945, p. 18; *Yukon Territory 1950*, p. 21 (*supra*).

<sup>92</sup> *The Polar Times*, Dec., 1945, p. 19; Richard L. Neuberger, "The Great Canol Fiasco," *The American Mercury*, April 1948, pp. 415-421.

<sup>93</sup> Trevor Lloyd, "Aviation in Arctic North America and Greenland," *The Polar Record*, Jan.-July 1948 (published Dec. 1948), pp. 163-171; Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," *Behind the Headlines*, p. 13 (*supra*); Trevor Lloyd, "Canada's Strategic North," *International Journal*, p. 145 (*supra*); *The Polar Times*, Dec., 1945, pp. 17-18. Also see Canadian House of Commons *Debates*, Aug. 1, 1944, Vol. LXXXII, p. 5837. Prime Minister King, in announcing the purchase by the Canadian Government of all permanent installations built in Canada for the Northeast Staging Route, gave the following reasons for the purchase: "In the first place it is believed that, as part of the Canadian contribution to the war, this country should take responsibility for the provision of facilities in Canada and Labrador required for the use of Canadian, United Kingdom, and United States forces. In the second place it was thought undesirable that any other country should have financial investment in improvements of permanent value such as civil aviation facilities for peacetime use in this country."

<sup>94</sup> *The Arctic Circular*, Jan., 1950, pp. 11-12; *ibid.*, p. 12.

<sup>95</sup> E.g., Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," *Behind the Headlines* (*supra*).

might have the effect of impairing Canadian sovereignty.<sup>96</sup> A considerable number of northern military, naval, and air maneuvers have been conducted by both countries since the war's end, often as joint exercises. These included Exercise Musk Ox in 1946 (primarily Canadian but with a few Americans present), the naval Exercise Noramex in 1949 (almost wholly American but with at least one Canadian warship taking part), and the joint army and air force Exercise Sweetbriar along the Alaska Highway in the winter of 1950.<sup>97</sup>

Other than military maneuvers such as those mentioned in the last paragraph, the most significant joint enterprises in the postwar period have been the establishment of an arctic radar network, and of a number of weather stations in the most northerly islands of the archipelago, far to the north even of those established during the war. Up to the present time the new stations constructed have been "Eureka" at Slidre Fiord on Ellesmere Island in 1947, "Resolute" on Cornwallis Island, also in 1947, "Isachsen" on Ellef Ringnes and "Mould Bay" on Prince Patrick Islands, both in 1948, and "Alert" at the northern tip of Ellesmere, the most northerly weather station in the world, in 1950.<sup>98</sup> A Canadian is in charge at each of these posts, but the crews are mixed, and the United States has, up to the present at least, done most of the work in connection with providing the yearly quota of supplies.<sup>99</sup>

A rather delicate point in Canadian-American postwar relations has been the American bases still maintained in Newfoundland. These were established under a long-term agreement made during the war, and when Newfoundland joined the

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<sup>96</sup> Canada, *House of Commons Debates*, Feb. 12, 1947, pp. 359-361 (Daily Edition).

When the proposal for such continued collaboration was made by the United States, some months earlier, James Reston wrote as follows in the *New York Times*: "It is fully recognized here that all Canadian rights of sovereignty would have to be maintained...."

Consequently, if the Canadian Government agrees, the United States has indicated its willingness to help finance the joint venture while protecting to the full the sovereignty of the Canadian people." *New York Times*, May 18, 1946. See also Hans W. Weigert, "U.S. Strategic Bases and Collective Security," *Foreign Affairs*, Jan. 1947, p. 260.

<sup>97</sup> Lt. Col. G. W. Rowley, *op. cit.*; *Arctic Circular*, Dec., 1949, p. 107; *New York Times*, Feb. 13-23, 1950.

<sup>98</sup> Rt. Hon. C. D. Howe in *Canadian House of Commons Debates*, March 3, 1947; *Polar Record*, Jan.-July 1947 (published Dec. 1947), pp. 95-97; *ibid.*, July 1950, pp. 602-605; *Arctic Circular*, Vol. I, No. 1, 1948, pp. 2-3; No. 6, pp. 68-69; No. 8, pp. 90-91; Vol. II, No. 6, 1949, pp. 70-71; Vol. III, No. 4, 1950, pp. 46-48; *Polar Times*, June, 1947, p. 26; *ibid.*, Dec. 1947, p. 20; *Ottawa Journal*, Sept. 8, 1949; *Edmonton Journal*, Jan. 30, 1950; *New York Times*, Sept. 2, 1950.

<sup>99</sup> *Edmonton Journal*, Jan. 30, 1950; *Ottawa Journal*, Sept. 8, 1949; *Polar Record*, Jan. - July 1947 (published Dec. 1947) p. 96; *Polar Record*, July 1950, pp. 602-605.

Dominion they were left in American hands.<sup>100</sup> There has been a certain amount of speculation as to their fate, and some agitation in Canada for their return. There have been reports that the cession of these bases to Canada might become the subject of official discussion, but in September 1950 the announcement was made that an American Northeast Command had been established, with headquarters at Pepperell Air Base, Newfoundland, thus indicating that such a step was not contemplated in the immediate future.<sup>101</sup>

In conclusion, it would appear reasonable to say that the United States no longer has any grounds for a territorial claim within the Canadian Arctic, and, as far as can be learned, the American Government has not recently manifested any official inclination to put such a claim forward. It is clear, however, that Canada has in the past occasionally regarded the United States as an actual or potential threat to her sovereignty in this region, and that the question has been raised and discussed even in recent years. Such Canadian fears have had some justification, owing to a variety of circumstances - the unofficial or semiofficial claims of American explorers and the activities of American whalers, the printing of American maps showing parts of the archipelago, particularly Ellesmere, either as unowned or American territory, agitation in the United States for securing additional footholds in the Arctic, and the long period of lethargy on the part of the Canadian Government in making its own claims secure.<sup>102</sup> However, through failure to follow up the claims of its explorers or actively to prosecute its own interests in this region, the United States would appear to have lost the opportunity of making territorial acquisitions here, and American claims may be said to have perished through dereliction. In recent years the official American attitude had obviously been that the United States harbors no territorial designs upon the Canadian Arctic, and the understanding between the two countries has just as obviously been that, in spite of the privileges given to the United States during and since the war, Canadian sovereignty will be respected. Both countries are vitally and commonly interested in the problems of defense and scientific research, and there should be every reason to hope for a continuation of the fruitful cooperation which had prevailed in these matters for over a decade. At the same time, it will continue to be the responsibility of the Canadian Government to maintain constantly the stand it has taken, and also to do

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<sup>100</sup> A.M. Fraser, "Newfoundland's Contribution to Canada," *International Journal*, Summer, 1949, pp. 250-260, especially p. 251. See also Robert A. MacKay (ed.), *Newfoundland: Economic, Diplomatic, and Strategic Studies* (Toronto: Oxford University Press, 1946).

<sup>101</sup> *New York Times*, Jan. 1, 1950; *New York Herald Tribune*, Sept. 20, 1950.

<sup>102</sup> W. F. King, *op. cit.*, p. 55 ff. On page 72, for example, Dr. King lists a volume of maps, *The Century Dictionary and Cyclopedia* (New York: Century Company, 1899), containing several maps showing Ellesmere Island as American property; Cf. Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," p. 1 (*supra*): "United States military men refer, whether nervously or menacingly, to the 'undefended roof of North America,' and claim the right to return en masse to the Canadian northland which they left so recently."

all possible to develop and occupy the region, if it wishes its claims to be respected abroad.

The question raised earlier, as to whether or not the United States had ever formally acknowledged Canadian claims in the Arctic to be valid, would appear to remain in some doubt even today. It is obvious that the American Government no longer entertains any territorial pretensions on its own behalf in this region, also that an agreement of some sort exists to the effect that Canadian sovereignty will be respected, but on the other hand, no formal document has come to light embodying outright recognition. It is true that numerous statements have been made, perhaps on doubtful authority, to the effect that the United States has acknowledged the Canadian claim. One such statement was that by the Russian writer Lakhtine, already referred to.<sup>103</sup> Another, of somewhat similar import, was made by the American Major General William Mitchell in 1931, when he wrote, "The United States very foolishly renounced its claims to Grant Land (American name for the north end of Ellesmere Island) in the Arctic when we purchased the Virgin Islands."<sup>104</sup> In 1946 Trevor Lloyd wrote, "There are no competing claims. The United States has recognized Canadian ownership as have Norway and Denmark...."<sup>105</sup> On the other hand, David Hunter Miller in the 1920's wrote that "The sole declaration we have made regarding Arctic regions is the renunciation of any possible rights based on discovery or otherwise in Greenland" and, in the same article, "...while it cannot be asserted that Canada's title to *all* these islands is legally perfect under international law, we may say that to almost all of them it is not now questioned...."<sup>106</sup> The continued discussion of the subject at least indicates that, if formal American recognition has been extended, it has not been publicized.

On the whole, the best guess would appear to be that if there is a formal document on the subject it has not been made public, but that there probably is none; and in its place there exists a sort of "gentlemen's agreement," at high government levels, to the effect that the United States has no territorial aspirations in this region, and that Canadian sovereignty will be respected. Actually, it may be noted, the United States would probably hesitate to concede formally all that Canada might claim. The sector principle, for example, which has been used by the Canadian Government to delimit its territorial claims in the Arctic, has been denied outright by the United States in both the Arctic and the Antarctic.<sup>107</sup> That being the

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<sup>103</sup> V. L. Lakhtine, *op. cit.*, pp. 706-707 (*supra*).

<sup>104</sup> Major General William Mitchell, "The Next War - What About Our National Defence," *Liberty*, June 27, 1931, quoted in D. S. Robertson, *To the Arctic with the Mounties*, p. 118, *supra*.

<sup>105</sup> Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," p. 9 (*supra*).

<sup>106</sup> David Hunter Miller, *op. cit.*, p. 242; *ibid.*, p. 240.

<sup>107</sup> Green H. Hackworth, *Digest of International Law* (Washington: Government Printing Office, 1940), Vol. I, Sec. 67, pp. 463-464 (quoting Secretary of the Navy Adams to

case, it is probable that the United States, while not anxious to dispute Canadian ownership of actual land territory in the Arctic, would be more reluctant to acknowledge Canadian sovereignty over expanses of water and ice beyond the three-mile territorial limit, and over the airspace above these regions. Any of all of these four factors—the sector principle, sovereignty over arctic waters, sovereignty over arctic ice, and sovereignty over arctic airspace—might prove to be a stumbling block to a formal agreement. These are discussed in the last four chapters of this work, but for the present it could be noted that they might come to a head in the near future, especially as transpolar air traffic expands in volume. If such should be the case, it might be necessary for Canada, the United States, and other interested nations to sit down at a conference table and resolve their disagreements.

The main question raised in this chapter has now been answered, and it may be stated with confidence that today no foreign nation entertains any actual territorial claim within the Canadian Arctic. France's claims were conclusively terminated in the eighteenth century. Great Britain's rights were handed over to Canada in the nineteenth. Russia has never put forward any claim in the Canadian Arctic, and by her own municipal law could not do so. Norway formally acknowledged Canadian sovereignty in 1930. Any Danish and American claim, such as they may have been, have either been terminated by formal or informal agreement, or if not, have been allowed to perish through silent acquiescence and by dereliction. No other nation has ever had, or could have at the present time, any legitimate claim in the Canadian Arctic. Consequently one may agree with Trevor Lloyd's statement in 1946, at least as far as land territory is concerned, that "there are no competing claims."<sup>108</sup>

Having dealt with the question from a negative point of view, and discussed the elimination of foreign claims, it is now necessary to adopt a positive approach, and attempt to assess the legitimacy of Canada's own claim to the land territory north of her mainland. This question forms the subject of the next chapter.

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Secretary of State Stimson, Sept. 23, 1929, *MS Department of State*, file 800.014 Arctic/26; *The Polar Times*, Dec., 1946, p. 11, p. 13; *New York Times*, Dec. 28, 1946.

<sup>108</sup> Trevor Lloyd, "Frontier of Destiny - The Canadian Arctic," p. 9 (*supra*). See also V. Kenneth Johnston, "Canada's Title to the Arctic Islands," especially p. 40 (*supra*).

## CHAPTER 15

# THE QUESTION OF SOVEREIGNTY OVER REMOTE AND THINLY SETTLED LANDS: CANADA'S TITLE TO THE ARCTIC ISLANDS NORTH OF HER MAINLAND

Historically speaking, a great proportion of polar territory has been “terra nullius”—in other words, unoccupied or uninhabited land. This is true of both the Arctic and the Antarctic, but particularly the latter. Although there has been a limited occupation of some of these territories in recent years, and settlements have arisen, especially in the Russian, Danish, and Canadian Arctic, yet large parts of the genuinely polar lands in both northern and southern hemispheres remain virtually without inhabitants. The entire Antarctic continent remains an empty land, except for a few weather stations and explorer's bases, and most of Greenland is uninhabited. In the Canadian Arctic, also, there are large expanses of thinly populated territory on the northern mainland, and numerous uninhabited islands in the archipelago. Nevertheless all polar territories have now been claimed (in several instances by more than one government), except for a small sector of Antarctica between the New Zealand and Chilean claims.<sup>1</sup> Since polar lands are claimed but only partly occupied, and since occupation has been one of the main requirements of modern international law in the achievement of complete sovereignty over territory, the question arises as to whether title to such lands is perfect. The present chapter discusses the acquisition of sovereignty over backward, remote, or uninhabited lands in general and polar lands in particular, with special attention being devoted to Canada's title to the islands north of her mainland.<sup>2</sup>

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<sup>1</sup> Even this has been claimed unofficially, on behalf of the United States, by American explorers. See Green H. Hackworth, *Digest of International Law* (Washington: Government Printing Office, 1940), Vol. I, p. 454.

<sup>2</sup> Some of the outstanding books in this field are M. F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (London: Longmans, Green and Co., Ltd., 1926); Gustav Smedal, *Acquisition of Sovereignty over Polar Areas* (Oslo, 1931); Julius Goebel Jr., *The Struggle for the Falkland Islands* (New Haven: Yale University Press, 1927); Charles Salomon, *L'Occupation des Territoires Sans Maitre* (Paris: A. Giard, 1889); Olaf-M. Smith, *Le Statut Juridique des Terres Polaires* (Paris: Rousseau, 1934); A. S. Keller, O. J. Lissitzyn, and F. J. Mann, *Creation of Rights of Sovereignty through Symbolic Acts 1400-1800* (New York: Columbia University Press, 1938); Naval War College, “Jurisdiction and Polar Areas,” *International Law Situations with Solutions and Notes 1937* (Washington: Government Printing Office, 1939); T. A. Taracouzio, *Soviets in the Arctic* (New York:

It has been stated by the renowned authority L. F. L. Oppenheim that there are in international law five basic methods by which a state may acquire a legal title to territory. These five methods are accretion, conquest or subjugation, cession, prescription and occupation.<sup>3</sup> In addition, there are a number of other relevant factors, which, although not usually considered decisive in themselves as means of achieving sovereignty, may nevertheless have considerable political, geographical, or strategic significance. Among these are continuity, contiguity, the hinterland, and spheres of influence or interest. Also, discovery is often considered to give an "inchoate" or beginning title, which must be perfected by other means in order to become completely valid, and exploration, which is often allied with discovery, would appear to merit some consideration, particularly in polar regions. A last feature is the sector principle, which is believed to be of sufficient importance in this subject to require a separate chapter.

Accretion is the addition of territory through physical changes, and may occur in a variety of ways, as, for example, through an uprising of land, a receding of water,

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Macmillan Co., 1938); Elmer Plischke, *Jurisdiction in the Polar Regions* (Worcester: Doctoral Dissertation Written at Clark University, 1943); Green H. Hackworth, *Digest of International Law* (Washington: Government Printing Office, 1940), Vol. I. See also the additional books and articles cited in the following pages.

<sup>3</sup> L. F. L. Oppenheim, *International Law*, 7th edition, edited by H. Lauterpacht (London: Longmans, Green and Co., 1948), Vol. I, p. 498. Of the many valuable general works which discuss modes of acquiring territory, the following are among the most outstanding: John Westlake, *International Law* (Cambridge: Cambridge University Press, 1910), Part I, pp. 86-120; William E. Hall, *A Treatise on International Law*, 8th edition, edited by A. Pearce Higgins (Oxford: Clarendon Press, 1924), chap. 2, pp. 125-211; T. J. Lawrence, *The Principles of International Law*, 7th edition, revised by P. H. Winfield (New York: Heath and Co., 1923), pp. 136-198; Georg Schwarzenberger, *International Law* (London: Stevens and Sons Limited, 1949), Vol. I, pp. 135-160; J. L. Brierly, *The Law of Nations* (Oxford: Clarendon Press, 1949), pp. 142-172; John Bassett Moore, *A Digest of International Law* (Washington: Government Printing Office, 1906), Vol. I, pp. 258-301; A. S. Hershey, *The Essentials of International Public Law and Organization* (New York: Macmillan Co., 1935), Part 2, pp. 268-390; C. G. Fenwick, *International Law* (New York: Appleton-Century-Crofts, Inc., 1948), pp. 342-369; C. C. Hyde, *International Law, Chiefly as Interpreted and Applied by the United States*, 2nd revised edition (Boston: Little, Brown and Co., 1945), Vol. I, pp. 319-394; Paul Fauchille, *Traite de Droit International Public*, huitieme edition (Paris: Rousseau, 1925), Tome I, Deuxieme Partie. There is by no means unanimity among writers with regard to modes of acquiring territory, as Oppenheim points out (*op. cit.*, p. 497); for example, W. E. Hall adds gift but omits conquest (*op. cit.*, p. 125), while C. G. Fenwick adds treaties of peace and assimilation (*op. cit.*, p. 343). Oppenheim's classification is given, however, because it is perhaps the most common and is frequently cited. He subdivides his five methods into derivative and original modes, considering cession to be a derivative mode and the remaining four original (*op. cit.*, p. 498).

or the alluvial action of rivers or the ocean.<sup>4</sup> It is most noticeable at the mouths of large rivers such as the Mississippi, the Ganges, and the Nile. Accretions may result from the operation of the forces of nature, or may on the other hand be the consequence of the efforts of man, an example of the latter being the diked land of Holland. As a general rule the lands resulting from such processes accrue automatically to the littoral state. Accretion as a means of acquiring new territory is of comparatively small significance in polar regions, and international disputes involving accretive lands in these areas are conspicuous by their absence.<sup>5</sup> A considerable amount of delta land has been built up at the mouths of some of the arctic rivers, notably the Mackenzie in Canada, but there would appear to be little doubt that in such cases ownership falls, by the rule just stated, to the littoral state.

Conquest is, according to Oppenheim, the taking possession of enemy territory through military force in time of war. He makes a distinction between conquest and subjugation, saying that the former refers merely to the taking of possession during a war, and is not in itself a mode of acquisition, unless followed by subjugation and formal annexation.<sup>6</sup> Others appear to ignore or disapprove of this distinction.<sup>7</sup> Brierly says that in practice titles by conquest are rare, because an annexation of territory is usually carried out by a treaty of cession after a war has ended.<sup>8</sup> Most authorities feel that there are strong moral objections to the legal recognition of a title by conquest, but admit that in many cases such title can hardly be denied.<sup>9</sup> The Stimson Doctrine of Non-Recognition was directed against the acquisition of territory by conquest, but cannot be said to have won the day, since this method of

<sup>4</sup> L. Oppenheim, *op. cit.*, pp. 514-518; also C. C. Hyde, *International Law*, Vol. I, pp. 355-356 (*supra*); A. S. Hershey, *op. cit.*, p. 276; C. G. Fenwick, *op. cit.*, pp. 355-356.

<sup>5</sup> There have been some outstanding cases in more temperate regions, however. See *The Case of the Anna*, 5 C. Rob. 373, cited in L. Oppenheim, *op. cit.*, p. 517, and given in abridged form in J. B. Moore, *A Digest of International Law*, Vol. I, pp. 269-270 (*supra*); also *The Chamizal Arbitration*, United States and Mexico (Washington, June 15, 1911), summarized in Green H. Hackworth, *Digest of International Law*, Vol. I, pp. 411-417 (*supra*).

<sup>6</sup> L. Oppenheim, *op. cit.*, p. 518. Cf. Green H. Hackworth, *Digest of International Law*, Vol. I, p. 427: "Conquest is the taking possession of an enemy state by force; it becomes a mode of acquisition of territory - and hence of transfer of sovereignty - only if the conquered territory is effectively reduced to possession and annexed by the conquering state." See also T. J. Lawrence, *The Principles of International Law*, pp. 159-160: "Title by conquest differs from title by cession in that the transfer of the territory is not effected by treaty, and from title by prescription in that there is a definite act or series of acts other than mere possession, out of which the title arises."

<sup>7</sup> E.g., J. L. Brierly, *op. cit.*, p. 147; A. S. Hershey, *op. cit.*, p. 277.

<sup>8</sup> J. L. Brierly, *op. cit.*, p. 147.

<sup>9</sup> J. L. Brierly, *ibid.*, pp. 147-149; A. S. Hershey, *op. cit.*, pp. 277-278; M. F. Lindley, *op. cit.*, p. 160; G. Schwarzenberger, *op. cit.*, Vol. I, p. 141.

acquiring territory had continued to receive recognition.<sup>10</sup> It has, however, been of only slight significance in the polar regions, where examples of anything resembling conquest are hard to find. Argentina does, of course, still dispute British sovereignty over the Falkland Islands, claiming that she was deprived of them by force, and the Soviet Government sent the gunboat "Red October" to take forcible possession of Wrangel Island in 1924, but these are about the only such instances that can be found.<sup>11</sup>

Cession is the formal transfer of territory by treaty or convention from one state to another, whether freely or under compulsion. It may result from a successful war, from peaceful negotiations, or from a plebiscite; it may involve part or all of a state's territory; it may be gratuitous or in return for some monetary or other consideration, or, in other words, it may be a gift, a sale, or an exchange.<sup>12</sup> The fact that a convention or treaty is made between the two states concerned is the chief feature distinguishing a cession from a conquest; for the latter, while usually characterized by a declaration of annexation, does not include a formal arrangement of transfer from defeated to victor. If a treaty is made, the change in sovereignty is accomplished by cession rather than by conquest.<sup>13</sup> Thus, the transfer of Finland's arctic coastal Petsamo (Pechenga) District to Russian in the Peace Treaty of February 10, 1947, was accomplished by cession, as was the surrender by France in 1763 of all her continental territories which she possessed, or claimed to possess,

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<sup>10</sup> *Department of State Press Releases*, Jan. 9, 1932, p. 41. See also C. C. Hyde, *International Law*, Vol. I, pp. 374-376 (*supra*); Arnold D. McNair, "The Stimson Doctrine of Non-Recognition," *The British Year Book of International Law*, Vol. XIV (1933), pp. 65-74; and Quincy Wright, "The Stimson Note of January 7, 1932," *The American Journal of International Law*, Vol. 26 (1932), pp. 342-348. In discussing the Stimson Doctrine Brierly remarks (*op. cit.*, pp. 148-149), "The truth is that international law can no more refuse to recognize that a finally successful conquest does change the title to territory than municipal law can a change of regime brought about by a successful revolution."

<sup>11</sup> See Julius Goebel Jr., *The Struggle for the Falkland Islands* (*supra*), for a detailed account of this tangled dispute down to the date of publication (1927); Vilhjalmur Stefansson, *The Adventure of Wrangel Island* (*supra*); and D. M. LeBourdais, *Northward on the New Frontier* (*supra*); The Permanent Court of International Justice refused to concede in 1933 that "conquest" would be a suitable term to describe the disappearance of the ancient Norse colonies in Greenland, on the grounds that the massacre of foreign settlers by aborigines was not a true conquest, and that the fact of this alleged "conquest" was not, in any case, established. "Eastern Greenland Case," *Permanent Court of International Justice, Series A/B, No. 53* (April 5, 1933), p. 47.

<sup>12</sup> L. Oppenheim, *op. cit.*, pp. 498-506; M. F. Lindley, *op. cit.*, p. 2, pp. 166-177; C. C. Hyde, *International Law*, pp. 358 ff. (*supra*); T. J. Lawrence, *op. cit.*, pp. 157-158; A. S. Hershey, *op. cit.*, p. 279; J. L. Brierly, *op. cit.*, p. 147.

<sup>13</sup> T. J. Lawrence, *op. cit.*, pp. 159-160; L. Oppenheim, *op. cit.*, p. 519.

north of New France.<sup>14</sup> On the other hand, the purchase of Russian Alaska by the United States in 1867 for \$7,200,000 is an example of cession involving sale of territory.<sup>15</sup> So, also, is the American purchase of the Danish West Indian Islands in 1916 for \$25,000,00, although the latter arrangement had the added feature of an attached declaration to the effect that the United States would not object to Denmark's extending her political and economic interest to the whole of Greenland.<sup>16</sup> The recognition by the Norwegian Government of Canadian sovereignty over the Sverdrup Islands in 1930 could not be classed as a cession, however, since it did not involve a transfer of territory but rather an express denial that Norway claimed the islands in question.<sup>17</sup> Neither could the Canadian payment of \$67,000 to Sverdrup a few months later be considered to involve any cession on Norway's part, for, as Oppenheim points out, only cessions in which both subjects are states concern the Law of Nations.<sup>18</sup> This point would seem to apply also in the Hudson's Bay Company's surrender of its territories to the Canadian Government in 1869-1870, and also, apparently, to the transfer of British rights in the Arctic to Canada in 1880, since Canada could not at that time be classed as a sovereign state.<sup>19</sup> It was, as described, a long and complicated muddle, but there is little reason to doubt the validity of the transfer of British rights, the doubtful point being of what these rights consisted. This has never been determined and perhaps never will be, but one may at any rate observe, as Judge Huber did in the Palmas Island Arbitration, that the transferring nation "could not transfer more

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<sup>14</sup> This treaty is reproduced in *The American Journal of International Law, Supplement*, Vol. 42 (1948), pp. 203-223. See especially p. 204; Frances G. Davenport, *European Treaties Bearing on the History of the United States and its Dependencies*, edited by C. O. Paullin (Washington: Carnegie Institution, 1937), Vol. IV, pp. 92-98.

<sup>15</sup> W. M. Malloy, *Treaties and Conventions Between the United States and Other Powers* (Washington: Government Printing Office, 1910), Vol. 2, pp. 1521-1524.

<sup>16</sup> *Ibid.*, Vol. 3, pp. 2558-2566; *ibid.*, p. 2564.

<sup>17</sup> Dominion of Canada, *Treaty Series* 1-18 (1930), No. 17 (*supra*).

<sup>18</sup> *Canadian Press*, Nov. 11, 1930, and Nov. 26, 1930; L. Oppenheim, *op. cit.*, p. 499. In any case, it was not territory which was purchased, but Sverdrup's maps and other documents, and, presumably, any rights which he might have.

<sup>19</sup> See Chapter 8 (*supra*); Folder *Arctic Islands Sovereignty* (Ottawa: Public Archives); W. F. King, *op. cit.*, p. 10; This aspect of Canada's international status is important, although difficult to describe in exact terms. Just when Canada emerged as a fully fledged member of the international community is a rather doubtful point, but it may be said that it has been a gradually developing process, punctuated by such outstanding features as the formation of the Dominion in 1867, the strong stand for self determination taken by Laurier at the Colonial Conference in 1897 and by Borden and Mackenzie King after World War I, by the Balfour Report of 1926, and the Statute of Westminster in 1931. See the books by A. B. Keith in this field, e.g., *Responsible Government in the Dominions* (Oxford: Oxford University Press, 1928).

rights than she herself possessed.”<sup>20</sup> Whatever rights Great Britain had in the Arctic, Canada received, but the extent of these rights was, and remains, unknown.

Prescription has been defined by Oppenheim in an oft-quoted passage as “the acquisition of sovereignty over a territory through continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order.”<sup>21</sup> Hyde says that “the uninterrupted exercise of dominion by a State for a sufficient length of time over territory belonging to another, and openly adverse to the claim of that other, suffices in itself to transfer the right of sovereignty over the area concerned,” thus indicating that in prescription a right of sovereignty has already been in existence, and the attempts to transfer it are in defiance of the original or previous right.<sup>22</sup> He adds that the conduct of the former possessor must reveal toleration of or acquiescence in the process of deprivation.<sup>23</sup> The status of prescription in international law is somewhat vague, as Brierly points out, and its validity has been denied by a few authorities, but the majority of opinions seem to be in its favor.<sup>24</sup>

Prescription has received recognition in a number of disputes between American states, for example those between Rhode Island and Massachusetts in 1846 and Indiana and Kentucky in 1890.<sup>25</sup> More important internationally, perhaps, the principle of prescription has been invoked, and in some cases validated, in a number of disputes between sovereign states. Three such examples are the Chamizal arbitration between the United States and Mexico, June 15, 1911, the Grisbadarna arbitration between Sweden and Norway (Permanent Court of Arbitrations Award, October 23, 1909), and the Island of Palmas arbitration between the United States and Holland, April 4, 1928.<sup>26</sup>

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<sup>20</sup> “Arbitral Award in the Palmas Island Dispute,” *American Journal of International Law*, Vol. 22 (1928), p. 879.

<sup>21</sup> L. Oppenheim, *op. cit.*, Vol. I, p. 527.

<sup>22</sup> C. C. Hyde, *International Law*, Vol. I, p. 386 (*supra*).

<sup>23</sup> *Ibid.*, p. 386.

<sup>24</sup> J. L. Brierly, *op. cit.*, p. 149; E.g., G. F. von Martens, *Precis du Droit des Gens*, sections 70-71; also Von Ullman, *Volkerrecht*, section 92 (Cited in C. G. Fenwick, *op. cit.*, p. 356; E.g., Oppenheim, Hyde, and Brierly, as just cited; also A. S. Hershey, *op. cit.*, pp. 276-277; M. F. Lindley, *op. cit.*, pp. 178-180; C. G. Fenwick, *op. cit.*, p. 356; W. E. Hall, *op. cit.*, pp. 143-144; John Westlake, *op. cit.*, pp. 94-95. See also J. B. Moore, *A Digest of International Law*, Vol. I, pp. 293-297, for quotations from writers who approve prescription, including the older authorities Grotius, Vattel, and Edmund Burke.

<sup>25</sup> Rhode Island v. Massachusetts (1846), 4 Howard, 591, 639; Indiana v. Kentucky (1890), 136 U.S. 479; both cited with excerpts in J. B. Moore, *A Digest of International Law*, Vol. I, p. 295 (*supra*). See also Green H. Hackworth, *Digest of International Law*, Vol. I, p. 432 ff., for other similar cases.

<sup>26</sup> Cited in L. Oppenheim, *op. cit.*, Vol. I, p. 529. For the Chamizal Case see *The American Journal of International Law*, Vol. 5 (1911), pp. 785-812; for the Grisbadarna Case see J. B.

Regarding evidence of a valid prescriptive title, one can probably not do better than quote the following well-known passage by the outstanding British authority Sir Robert Phillimore:

... the proofs of prescriptive possession are simple and few. They are, principally, publicity, continued occupation, absence of interruption (usurpation), aided not doubt generally, both morally and legally speaking, by the employment of labour and capital upon the possession by the new possessor during the period of the silence, or the passiveness (inertia), or the absence of any attempts to exercise proprietary rights, by the former possessor.<sup>27</sup>

Phillimore added that the period of time necessary for a prescriptive title to become valid must necessarily be indefinite and variable, and will in large measure depend upon individual circumstances.<sup>28</sup>

Sir Robert's statement was quoted with approval by the American Secretary of State Richard Olney in 1896, with reference to the British Guiana - Venezuela boundary dispute, in a letter to British Ambassador Sir Julian Pauncefote.<sup>29</sup> Olney himself remarked that "a state which in good faith colonizes as well as occupies, brings about large investments of capital, and founds populous settlements would justly be credited with a sufficient title in a much shorter space than a state whose possession was not marked by any such changes of status."<sup>30</sup>

This attitude respecting the time element appears to have received fairly general acceptance.<sup>31</sup> The time limit necessary for a prescriptive title to become valid remains indefinite, although a number of suggestions have been made as to an appropriate length. For example, Grotius suggested a possession "going beyond memory," Vattel "a considerable number of years," and the modern writer Hyde "a possession well within the memory of living men."<sup>32</sup> A period of fifty years has been

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Scott, *Hague Court Reports* (1916), pp. 121-133; and for the Palmas Island Case see J. B. Scott, *Hague Court Reports* (2nd series, 1932), p. 84, or *The American Journal of International Law*, Vol. 22 (1928), pp. 867-912 (text of award), and pp. 735-752 (article entitled "The Palmas Island Arbitration," by P. C. Jessup.)

<sup>27</sup> Sir Robert Phillimore, *Commentaries Upon International Law* (London: Butterworths, 1871), 2nd ed., Vol. I, section CCLX.

<sup>28</sup> *Ibid.* Cf. George Schwarzenberger, *International Law*, Vol. I, pp. 140-141 (*supra*), where he maintains that for a prescriptive title to be valid, a state must display actual power, which must be continuous, peaceful, and public, in the particular territory.

<sup>29</sup> United States, *Foreign Relations 1896*, p. 236 (*supra*).

<sup>30</sup> *Ibid.*, p. 236.

<sup>31</sup> E.g., see L. Oppenheim, *op. cit.*, p. 527; J. Westlake, *op. cit.*, p. 95; M. F. Lindley, *op. cit.*, p. 179; T. J. Lawrence, *op. cit.*, p. 160.

<sup>32</sup> Cited in C. G. Fenwick, *op. cit.*, p. 356; *ibid.*, p. 356; C. C. Hyde, *International Law*, Vol. I, p. 388 (*supra*). See also the cases cited in Jackson H. Ralston, "Prescription," *The American Journal of International Law*, Vol. 4 (1910), pp. 133-144.

suggested upon a number of occasions, notably during the British Guiana - Venezuela boundary dispute already referred to, when the preliminary arbitration treaty concluded at Washington on February 2, 1897, laid down the rule that "Adverse holding or prescription during the period of fifty years shall make a good title."<sup>33</sup> The same length of time had been suggested by Russia in 1822 during the boundary dispute between Russia and the United States over northwestern North America.<sup>34</sup> Lindley, in commenting on the British Guiana - Venezuela dispute, remarks that the part of South America in question had been occupied only in a half-hearted manner, and that "in a case where effective occupation and administration could be shown, a much shorter period of control would probably be held to suffice."<sup>35</sup>

An outstanding dispute involving prescription is that between Great Britain and Argentina over ownership of the Falkland Islands. These have been occupied and administered by Great Britain since 1833, and Argentina had protested the occupation, infrequently at first, but more frequently in recent years.<sup>36</sup>

It would hardly appear that there are any examples of prescriptive claims or titles in the Canadian Arctic, under a strict interpretation of the term. The nearest cases were American explorers' adverse claims to central and northern Ellesmere in 1882 and 1914, and Danish claims to the same island in 1919. However, these could hardly be taken to constitute genuine adverse claims. The American claim was unofficial, and the degree of occupation was small and temporary, being only that of the explorers themselves. There was never any genuine Danish occupation.<sup>37</sup> On the other hand, insofar as Denmark and the United States have appeared to acquiesce silently in Canadian claims of ownership, especially since about 1920, and in the small amount of Canadian occupation which had occurred since that time, Canada may have acquired a title to Ellesmere.

The fifth and last of Oppenheim's basic methods of acquiring territory is occupation. Occupation is probably the most important of the five, especially in the case of remote, backward, or thinly settled regions, such as those around the Poles. It has, however, come to the fore as discovery and symbolic appropriation have declined in significance. For this reason, and because there are several other minor

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<sup>33</sup> Quoted in J. B. Moore, *A Digest of International Law*, Vol. I, p. 297 (*supra*).

<sup>34</sup> *American State Papers*, Vol. IV, pp. 861-863.

<sup>35</sup> M. F. Lindley, *op. cit.*, p. 180.

<sup>36</sup> Julius Goebel Jr., *op. cit.*, especially pp. 455-459, also pp. 460-468. See also C. H. M. Waldock, "Disputed Sovereignty in the Falkland Islands Dependencies," *The British Year Book of International Law*, Vol. XXV (1948), pp. 311-353.

<sup>37</sup> See Hyde's comment (*International Law*, Vol. I, p. 388) on Judge Huber's apparent disregard of Holland's claim to a prescriptive title to Palmas Island. Hyde indicates that Huber may have felt that there was, in fact, no adverse American title worthy of respect as such, so that Holland could not invoke the principle of prescription.

elements which may conveniently be disposed of first, consideration of occupation will be postponed until after the others have been discussed.

Four of the minor elements mentioned are continuity, contiguity, the hinterland, and spheres of influence. They are generally not regarded, in and of themselves, as creative of valid titles to territory, but may have considerable geographical, political, or strategical significance, and have sometimes been invoked in support of doubtful territorial claims. The first three, at least, are closely related to territorial proximity or propinquity.<sup>38</sup>

According to the doctrine of continuity, a state which has established a number of isolated settlements in a region, and particularly along a coastline, may lay claim to the intervening areas that connect them, and also to others extending further inland.<sup>39</sup> This doctrine has been used frequently to claim large blocks of territory, which have usually been uncivilized or even uninhabited. Some of the early English colonial charters purported to grant territory in North America extending westwards from the Atlantic seaboard all the way to the Pacific Ocean.<sup>40</sup> The idea was later adopted by the United States upon several occasions, sometimes with modifications.<sup>41</sup> It was asserted by the American diplomats Pinckney and Monroe in the dispute with Spain over the boundaries of the Louisiana Territory in 1805, by Albert Gallatin in the Oregon Boundary Dispute with Great Britain in 1826-1827, and by John Calhoun in the same dispute in 1844.<sup>42</sup> Conversely, it was vigorously denounced by the American Secretary of State Richard Olney in a note to the British ambassador Sir Julian Pauncefote during the British Guiana-Venezuela Boundary Dispute in 1896.<sup>43</sup> It was put forward strongly by European Powers during and for the purpose of the partition of Africa in the closing years of the last century - probably its outstanding application in modern times.<sup>44</sup> A number of factors, however, have combined to discourage its excessive application in recent years. Notable among these have been the rapid appropriation of disputed and

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<sup>38</sup> See Quincy Wright, "Territorial Propinquity," *The American Journal of International Law*, Vol. 12 (1918), pp. 519-561, for an illuminating discussion of this problem.

<sup>39</sup> C. C. Hyde, *International Law*, Vol. I, p. 332 (*supra*).

<sup>40</sup> J. B. Moore, *A Digest of International Law*, Vol. I, p. 265; Quincy Wright, "Territorial Propinquity," *op. cit.*

<sup>41</sup> Two of these modification, advanced by Pinckney and Monroe in 1805, were that possession extended *a* from a settled coast inwards to the sources of the rivers or "watershed" and *b* between the settlements of two nations to the "middle distance." *American State Papers, Foreign Relations*, Vol. II, pp. 662-665.

<sup>42</sup> *Ibid.*, pp. 662-665; *ibid.*, Vol. VI, p. 667; J. B. Moore, *A Digest of International Law*, Vol. I, p. 263. See also Travers Twiss, *The Oregon Question Examined* (London: Longman, Brown, Green, and Longmans, 1846) chap. XVI, especially pp. 310-311; *British and Foreign State Papers*, Vol. XXXIV (1845-1846), pp. 64-73, especially pp. 67-68.

<sup>43</sup> *Foreign Relations of the United States* (1896), p. 232, p. 235.

<sup>44</sup> A. S. Hershey, *op. cit.*, p. 291; M. F. Lindley, *op. cit.*, p. 234.

coveted territories and the simultaneous reduction in the amount of available territory to which the principle could be applied, the rise of nationalism among the inhabitants of backward territories, the increasing stress upon occupation as a requirement for possession, and a number of specific international agreements discouraging the use of the principle, especially the Africa Act signed at Berlin by most of the European Powers in 1885.<sup>45</sup>

Contiguity may be distinguished from continuity, according to Quincy Wright, in that the latter principle is appealed to when a desired addition of land involves an extension from owned territory to an unowned part of that same territory, whereas the former is invoked when the coveted region lies across an intervening body of water.<sup>46</sup> Thus, under the principle of contiguity, a claim might be made to unowned islands near an owned mainland coast, to an unowned mainland coast near owned islands, or to unowned islands near owned ones.<sup>47</sup> The principle would not be invoked in the case of islands lying within territorial waters, obviously, since these belong automatically to the littoral state.<sup>48</sup> Contiguity has had a varied history both in literature and in practice. It was denied vigorously and with considerable success by the United States upon several occasions, in the Lobos Islands Dispute with Peru in 1852, the Aves Island Dispute with Venezuela in 1855, and the Navassa Island Dispute with Haiti in 1872-1873.<sup>49</sup> It has been denied also by a number of outstanding authorities, including Oppenheim, Hyde, Smedal, and Verdross.<sup>50</sup> Argentine efforts to invoke it in support of their claim to the Falkland Islands have thus far failed of success, and Judge Max Huber, sole arbitrator in the Palmas Island Dispute between the United States and Holland, gave the principle perhaps its outstanding reversal in 1928 when he declared: "The title of contiguity, understood

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<sup>45</sup> W. E. Hall, *op. cit.*, pp. 137-140; J. Westlake, *op. cit.*, p. 106 ff; A. S. Hershey, *op. cit.*, pp. 289-292; G. Smedal, *op. cit.*, pp. 42-46.

<sup>46</sup> Quincy Wright, "Territorial Propinquity," *supra*, p. 520: "The principle is described as contiguity or continuity, according as the territory in question is or is not separated by water." Smedal also makes this distinction (*op. cit.*, pp. 43-44), but Lindley does not (*op. cit.*, pp. 228-231), and neither does Hershey (*op. cit.*, p. 287, p. 291).

<sup>47</sup> For an example of the first type one may cite the original Canadian and Russian claims to the islands north of their mainland, of the second, the British claim to the Falkland Islands sector of Antarctica, and of the third, the American claim to Palmas Island.

<sup>48</sup> Quincy Wright, "Territorial Propinquity," (*supra*), p. 520.

<sup>49</sup> J. B. Moore, *A Digest of International Law*, Vol. I, pp. 265-266 (*supra*); *ibid.*, pp. 571-572; *ibid.*, pp. 266-267, 577-578. See also Quincy Wright, "Territorial Propinquity," p. 52 (*supra*); Green Hackworth, *Digest of International Law*, Vol. I, p. 512 ff.

<sup>50</sup> L. Oppenheim, *op. cit.*, p. 512; C. C. Hyde, *International Law*, Vol. I, pp. 343-344; Gustav Smedal, *op. cit.*, p. 44, pp. 60-61; cited in Dr. F. A. F. von der Heydte, "Discovery, Symbolic Annexation and Virtual Effectiveness in International Law," *The American Journal of International Law*, Vol. 29 (1935), p. 470.

as a basis of territorial sovereignty, has no foundation in international law.”<sup>51</sup> On the other hand, it has at times received a good measure of support. The United States used it, unsuccessfully it must be admitted, as a basis for its claim to Palmas Island. Lord Stowell’s celebrated decision in *The Case of the Anna* implied its validity under certain circumstances, and J. C. Bancroft Davis’s advisory opinion in the *Bulama Island Case* was almost as categorical in its affirmation of the principle as Huber’s decision in the *Palmas Island Case* was in its denial of it.<sup>52</sup> Von der Heydte, Lawrence, and Hershey have supported its validity, and so, with reservations, had Quincy Wright.<sup>53</sup> The sector claims of the various nations in the Arctic and Antarctic depend partly, as had been pointed out, upon the principle of contiguity.<sup>54</sup>

Smedal has rejected contiguity entirely, pointing out that Francis Joseph Land is 800 kilometres from Siberia — in other words, so far that a claim on this basis would not be reasonable.<sup>55</sup> One may add that Australia, New Zealand, the Falkland Islands, Chile, and Argentina are all either as far as this, or farther, from Antarctica. Obviously such claims, if founded upon contiguity, are rather extreme applications of the principle. Von der Heydte, however, replying to Smedal, maintains that an unjustifiable reliance upon the principle of contiguity does not destroy the validity of the principle itself, suggesting that a more moderate application of the idea of contiguity would be acceptable. He says also that it is legitimate to speak of contiguity as far as one speaks also of virtual effectiveness.<sup>56</sup>

In summary, it is difficult to point to a definitive rule of international law in favor of or against either contiguity or continuity. One may say, however, that although neither can be regarded as a generally accepted legal principle, both have been appealed to frequently in the past, and will continue to be invoked whenever a state’s political or other interests are at stake.

The theory of the “back country” or “hinterland” is, as Westlake points out, similar to that of continuity.<sup>57</sup> Hershey makes the distinction that continuity (and contiguity) were the theories put forward by American statesmen in the early part of the nineteenth century to justify the acquisition of certain interior and western

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<sup>51</sup> “The Island of Palmas Award,” *The American Journal of International Law*, Vol. 22 (1928), p. 910.

<sup>52</sup> “The Case of the Anna,” 5 *C. Rob.* 373 (1805), cited in Quincy Wright, “Territorial Propinquity,” *op. cit.*, p. 520 (*supra*); John Bassett Moore, *History and Digest of International Arbitrations* (Washington: Government Printing Office, 1898) Vol. 2, p. 1919.

<sup>53</sup> F. A. F. von der Heydte, *op. cit.*, pp. 470-471; T. J. Lawrence, *op. cit.*, pp. 151-152; A. S. Hershey, *op. cit.*, pp. 287; Quincy Wright, “Territorial Propinquity,” *op. cit.*, p. 559.

<sup>54</sup> E.g. Von der Heydte, *op. cit.*, p. 470; G. Smedal, *op. cit.*, p. 60.

<sup>55</sup> Gustav Smedal, *op. cit.*, p. 44, pp. 60-61.

<sup>56</sup> F. A. F. von der Heydte, *op. cit.*, pp. 470-471.

<sup>57</sup> John Westlake, *op. cit.*, p. 116.

portions of the North American continent; whereas the revival of these theories by European Powers to accomplish the partition of the interior of Africa constituted the doctrine of the hinterland.<sup>58</sup> It may be noted, also, that while the principle of continuity could be invoked in an extension along a coastline or a long peninsula, the meaning of the term "hinterland" limits its application to "back country" or internal regions. The validity of the hinterland idea has been denied upon a number of occasions, notably by the American Secretary of State Olney in 1896 and in John Westlake's textbook on International Law.<sup>59</sup> One may agree with Fenwick's conclusion that hinterland acquisitions such as those achieved in Africa by means of treaties contracted among the various European Powers are valid only for the contracting parties, and other states are not necessarily compelled to observe them.<sup>60</sup> However, it may also be observed that such annexations, while perhaps of doubtful initial validity sometimes, may in the course of time become well established in law.

According to T. J. Lawrence, "a very limited amount of power may be exercised by a state over territory which is called a "Sphere of Influence".<sup>61</sup> He adds that the dominant state does not necessarily exert any direct control, but reserves the right to acquire dominion therein if it wishes, and to exclude other states.<sup>62</sup> It is thus evident that in a sphere of influence it is not ownership, but power and authority, which are asserted. Hershey refers to both spheres of influence and spheres of interest, and says that there is no clear distinction between them, but that spheres of influence appear to have more of a political, and spheres of interest more of an economic, significance.<sup>63</sup> Elsewhere it is suggested that the two terms may be used interchangeably.<sup>64</sup> It has been common practice for the Great Powers to mark out spheres of influence for themselves in weaker nations or unorganized communities, and one may cite such familiar examples as those in Africa, China, Persia, and Tibet.<sup>65</sup> The Monroe Doctrine, in a sense, aimed to map out an American sphere of influence, and a comparatively recent outstanding example was the Lansing-Ishii exchange of notes on November 2, 1917.<sup>66</sup> The latter stated:

The Governments of the United States and Japan recognize that

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<sup>58</sup> A. S. Hershey, *op. cit.*, p. 287 (footnote 27), p. 291.

<sup>59</sup> *Foreign Relations of the United States* (1896), p. 235 (*supra*); John Westlake, *op. cit.*, pp. 116-117.

<sup>60</sup> C. G. Fenwick, *op. cit.*, p. 351.

<sup>61</sup> T. J. Lawrence, *op. cit.*, p. 166.

<sup>62</sup> *Ibid.*, p. 166.

<sup>63</sup> A. S. Hershey, *op. cit.*, p. 291, (footnote 36).

<sup>64</sup> Geddes W. Rutherford, "Spheres of Influence: An Aspect of Semi-Suzerainty," *The American Journal of International Law*, Vol. 20 (1926), pp. 300-325. See p. 311, (footnote 64).

<sup>65</sup> See *ibid.*, for a detailed discussion of these; also Quincy Wright, "Territorial Propinquity," *op. cit.*, pp. 541-543; M. F. Lindley, *op. cit.*, chap. 24; A. S. Hershey, *op. cit.*, pp. 291-292.

<sup>66</sup> Quincy Wright, "Territorial Propinquity," *op. cit.*, pp. 546-547.

territorial propinquity creates special relations between countries, and consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous,<sup>67</sup>

thus recognizing not only Japan's alleged particular interest in China but also the whole concept of territorial propinquity as a creator of special relations. Spheres of influence may be brought into being by unilateral action, or by bilateral or multilateral agreements, and may or may not have the consent of the people inhabiting the area in question. They are, of course, primarily political, economic, or strategic rather than legal devices, and, as Lawrence points out, they are not necessarily binding upon states other than those which become parties to them.<sup>68</sup> It is probably not correct to speak of the various sector and other claims in the Arctic and Antarctic as being identical with spheres of influence under the definition of the latter given above, since the former imply not only exclusive rights of control, but outright ownership. However, in cases where the land territory had not yet proved productive, it is probably the right to control such things as whaling, fishing, and navigation, rather than ownership of land, which is the primary concern at the present time.

On the whole, it seems evident that the idea of territorial propinquity has played an important role in the formation of the various territorial claims in the Arctic and the Antarctic. The application of the theory of continuity is demonstrated, in some degree at least, by the extension of Canadian and Russian sovereignty to the sparsely settled northern extremities of their mainland, by the Danish claim (now validated) to all Greenland, by the immense regions marked out by different nations in Antarctica, and, perhaps, by the Canadian claim to such great islands as Baffin and Victoria, which have only a few settlements upon the most accessible parts of their coasts. The idea of the hinterland is apparent in some of these claims, also, notably the antarctic sectors and the Danish claim to Greenland. It is perhaps worthy of remark that in the territorial dispute between Canada and Newfoundland over the boundary of Labrador, the legality of the watershed as a dividing line received the express recognition of the Judicial Committee of the Privy Council.<sup>69</sup> The concept of contiguity is apparent in some of the sector claims, especially the Canadian, Russian, Australian, New Zealand, Chilean, and Argentinean, although, as indicated

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<sup>67</sup> Quoted in *ibid.*, p. 519. See also M. F. Lindley, *op. cit.*, p. 231.

<sup>68</sup> T. J. Lawrence, *op. cit.*, pp. 166-167. See also M. F. Lindley, *op. cit.*, p. 231.

<sup>69</sup> C. C. Hyde, *International Law*, Vol. 1, p. 334, citing *137 Law Times Reports*, p. 187. For the complete text of the report, see *2 Dominion Law Reports*, 401 (1927), also *Canadian Bar Review* (Toronto, May 1927), Vol. V, No. 5, pp. 335-361. For the entire case, see the following: Great Britain, Judicial Committee of the Privy Council, *In the Matter of the Boundary Between the Dominion of Canada and the Colony of Newfoundland in the Labrador Peninsula*, 12 vols., (London: Clowes and Sons, Ltd., 1927).

above, exaggerated in some of them. It is apparent also in the Argentine claim to the Falkland and other nearby islands which have generally been regarded as British.

In short, one may conclude that, although territorial propinquity does not automatically create full rights of ownership, it does arouse a special and natural interest, which in turn makes desirable the achievement of sovereignty over the doubtful area, if necessary by other means such as occupation or judicial decision. As a matter of practical politics, a nation is not likely to welcome the establishment of foreign holdings on unoccupied territory adjacent to its shores, and, if able to offer opposition, will doubtless do so. Of course, where one state possesses clearly defined and long established rights of sovereignty over land close to that of another state, territorial propinquity as a factor in determining ownership no longer has any weight. Thus France's ownership of St. Pierre and Miquelon Islands near the Newfoundland coast is unquestioned, as is Britain's ownership of the Channel Islands near the French coast. But in the case of original acquisition of unoccupied lands, it would appear that due allowance should be made for the factors of geography, interest, and security; and thus territorial propinquity should, within reasonable limits, be taken into consideration. As far as the Canadian Arctic Islands are concerned, it is natural, as Miller observed, that Canada should look upon them as geographical extensions of the country.<sup>70</sup> It must be admitted that some of them are quite remote and at the present time almost inaccessible from the continent, but the Canadian view is, unquestionably, that the islands form a unit, which is appurtenant to the Canadian mainland.

Discovery has also been an element of some importance in the achievement of sovereignty over unowned and uninhabited areas.<sup>71</sup> When allied with various acts of appropriation and exploration, it is likely to be a factor of considerable weight, particularly in polar regions, where the possibilities of large-scale occupation and settlement are restricted. Today the importance of discovery in giving title to territory seems to be an unsettled point in international law, but it is generally agreed that discovery does not in itself give complete rights of possession, no matter how formal the annexation may be.<sup>72</sup> It seems to be generally agreed also, however, that a legitimate discovery accompanied by formal annexation may give a temporary or inchoate title, which should be followed by more concrete evidence of

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<sup>70</sup> D. H. Miller, *op. cit.*, p. 244.

<sup>71</sup> See F. A. F. von der Heydte, *op. cit.*; Travers Twiss, *op. cit.*, pp. 156-167; Julius Goebel Jr., *op. cit.*, pp. 47-119; G. Smedal, *op. cit.*, pp. 14-16; also James Simsarian, "The Acquisition of Legal Title to Terra Nullius," *Political Science Quarterly*, Vol. LIII, No. 1 (March 1938), pp. 111-128.

<sup>72</sup> E.g., L. Oppenheim, *op. cit.*, p. 510; C. C. Hyde, *International Law*, Vol. I, pp. 321-330; M. F. Lindley, *op. cit.*, p. 136; G. Smedal, *op. cit.*, pp. 32-33; J. Simsarian, *op. cit.*, p. 128; Thomas Willing Balch, "The Arctic and Antarctic Regions and the Law of Nations," *The American Journal of International Law*, Vol. 4 (1910), pp. 265-275, especially pp. 273-274.

sovereignty in order to become completely valid.<sup>73</sup> This additional evidence may take various forms, depending upon circumstances, but acts of administration are acceptable, and occupation is the most tangible evidence of all. If a discovery is not followed by some such manifestation of official state interest, however, the temporary title will lapse, and the land will become subject to occupation by others.<sup>74</sup> How long such a temporary title should last is uncertain, as is the degree of completeness while it is in being.<sup>75</sup> Other debatable points are whether the same standards should be applied to inaccessible as to easily accessible areas, and to uninhabitable as to inhabitable ones, and if not, what distinctions should be made.<sup>76</sup> There are not conclusive answers to these questions. Reason and common sense would seem to dictate, however, that a specific time limit cannot be applied in all circumstances with absolute rigidity, and that the different conditions which exist make necessary flexible rules.

Priority of sight and claim became important in the era of the great voyages of discovery, being used to combat the sweeping papal grants which were in vogue. Discovery had considerable significance during the following two hundred years, or from about 1500 A.D. to 1700 A.D. As requirements for the achievement of sovereignty stiffened, it gradually gave way to effective occupation, but the record of events shows that it has not been completely ignored.<sup>77</sup> Rather it has continued to be used occasionally as the basis for territorial claims, even in recent years.<sup>78</sup>

Much emphasis was placed upon the manner in which a discoverer's claim was made. That is, a claim asserted loosely by a private voyager, who had seen but not landed upon a newly-discovered territory of unknown extent, who performed no formal act of annexation on the ground, and who was neither authorized to make the annexation by his government nor supported by it afterwards, would have a minimum of authenticity. Conversely, an official annexation of defined territory made by a government officer especially authorized to make such annexations,

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<sup>73</sup> E.g., L. Oppenheim, *op. cit.*, pp. 510-511; T. J. Lawrence, *op. cit.*, pp. 148-149; M. F. Lindley, *op. cit.*, pp. 136-137.

<sup>74</sup> T. J. Lawrence, *op. cit.*, pp. 148-149; M. F. Lindley, *op. cit.*, pp. 136-137; W. E. Hall, *op. cit.*, p. 127.

<sup>75</sup> This is an interesting, if undecided, point. Field and Fiore suggested 25 years, Fauchille only one. (Cited in F. A. F von der Heydte, *op. cit.*, p. 462. See also M. F. Lindley, *op. cit.*, p. 137.) Fauchille's time limit seems much too short in view of the inaccessibility of most lands when discovered.

<sup>76</sup> C. C. Hyde, *International Law*, Vol. I, pp. 347-348; also James Brown Scott, "Arctic Exploration and International Law," *The American Journal of International Law* (1909) pp. 928-941.

<sup>77</sup> M. F. Lindley, *op. cit.*, chapters XVII, XVIII, XIX; Julius Goebel Jr., *op. cit.*, chapter 2; Gustav Smedal, *op. cit.*, pp. 13-24; Travers Twiss, *op. cit.*, pp. 150-177.

<sup>78</sup> E.g., most of the territorial claims in the Antarctic are partially based upon discovery. See Chapter 16 (*infra*).

accompanied by a landing and the performance of certain formalities designed to give the annexation an official flavor, would carry a maximum of weight.<sup>79</sup> Much emphasis was placed upon the performance of symbolic acts of appropriation to give added force to the ceremony of taking possession — the planting of flags, the erection of cairns, beacons, or monuments, the reading of documents proclaiming the annexation, the deposition of records, and so on. The authors of a recent comprehensive work on such symbolic appropriations conclude, in fact, that without such formal ceremonies mere discovery was not in itself regarded as giving valid title to new land, but that when such symbolic acts were performed the right of possession was usually regarded as being established.<sup>80</sup> The same authors, after surveying a considerable amount of historical evidence, say in summary that while most European nations relied upon symbolic acts to establish their claims to new territory, the Spanish and English followed more complicated and formal procedures than the other nations, with the Spanish frequently adding religious rituals besides.<sup>81</sup> It may be observed that although such symbolic acts have declined in significance, they have been indulged in extensively even in the twentieth century.<sup>82</sup>

The importance of exploration in the attainment of sovereignty over “terra nullius” is a question which has been little discussed in International Law. Usually exploration is considered to be closely associated with discovery, which is sometimes the case, but on the other hand it is obvious that the detailed exploration of a land may be entirely apart from its initial discovery. Thus Baffin Island was discovered (or rediscovered) in Queen Elizabeth’s time, but it is still being explored today. Most authorities have discounted or ignored exploration as a factor in gaining sovereignty, especially exploration of the privately sponsored type. On the other hand, it has occasionally been suggested or implied that exploration may have a legitimate role in the attainment of sovereignty over land, especially if it is government-sponsored. Thus, the British, French, and Norwegian claims in the Antarctic appear to be based partly upon exploration, and the same thought is apparent in statements made by several Canadians, notably King, Poirier, and

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<sup>79</sup> F. A. F. von der Heydte, *op. cit.*, p. 452 ff.; Gustav Smedal, *op. cit.*, pp. 14-15; Travers Twiss, *op. cit.*, chap. VIII.

<sup>80</sup> Keller, Lissitzyn, and Mann, *op. cit.*, especially pp. 148-151. Von der Heydte does not agree that discovery and symbolic annexation were considered to give complete title (*op. cit.*, p. 456). Simsarian believes that they were thought to be sufficient (*op. cit.*, p. 111).

<sup>81</sup> *Ibid.*, p. 149, also p. 44, p. 98.

<sup>82</sup> E.g., the leaving of flags, at the North Pole by Peary, and at the South Pole by Amundsen; the acts performed by the survivors of the Karluk in claiming Wrangel Island in 1914; and the proclamations, tablets, cairns, etc., of Captains A. P. Low and J. E. Bernier in the Canadian Arctic Islands between 1903 and 1911.

Johnston.<sup>83</sup> If Canadian exploration should have any such significance, this would probably be greater in the polar regions than elsewhere, owing to their inaccessibility and severe climate, which make difficult permanent occupation. It is probable that those who, like V. K. Johnston, would relax the requirements for sovereignty over these lands, would be inclined to take a liberal view of the value of exploration; while those (like Oppenheim), who insist upon permanent occupation, would be inclined to discount it.<sup>84</sup>

Speaking particularly of the Canadian Arctic Islands, the record of discovery, symbolic appropriation, and exploration may be summarized rather briefly.<sup>85</sup> Exploration was entirely British before about 1850, except for the Dane Jens Munk's unfortunate voyage in 1619. Since 1850 it has been predominantly British and Canadian, with notable contributions from American, Norwegian and Danish explorers. All the large islands were discovered by British or Canadian explorers, with the exception of the Sverdrup Islands, discovered by a Norwegian expedition.<sup>86</sup> Apart from this expedition, explorers from other countries have concentrated mostly in Ellesmere, although Hall travelled widely in Baffin Island, Hall and Schwatka were active in King William Island, and Amundsen's Lieutenant Hansen was the first to explore part of the northern Victoria coast. Most of the early British expeditions, as King points out, took possession of the lands they discovered for the Crown, and since many of them were dispatched by the Admiralty they could only be classed as official.<sup>87</sup> Most of the other expeditions were private, or, if government sponsored, were not authorized to annex territory.<sup>88</sup> The customary manner of taking possession was by means of symbolic acts, devices that were used not only by both early British and foreign explorers, but also by the Canadians Low and Bernier in the present century.<sup>89</sup> Such symbolic acts were regarded as, if not conclusive, at least important, in the sixteenth and seventeenth centuries; but they are not as significant today.

<sup>83</sup> W. F. King, *op. cit.*, p. 23 ff; Senator P. Poirier, *op. cit.*, p. 266 ff; V. K. Johnston, *op. cit.*, pp. 24-29.

<sup>84</sup> *Ibid.*, p. 24, p. 30; L. Oppenheim, *op. cit.*, Vol. I, p. 509.

<sup>85</sup> See Parts II and III (*supra*), also the excellent summaries in W. F. King, *op. cit.*, V. K. Johnston, *op. cit.*, and P. D. Baird, *op. cit.*

<sup>86</sup> As noted in Chapter 14, the Norwegian Government renounced all claims to these islands in 1930. Stefansson, who discovered Meighen, Borden, Brock, and Perley Islands, was an American citizen, but since he was the leader of an official Canadian Government expedition the discovery must be classed as Canadian.

<sup>87</sup> W. F. King, *op. cit.*, p. 24.

<sup>88</sup> *Ibid.*, p. 24, p. 26 ff.

<sup>89</sup> *Ibid.*, p. 24, p. 26 ff. It must be observed, however, that King seems to make no distinction between a symbolic act and a territorial claim. The two are not necessarily synonymous. The element of intention to acquire sovereignty is important, and must be present if a symbolic act is to be interpreted as a territorial claim. If it is not present, the raising of a flag or building of a cairn may be meaningless.

In discussing the title to these islands through discovery and exploration, two dates are of crucial importance. These two dates are 1880, when Great Britain transferred her title to the islands, such as it was, to Canada, and 1895, when Canada took the initial step in administration of the islands, by incorporating them into the Dominion as Franklin District. The problem may be put forward concisely in two questions based upon these dates.

In the first place, had Great Britain, by means of discovery, symbolic annexation, and exploration, established a valid title (inchoate or otherwise), to the archipelago, or part if it, when the transfer was made?

In the second place, if such a title was established, did Canada allow it to perish between 1880 and her first attempts at administration in 1895, or has she allowed it perish since 1895?

It may be stated at the outset that no conclusive answers to these questions have ever been given, an occasion for finding such answers never having arisen. However, a few relevant facts may be pointed out, and an opinion expressed.

To answer the first question, it is necessary to know whether the islands of the archipelago are to be treated individually or as a unit.<sup>90</sup> The dubious value of an inchoate title dates from the original discovery and annexation. Obviously there can be only one original discovery of a thing, but in the case of new land or islands this leaves unsettled the doubtful point of how far such a discovery can be considered to extend. In other words, if the archipelago were to be treated as a unit, then the original discovery (apart from the possibility of its having been found by the Norsemen) was made by Frobisher in 1576, and the inchoate title could be dated from that time and could be applied to all of the islands. Doubtless most authorities would look upon this idea as extreme. On the other hand, if the islands are to be treated separately, then inchoate titles have been created frequently from 1576 down to the present day, and perhaps more are to come. For example, Frobisher discovered Baffin Island in 1576, Parry discovered Melville Island in 1819, Stefansson discovered Borden Island in 1915, and the Royal Canadian Air Force discovered several islands in Hudson Bay in 1948. If this plan were to be used without limitation, there would have to be as many annexations as there are islands, and the unsettled duration of inchoate titles might result in the endless creation and extinction of separate rights of sovereignty over each island.<sup>91</sup> Obviously this idea, like the first, is illogical and unreasonable.

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<sup>90</sup> On the question of whether a group of islands are to be treated separately or collectively, see A. S. Hershey, *op. cit.*, p. 287; G. Smedal, *op. cit.*, p. 34; F. A. F. von der Heydte, *op. cit.*, p. 468; Julius Goebel Jr., *op. cit.*, pp. 73-75; Max Huber in *Palmas Island Arbitration*, p. 894 (*supra*); D. H. Miller, *op. cit.*, pp. 239-240. Hershey and Huber admit that a group of islands may be regarded as a unit; Smedal says that this is not necessarily true.

<sup>91</sup> It will be recalled that Captain Bernier annexed the islands individually, as far as he was able, and collectively also.

It seems sensible to take a middle view between the above two extremes, and to say that some form of inchoate title could be created by discovering and annexing all of the larger islands. That being the case, it is believed that the sum total of British activity in the archipelago between 1576 and 1880 was sufficient to create certain rights, which could be transferred to Canada.<sup>92</sup> This seems a reasonable conclusion, in view of the extent of British explorations and annexations, the obvious intention to acquire sovereignty, and the almost total absence of foreign interest. The degree of completeness of Britain's title, and its duration also, remain in doubt. It is believed, however, that this inchoate title, such as it was, extended to the known islands, and that it was still in existence in 1880.<sup>93</sup> A crescendo of activity was reached during the height of the Franklin search, from about 1848 to 1858, when British expeditions were so numerous that they might almost be said to have constituted a ten-year occupation. British activity declined somewhat after McClintock's voyage in 1858, and had some other nation then made a comprehensive attempt to gain sovereignty over the islands, Britain's partial title might not have been sufficient to maintain her claim. The essential fact is that no such attempt was made, and consequently Britain's rights were passed on to Canada essentially unimpaired, except that a lapse of about twenty-two years had occurred, in which little was accomplished save the voyages of Young and Nares. On the whole, however, it appears reasonable to say that insofar as discovery, plus annexation and exploration, can give an inchoate title to territory, then the British record was impressive enough, and exclusive enough, to have merited such a title, at least to the known islands, in 1880.

The second question may be answered more readily, at least as far as the period between 1880 and 1895 is concerned. Britain transferred her rights in the archipelago to Canada in 1880, yet Canada did little to manifest her interest in the island until 1895, when they were incorporated into the Dominion as Franklin District. Thus a gap of fifteen years intervened between the transfer and the incorporation. Canada's title might have been jeopardized if a legitimate foreign claim had been established in the meantime. However, the only semblance of a foreign claim was that resulting from the expeditions of the Americans Greely and

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<sup>92</sup> Senator Poirier was obviously in error, however, in implying that British activity during these years was the equivalent of occupation (*op. cit.*, p. 267, p. 268).

<sup>93</sup> A comment by C. C. Hyde on Judge Huber's decision in the Palmas Island Case is interesting in this connection. In the passage referred to by Hyde, Huber had been trying to make a distinction between the creation of rights (i.e. through discovery) and the existence of rights. Hyde remarks, "It is suggested that the learned arbitrator might well have reached the conclusion that the mere seeing or finding of the Island of Palmas did not produce a right of sovereignty. But if it did, it is not apparent how a mere change of the law touching the acts necessary to bring into being such a right, served in itself to destroy the existence of one that had in fact already come into being." (C. C. Hyde, *International Law*, Vol. I, p. 329, footnote 27.)

Peary.<sup>94</sup> These expeditions appear irrelevant in view of the circumstances, since Greely's was part of an international project and was purely scientific in nature, while Peary was a private explorer interested chiefly in reaching the North Pole. Consequently it may be said that there were no well-established foreign claims to make the order in council of 1895 invalid. Up till that date, however, there had been very little evidence of either Canadian occupation or administration in the archipelago.

After 1895 the situation changed considerably. The Canadian Government, intermittently at first and then more comprehensively, made attempts actually to occupy and administer the islands. The intention was obviously to place Canadian ownership of the archipelago beyond reasonable doubt, and the policy shows recognition of the superiority of the above form of title. Consequently it becomes necessary to consider occupation — the last of Oppenheim's five methods of securing territory, and the one which, in reference to "terra nullius," has been considered most important in modern times.

Occupation has been defined by Oppenheim as "the act of appropriation by a State through which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another State."<sup>95</sup> Obviously it is implied that the appropriation must be a deliberate act of the state itself. Elsewhere Oppenheim stresses that if the original act of acquisition is not performed in direct service of a state, it must be acknowledged by the state afterwards in order to become valid, and that the occupation, to be valid, must be effective.<sup>96</sup> For this purpose the intention of acquiring sovereignty over the territory (*animus*) must be combined with the actual taking by the acquiring state of the territory under its sway (*corpus*), the latter feature implying both settlement and administration.<sup>97</sup> There have been instances of private individuals or groups laying claim to territory on their own behalf, and of course a state as well as an individual can act in a private capacity as the owner of property, but in respect to occupation in the above sense international law is primarily concerned with the state acting in its public capacity as the sovereign over land.<sup>98</sup>

A fundamental condition for valid occupation of territory, as noted by Oppenheim in the quotation just given, is that it must not at the time of occupation already belong to some other state.<sup>99</sup> Such territories may include lands which have never been in the possession of an organized state, and also lands which have been

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<sup>94</sup> See Chapter 7 (*supra*).

<sup>95</sup> See Gaston Jeze, *Etude sur l'Occupation* (Paris: V. Giard, 1896) for a detailed treatment of occupation; L. Oppenheim, *op. cit.*, Vol. I, p. 507.

<sup>96</sup> *Ibid.*, p. 507; *ibid.*, p. 509.

<sup>97</sup> *Ibid.*, p. 509.

<sup>98</sup> *Ibid.*, p. 509; also Gustav Smedal, *op. cit.*, p. 10, p. 24; M. F. Lindley, *op. cit.*, pp. 82-83.

<sup>99</sup> L. Oppenheim, *op. cit.*, Vol. I, p. 507. See also A. S. Hershey, *op. cit.*, p. 284; M. F. Lindley, *op. cit.*, p. 80.

possessed by a state at one time but have since been abandoned.<sup>100</sup> There has been considerable discussion as to the status of territory which actually is inhabited, but by backward or uncivilized peoples who have never organized themselves into a state. Oppenheim, for example, regards such lands as open to occupation.<sup>101</sup> M. F. Lindley, however, in his great work on this subject, has considered the opinions of a great many writers, and has come to a somewhat different conclusion. He divided writers into three groups, those who consider that backward peoples have a valid title to the land they inhabit, those who consider that they have such a title but only under certain conditions or with restrictions, and those who do not believe that they have such rights. After an extended discussion he concludes that, historically speaking, there has been a steady preponderance of juristic opinion in favor of the proposition that such lands should not be regarded as if they belonged to no one. He admits, however, that in modern times the idea has been developing that such peoples should have progressed far enough so that they have been recognized as members of the Family of Nations before they can be granted rights of ownership.<sup>102</sup>

The history of the principle of occupation, it has been said, can be divided into three periods, as follows<sup>103</sup>:

- a. The period before the sixteenth century, when papal grants were chiefly relied upon as means of acquiring new territory.
- b. The sixteenth and seventeenth centuries, during which the validity of papal grants was attacked, chiefly by such states as England, France, and Holland, which had been ignored when the papal grants to Spain and Portugal were made, and which now attempted to base territorial claims upon discovery, symbolic appropriation, or effective possession, or a combination of the three.
- c. The period beginning in the eighteenth century, during which the principle of effective occupation was endorsed by writers and statesmen and incorporated gradually into international law, receiving definite confirmation in the Africa Act of the Berlin Conference of 1884-1885.

There are innumerable instances of the disposal of territories by papal grants prior to the sixteenth century.<sup>104</sup> A few examples are Hadrian IV's grant of Ireland

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<sup>100</sup> Gustav Smedal, *op. cit.*, p. 24; M. F. Lindley, *op. cit.*, p. 80.

<sup>101</sup> L. Oppenheim, *op. cit.*, Vol. I, p. 507.

<sup>102</sup> M. F. Lindley, *op. cit.*, pp. 11-20, especially p. 20.

<sup>103</sup> A. S. Hershey, *op. cit.*, p. 285, footnote 23. See also G. Smedal, *op. cit.*, pp. 13-24; Julius Goebel, Jr., *op. cit.*, especially Chapters 2 and 3. One of the best accounts of the history of occupation is given in Charles Salomon, *op. cit.*, pp. 31-101.

<sup>104</sup> See S. Dawson, "The Lines of Demarcation of Pope Alexander VI," *Royal Society of Canada Transactions* (1899-1900), Vol. V, Sec. 2, for a comprehensive survey of papal grants.

to King Henry II of England in 1155, Clement VI's grant of the Canary Islands to Spain in 1344, and Nicholas V's grant to the King of Portugal in 1454 of all lands which had been discovered or might be discovered on the west coast of Africa.<sup>105</sup> By far the most famous papal grant, however, was that of Alexander VI in 1493, in which he divided the colonial world, including lands undiscovered as well as discovered, between Spain and Portugal, along a line running from the North to South Pole and passing west of the Azores at a distance of one hundred leagues.<sup>106</sup> Because of Portuguese objections to the location of the demarcation line Spain agreed to the bilateral Treaty of Tordesillas one year later, which moved the said demarcation line 270 leagues farther west.<sup>107</sup> This variation of the Pope's grant did not receive papal sanction until 1506.<sup>108</sup>

It does not appear that there was any marked objection to papal grants, or any serious question of their validity, until the onset of the great age of discovery begun by Christopher Columbus in the west and Vasco da Gama in the east. The appearance of new lands for exploitation, and the arbitrary assignment of them by Alexander VI to Spain and Portugal, were undoubtedly two of the most important factors in the opposition which arose after 1492 to question the legality of papal allocations of territory. This opposition was led by the new maritime and commercial states England, France, and Holland, who argued that if Spain and Portugal could disregard papal decrees themselves (as they had apparently done in the Treaty of Tordesillas), there was no reason why nations not party to such decrees should be bound by them either.<sup>109</sup> The Reformation and the consequent departure of a number of states, chiefly in northern Europe, from the Roman Catholic Church, afforded another excuse for denying papal authority in territorial sovereignty.<sup>110</sup> However, not only Protestants, but Roman Catholics also, disputed the validity of the papal grants.<sup>111</sup>

Thus Henry VII of England commissioned John Cabot to discover and take possession of new lands, Francis I of France asked to see the clause in Adam's testament which entitled Spain and Portugal to divide the New World between them, and the Dutchman Hugo Grotius denied that the Pope had any authority

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<sup>105</sup> M. F. Lindley, *op. cit.*, pp. 124-125; G. Smedal, *op. cit.*, p. 13.

<sup>106</sup> M. F. Lindley, *op. cit.*, pp. 125-126; Gustav Smedal, *op. cit.*, pp. 13-14; also see F. G. Davenport, ed., *European Treaties Bearing on the History of the United States and its Dependencies* (Washington, D. C., 1937), Vol. I, pp. 56-83.

<sup>107</sup> F. G. Davenport, *op. cit.*, Vol. I, pp. 84-100.

<sup>108</sup> M. F. Lindley, *op. cit.*, p. 126; F. G. Davenport, *op. cit.*, Vol. I, pp. 107-111.

<sup>109</sup> M. F. Lindley, *op. cit.*, p. 126.

<sup>110</sup> Gustav Smedal, *op. cit.*, p. 14; John Westlake, *International Law*, Vol. I, p. 97; also Julius Goebel Jr., *op. cit.*, p. 62, p. 63.

<sup>111</sup> G. Smedal, *op. cit.*, p. 14.

over the peoples occupying the then unknown parts of the world.<sup>112</sup> Perhaps the outstanding repudiation of the papal prerogative was Queen Elizabeth's famous retort to the Spanish ambassador, Mendoza, when he protested in 1580 against Drake's voyage around the world, that

she would not persuade herself that the Indies are the rightful property of Spanish donation of the Pope of Rome in whom she acknowledged no prerogative in matters of this kind, much less authority to bind Princes who owe him no obedience, or to make that new World as it were a fief for the Spaniard and clothe him with possession....<sup>113</sup>

The loss of Portuguese independence to Spain in 1580, and the defeat of the Spanish Armada in 1588, did much to destroy the practical effectiveness of first Portuguese, and then Spanish, pretensions. The authority of the papal grants, naturally enough, declined also. Consequently it behooved all nations, Spain and Portugal included, to find some device more potent than papal grants in order to assert and maintain title to desired territory.

When the validity of papal grants was attacked, a doctrine that was used in substitute by all nations was that prior discovery gave title to ownership. This doctrine enjoyed its heyday during the sixteenth and seventeenth centuries, as has been noted, but even then it was denied upon occasion.<sup>114</sup> Right of ownership was sometimes asserted as a consequence of mere discovery, unaccompanied by an act of possession, but more often various acts of appropriation were carried out with great formality. Sometimes, also, discovery was accompanied or followed by occupation - a factor which even then was recognized as being of great weight.<sup>115</sup>

During the seventeenth and eighteenth centuries the effectiveness of discovery and symbolic annexation in creating permanent title to land came increasingly under attack.<sup>116</sup> There were various reasons for the decline in significance of discovery - disputes over priority and territorial boundaries, the indefiniteness of claims, which sometimes included vast, unknown hinterlands, the lessening field for

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<sup>112</sup> *The Journal of Christopher Columbus and Documents Relating to the Voyages of John Cabot and Gaspar Corte Real*, translated by Clements R. Markham (London: Hakluyt Society, 1893), Vol. LXXXVI, pp. 197-198; Paul Fauchille, *op. cit.*, p. 687; Hugo Grotius, *De Jure Belli Ac Pacis*, Vol. II, chap. XXII, part XIV.

<sup>113</sup> Quoted in Julius Goebel Jr., *op. cit.*, p. 63.

<sup>114</sup> Probably the most famous denial of discovery was that expressed by Queen Elizabeth, who said that she knew no right the Spanish had "to any places other than those they were in actual possession of; for that their having touched only here and there upon a coast...were such insignificant things as could in no ways entitle them to a propriety...." (J. Westlake, *op. cit.*, p. 104).

<sup>115</sup> F. A. F. von der Heydte, *op. cit.*, pp. 452-462.

<sup>116</sup> James Simsarian, *op. cit.*, p. 111, 127; M. F. Lindley, *op. cit.*, chap. 18; T. J. Lawrence, *op. cit.*, pp. 147-148.

discovery, the fact that desire to appropriate usually exceeded ability to use, and perhaps most important of all, the growing insistence that lands must be effectively occupied in order to create a valid title to them.

The concept of occupation as a requirement for ownership of land has always been of considerable importance.<sup>117</sup> In fact, as Goebel has shown, it is believed to “reach back into the remotest antiquity” and to be “as old as human reason itself.”<sup>118</sup> Although overshadowed first by the system of papal grants and then by discovery and symbolic annexation, it came to be increasingly accepted during the seventeenth and eighteenth centuries, and received express recognition at the Berlin Conference of 1884-1885.<sup>119</sup>

Occupation was first stressed by publicists on international law, the majority of whom had by 1800 endorsed the theory that a territorial claim was not completely valid until the land in question had been effectively occupied.<sup>120</sup> Among the many writers who at an early date maintained that occupation was necessary in order to fulfill the requirements for possession the names of Grotius, Gryphiander, Bynkershoek, and de Martens are outstanding.<sup>121</sup> But perhaps the most forthright statement on the subject is that of Vattel, who in 1758 wrote:

Hence the Law of Nations will only recognize the ownership and sovereignty of a Nation over unoccupied lands when the Nation is in actual occupation of them, when it forms a settlement upon them, or makes some actual use of them. In fact, when explorers have discovered uninhabited lands through which the explorers of other Nations have passed, leaving some sign of their having taken possession, they have no more troubled themselves over such empty forms than over the regulations of Popes, who divided a large part of the world between the crowns of Castile and Portugal.<sup>122</sup>

The teachings of publicists were adopted more slowly in state practice.<sup>123</sup> The development of the latter may be divided roughly into two periods, the point of division being the Berlin Conference of 1884-1885. The first period was marked by the increasing adoption of the principle of occupation by the majority of states. During the second period, subsequent to the conference and extending down to the

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<sup>117</sup> F. A. F. von der Heydte, *op. cit.*, p. 448, p. 450, p. 457.

<sup>118</sup> Julius Goebel Jr., *op. cit.*, p. 70; *ibid.*, p. 70.

<sup>119</sup> C. G. Fenwick, *op. cit.*, p. 349; James Simsarian, *op. cit.*, p. 127.

<sup>120</sup> G. Smedal, *op. cit.*, p. 16.

<sup>121</sup> Hugo Grotius, *Mare Liberum*, 1608, chap. 2; Gryphiander, *Tractatus de Insulis* (1623), p. 268 (cited in F. A. F. von der Heydte, *op. cit.*, p. 461); C. van Bynkershoek, *De Dominio Maris*, 1702, chap. I; G. F. de Martens, cited in M. F. Lindley, *op. cit.*, p. 139.

<sup>122</sup> Emer de Vattel, *Le Droit des Gens* (Washington: Carnegie Institute, 1758), Vol. I, sec. 208.

<sup>123</sup> G. Smedal, *op. cit.*, pp. 16-17.

present day, the principle has had fairly general application. In recent years, however, a tendency has appeared to relax the requirements of occupation in remote or inaccessible regions such as those around the two poles.<sup>124</sup>

The increasing emphasis that was being placed upon occupation in the nineteenth century is apparent in a number of instances. Among these were the dispute between the United States and Spain over the western boundary of Louisiana after the purchase of 1803, the dispute between Russia, the United States, and Great Britain over northwestern North America in 1824, the long Oregon Boundary Dispute between Great Britain and the United States which was settled in 1846, the Lobos Islands Dispute between the United States and Peru in 1852, the United States Guano Act of 1856, and the Delagoa Bay Arbitration in 1875. The outcome of some of these cases can hardly be said to constitute a victory for the principle of occupation, but the essential thing is that the principle was asserted.

Thus, in the Louisiana Boundary Dispute both the United States and Spain asserted ownership of disputed territory partly by reason of settlements established therein, and the outcome paid some deference to the principle.<sup>125</sup> The same contention played a part in the Oregon Boundary Dispute, but here the outcome was simply a prolongation of the 49th parallel to the coast.<sup>126</sup> In the dispute over northwestern North America Great Britain, the United States, and Russia all stressed the necessity for occupation, with the former two maintaining successfully that the degree of Russian occupation was insufficient for the privileges demanded.<sup>127</sup> In the Lobos Islands Dispute the United States demanded that Peru show that she was in actual possession of the islands, and this the latter was able to do, although apparently upon the basis of long-continued jurisdiction rather than permanent occupation.<sup>128</sup> In the Delagoa Bay Dispute between Britain and Portugal the President of France, as arbitrator, decided that although Portuguese occupation of the disputed territory had unquestionably been interrupted in 1823, yet it had been sufficiently continuous and authoritative throughout three countries to give

<sup>124</sup> M. F. Lindley, *op. cit.*, chap. XIX; G. Smedal, *op. cit.*, pp. 17-21; C. G. Fenwick, *op. cit.*, p. 349.

<sup>125</sup> W. E. Hall, *op. cit.*, pp. 132-134, and citing *British and Foreign State Papers*, 1817-1818.

<sup>126</sup> M. F. Lindley, *op. cit.*, pp. 132-135; A. S. Hershey, *op. cit.*, pp. 288-289, especially footnote 31; W. E. Hall, *op. cit.*, pp. 134-136. For a detailed account of the Oregon Controversy from the British point of view see Travers Twiss, *op. cit.*, and for a detailed treatment by an American see John Bassett Moore, *International Arbitrations*, Vol. I, chapters 7 and 8.

<sup>127</sup> James Simsarian, *op. cit.*, pp. 123-127; J. B. Moore, *A Digest of International Law*, Vol. I, pp. 890-893. *American State Papers, Foreign Relations*, Vol. V, pp. 433-434; *Treaties and Conventions Between Great Britain and Foreign Powers*, Vol. III (1827), pp. 362-366.

<sup>128</sup> J. B. Moore, *A Digest of International Law*, Vol. I, p. 575; M. F. Lindley, *op. cit.*, p. 142.

Portugal title.<sup>129</sup> In the Guano Act, perhaps the most decisive of all the foregoing, it was provided that

whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other Government, and not occupied by the citizens of any other Government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States.<sup>130</sup>

These few examples of the many such cases during the nineteenth century illustrate the growing tendency to exact more solid evidence of genuine occupation than had been accepted as sufficient in the earlier days of papal grants and voyages of discovery. This tendency was given express recognition at the Berlin Conference on Africa in 1884-1885. Article 35 of the General Act of the Conference reads as follows:

The Signatory Powers of the Present Act recognize the obligation to insure the establishment of authority in the regions occupied by them on the coasts of the African Continent sufficient to protect existing rights and, as the case may be, freedom of trade and of transit under the conditions agreed upon.<sup>131</sup>

It is perhaps relevant to note that Article 34 of the above Act, immediately preceding the article quoted, made it mandatory henceforth for any Power taking possession of a tract of land on the African coast to "accompany the respective act with a notification thereof, addressed to the other signatory Powers of the present Act."<sup>132</sup> It has been observed that the conditions imposed by these articles were intended to be minimum rather than exhaustive obligations, that they applied only to the signatory Powers, and had reference to territorial acquisitions in Africa only.<sup>133</sup> Nevertheless a definite and perhaps conclusive step had been taken to

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<sup>129</sup> *British and Foreign State Papers*, Vol. LXVI, (1874-1875), pp. 554-556. See also W. E. Hall, *op. cit.*, pp. 141-142; M. F. Lindley, *op. cit.*, pp. 135-136, 142.

<sup>130</sup> J. B. Moore, *A Digest of International Law*, Vol. I, p. 556.

<sup>131</sup> *British and Foreign State Papers*, 1884-1885, Vol. LXXVI, p. 19. For English translation from the French text, see *American Journal of International Law, Supplement* (1909), Vol. III, p. 24.

<sup>132</sup> *American Journal of International Law, Supplement* (1909), Vol. III, p. 24.

<sup>133</sup> M. F. Lindley, *op. cit.*, pp. 144-145; Gustav Smedal, *op. cit.*, p. 20. See also W. E. Hall, *op. cit.*, pp. 138-140; John Westlake, *op. cit.*, pp. 106-111.

combine theory and writing with state practice in one generally recognized principle.<sup>134</sup>

At a meeting of the Institut de Droit International held at Lausanne in 1888 the question of occupation was further discussed and a number of resolutions adopted, which in the main fortified the stand taken at Berlin in 1885. The chief resolution, Article 1, provided that occupation of a territory in order to acquire sovereignty could not be recognized as effective unless it complied with these conditions:

1. The appropriation was to be made in the name of the government concerned and the territory taken was to have defined limits.
2. There was to be official notification of the act of appropriation.
3. An effective local government was to be established capable of maintaining order within the boundaries of the territory.<sup>135</sup>

At the end of the First World War the Allies decided that it would be advisable to revise the provisions of the Africa Conference of 1884-1885. In the Convention of St. Germain-en-Laye, September 1919, which replaced the Berlin Act as far as the signatory Powers were concerned, the principle of effective occupation was reaffirmed. Article 10 of the Convention was worded as follows:

The Signatory Powers recognize the obligation to maintain in the regions subject to their jurisdiction and authority and police forces sufficient to ensure protection of persons and of property and, if necessary, freedom of trade and of transit.<sup>136</sup>

Although the preamble of the Convention stated that the territories in Africa under discussion were "under the control of recognised authorities," yet the above article implied that this control to be valid must be extended to interior as well as coastal regions, in contrast to the Berlin Act which had only specified coastal regions.<sup>137</sup> It has also been noted that the Convention of St. Germain-en-Laye, unlike both the Berlin Act and the Lausanne Resolutions, said nothing about the necessity of notification.<sup>138</sup>

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<sup>134</sup> W. B. Seafie, "The Development of International Law as to Newly Discovered Territory," *Papers of the American Historical Association* (1890), Vol. IV, pp. 290-291.

<sup>135</sup> *Annuaire de l'Institut de Droit International*, (1889), Vol. X, pp. 201-202; French text reproduced in Naval War College, *International Law Situations, with Solutions and Notes* (Washington, D. C.) 1937, p. 74; English translation, paraphrased, in Gustav Smedal, *op. cit.*, pp. 20-21. See also A. S. Hershey, *op. cit.*, p. 285.

<sup>136</sup> United States, *Treaties, Conventions, etc., Between the United States and Other Powers, 1923-1937* (Washington, D. C., 1938) Vol. IV, pp. 4849-4855, especially p. 4853; also *American Journal of International Law, Supplement* (1921), Vol. XV, p. 319.

<sup>137</sup> Pointed out by M. F. Lindley, *op. cit.*, p. 149.

<sup>138</sup> A. S. Hershey, *op. cit.*, p. 285, footnote 22; L. Oppenheim, *op. cit.*, Vol. I, p. 511.

As a requirement for the acquisition of unpossessed territory, the principle of effective occupation has been upheld with considerable consistency since the Berlin Conference.<sup>139</sup> It has, however, been modified upon occasion to fit varying circumstances, and a distinct tendency has been apparent to reduce requirements in cases where extensive occupation would be difficult or impossible. Several outstanding examples make both of these trends clear.

The tendency to stress effective occupation is apparent, in greater or lesser degree, in the following cases, all of which have been decided since the Berlin Conference. By a Convention of March 5, 1885, concluded shortly after the Africa Act was signed, Great Britain and Germany expressly recognized the sovereignty of Spain throughout the Sulu Archipelago, over those parts effectively occupied and also over those parts not yet occupied. It is noticeable that Spain undertook to fulfill certain conditions if she extended her administration to the unoccupied parts.<sup>140</sup>

In the same year, Pope Leo XIII, acting as mediator in the dispute between Spain and Germany over the Caroline and Palaos Islands, gave his decision in favor of Spain, recognizing her inchoate title of discovery and her performance of numerous administrative acts. The case is interesting because the Pope recognized that Spain had not fulfilled the requirements of an effective occupation in the modern sense, and advised that she undertake the responsibility to do so, in a manner consistent with the circumstances.<sup>141</sup>

In the dispute between Great Britain and Portugal from 1887 to 1891 over the territory in Central Africa between the Portuguese possessions of Angola and Mozambique, Great Britain successfully contended that Portugal had no title to the disputed lands because there was no evidence of occupation. In reference to other African territories, however, Lord Salisbury maintained that adequate time must be allowed for an effective occupation to take place.<sup>142</sup>

In the 1899 arbitration between Great Britain and Venezuela, to determine the boundary between British Guiana and Venezuela, both sides placed much stress upon political control, and Britain upon actual settlement. The award gave each side the territory over which it had been able to show the greater evidence of sovereignty, with Britain receiving the lion's share.<sup>143</sup>

Another arbitration involving British Guiana was that decided by the King of Italy in 1904, with reference to the boundary between British Guiana and Brazil.

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<sup>139</sup> G. Smedal, *op. cit.*, p. 21.

<sup>140</sup> *British and Foreign State Papers*, Vol. LXXVI (1884-1885), pp. 58-60; W. E. Hall, *op. cit.*, p. 140; M. F. Lindley, *op. cit.*, p. 150.

<sup>141</sup> F. A. F. von der Heydte, *op. cit.*, p. 466; M. F. Lindley, *op. cit.*, pp. 149-151; G. Smedal, *op. cit.*, p. 21.

<sup>142</sup> M. F. Lindley, *op. cit.*, pp. 151-152; G. Smedal, *op. cit.*, p. 22.

<sup>143</sup> *British and Foreign State Papers*, Vol. XCII (1899-1900), pp. 160-162. See also J. B. Moore, *A Digest of International Law*, Vol. I, pp. 136-137; M. F. Lindley, *op. cit.*, pp. 152-157; G. Smedal, *op. cit.*, p. 22.

The arbitrator laid down the condition of effective occupation as one of the rules governing the determination of the frontier, and the decision attempted to apportion the disputed territory accordingly.<sup>144</sup>

The tendency to reduce or modify requirements for effective occupation in situations warranting such consideration, which is apparent in some of the cases above such as those concerning the Caroline and Sulu Islands, has become a more noticeable trend in recent years. There is evidence to indicate, also, that this tendency will be considered particularly applicable to polar and other areas which, owing to severity of climate or remoteness of location, are difficult to occupy effectively in the normal sense of the term.

By a treaty signed at Paris on February 9, 1920, a large number of states recognized the full sovereignty of Norway over the entire Spitsbergen (Svalbard) Archipelago, along with Bear Island. This was a striking modification of the doctrine of effective occupation, because there had been little evidence of either Norwegian occupation or administration, many of the islands were still uninhabited, and as recently as 1914 the archipelago had been regarded as "terra nullius."<sup>145</sup>

In the Norwegian claim to Bouvet Island in 1928 there is apparent both the demand for some occupation and the denial that extensive occupation is necessary to make good a title to a remote land. That is, Norway denied Great Britain's nineteenth century claim on the grounds that there had never been any real British annexation or occupation, and Britain acknowledged the Norwegian acquisition of 1928, which was apparently based only on a landing in that year, a symbolic annexation, and the intention to use the island as a calling place for sealing ships. Apparently Norwegian ownership of this Antarctic island has not been disputed since 1928.<sup>146</sup>

In the long controversy over Clipperton Island between France and Mexico, the King of Italy, as arbitrator, gave a decision on January 28, 1931, which favored France. Ignoring the undetermined date of discovery, he chose to regard the French annexation in 1858 as valid, and ruled that Mexico could not subsequently take possession of the island, since France had shown no intention of abandoning it.

<sup>144</sup> *British and Foreign State Papers*, Vol. XCIX (1905-1906), pp. 930-932. See also M. F. Lindley, *op. cit.*, p. 157; G. H. Hackworth, *Digest of International Law*, Vol. I, p. 401, p. 404

<sup>145</sup> Green H. Hackworth, *Digest of International Law*, Vol. I, pp. 465-468; Fred K. Nielsen, "The Solution of the Spitsbergen Question," *The American Journal of International Law*, Vol. 14 (1920), pp. 232-235; C. G. Fenwick, *op. cit.*, p. 354. See also Robert Lansing, "A Unique International Problem," *The American Journal of International Law*, Vol. II (1917), pp. 763-771.

<sup>146</sup> Green H. Hackworth, *Digest of International Law*, Vol. I, pp. 468-470; F. A. F. von der Heydte, *op. cit.*, p. 464. See also Rabot, "L'île Bouvet," *La Nature* (Paris, 1928), p. 387 ff.

This case, again, is significant, because France had never actually occupied the island before the dispute began.<sup>147</sup>

The Palmas Island Arbitration also applied the general principle of effective occupation, but it was again modified to suit a situation where a large manifestation of sovereignty could hardly be expected. Arbitrator Max Huber's award, given in April 1928, denied the American claim of a right of discovery inherited from Spain, and gave the island to the Netherlands on the grounds that the latter had displayed an adequate degree of sovereignty over the island for a long time.<sup>148</sup> This adequate degree of sovereignty, it may be noted, consisted mainly of intermittent acts of administration rather than permanent occupation, but the arbitrator maintained that "the manifestations of sovereignty over a small and distant island, inhabited only by natives, cannot be expected to be frequent" and also pointed out that "sovereignty cannot be exercised in fact at every moment on every point of a territory."<sup>149</sup>

Probably the outstanding instance showing the tendency to allow a smaller degree of occupation, where circumstances warrant such a relaxation, is that provided by the Eastern Greenland Case. The decision of the Permanent Court of International Justice given in April 1933, denied the Norwegian claim that Eastern Greenland was "terra nullius" in 1931, when Norway announced her occupancy of the said region, and ruled that Denmark "possessed valid title to the sovereignty over all Greenland."<sup>150</sup> The decision is most significant because it recognized an ancient title which had nevertheless been asserted somewhat intermittently, and had actually been interrupted for several centuries, and also because it gave Denmark full title to an entire island, nine tenths of which is not only uninhabited, but, in the foreseeable future at least, incapable of habitation. The Court ruled, however, that such a claim to sovereignty involves two essential elements, "the intention and will to act as sovereign, and some actual exercise or display of such authority," and then made the following significant statements:<sup>151</sup>

It is impossible to read the records of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual

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<sup>147</sup> *British and Foreign State Papers*, Vol. CXXXIV (1931), pp. 842-846; *The American Journal of International Law*, Vol. 26 (1932), pp. 390-394; F. A. F. von der Heydte, *op. cit.*, pp. 463-464; C. G. Fenwick, *op. cit.*, p. 351.

<sup>148</sup> *The American Journal of International Law*, Vol. XXII (1928), pp. 867-912; *British and Foreign State Papers*, Vol. CXXVIII (1928), pp. 863-912. For comments see Gustav Smedal, *op. cit.*, pp. 23-24; C. G. Fenwick, *op. cit.*, pp. 346-347; F. A. F. von der Heydte, *op. cit.*, p. 464.

<sup>149</sup> *The American Journal of International Law* (1928), p. 908; *ibid.*, p. 877.

<sup>150</sup> "Legal Status of Eastern Greenland," *Permanent Court of International Justice Publications*, Series A/B, No. 53 (April 5, 1933), pp. 22-147; *ibid.*, p. 64.

<sup>151</sup> *Ibid.*, p. 46.

exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries.<sup>152</sup>

It seems reasonable to conclude that the line of thought expressed in this passage is the prevailing one today, in respect to the acquisition of sovereignty over remote and uninhabited lands. That is, the requirement of occupation has been well established as a general principle, but in cases where this condition is difficult to fulfill, it has been customary to accept a moderate display of sovereignty, especially when there has been no strong competing claim. In practice this has meant that sovereignty has sometimes been recognized where there is actually little real occupation.<sup>153</sup>

It is probable that this circumstance would be decisive in the case of Canada's arctic islands, and that her occupation of these islands would, in the circumstances that prevail, be considered sufficient to establish her sovereignty over them. The facts concerning Canadian occupation and administration of the islands have been given in considerable detail in earlier pages, and consequently will not be repeated at length here.<sup>154</sup> It may be noted briefly that the Hudson's Bay Company, missionaries, and government officials of various kinds including medical personnel, are located in the islands. The Royal Canadian Mounted Police have enough posts to maintain law and order throughout the inhabited parts of the archipelago, and in addition make long patrols through uninhabited parts. A chain of weather stations has been built in recent years, a few of which are jointly operated with the United States, but all of which are under Canadian command. The archipelago is also inhabited by small bands of Eskimos, most of whom are not citizens, although nationals and wards of the Canadian Government. Of the larger islands, Baffin, Southampton, Devon, Cornwallis, King William and Victoria are now inhabited, also Ellesmere, Prince Patrick, and Ellef Ringnes, if the joint weather stations are counted. Banks, Melville, Bathurst, Prince of Wales, and Bylot, of the larger islands, remain uninhabited except for occasional calls. It is apparent that the islands are not thickly populated but that what population there is is fairly well distributed.

Regarding administration of the islands, the entire archipelago (with the exception of the Hudson Bay Islands) has been included in Franklin District, which is one of the three parts of the Northwest Territories. Numerous regulations

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<sup>152</sup> *Ibid.*, p. 46. See also C. C. Hyde, "The Case Concerning the Legal Status of Eastern Greenland," *The American Journal of International Law*, Vol. 27 (1933), pp. 732-738.

<sup>153</sup> Cf. J. S. Reeves, "Antarctic Sectors," *The American Journal of International Law*, Vol. 33 (1939), p. 521: "Certainly the trend away from the strict adherence of the principle of the Congo Act has been quite obvious, and the Eastern Greenland decision is evidence of this trend."

<sup>154</sup> See especially Chapter 2 and Part III (*supra*).

governing hunting, trapping, fishing, whaling, prospecting, exploration, and scientific research have been made and are enforced, and almost the whole archipelago has been included in a huge game preserve. A beginning has been made in the establishment of educational facilities, hospitals, and air fields, and there are postal facilities at most of the inhabited points. The Canadian Government conducts a yearly administrative cruise, and the Mounted Police boat "St. Roch" is usually present in the archipelago much of the year.

This activity began in 1895 with the inclusion of Franklin District in the Dominion; it was quickened after 1903, and though interrupted by the First World War, was resumed shortly afterwards, and has been carried on at an increasing rate ever since. Consequently it may be said that Canada has been trying to bring the archipelago under her control since 1895, and since about 1920, at the latest, it has been partially occupied by, and completely under the control of, the Canadian Government. It is believed that this record of occupation and administration is more than adequate under the circumstances.<sup>155</sup>

Finally, two additional points, which appear to lend support to Canada's claim to the archipelago, will be briefly discussed. In recent years, for the most part, but also in the more remote past, a number of nations have claimed jurisdiction over varying amounts of the sea bed beyond their territorial waters, or over what is often termed the continental shelf. Thus, Great Britain in the nineteenth century made such a claim to the oyster beds off the coast of Ceylon; by the Sea Fisheries Act of 1868 a similar claim was made to the oyster fisheries off the coast of Ireland; and the Bay of Tunis claimed the right to the sponges on a bank more than three miles from the Tunisian coast.<sup>156</sup> More recently, Great Britain and Venezuela arranged by treaty in 1942 for the division of the sea bed and subsoil of the Gulf of Paria between Trinidad and Venezuela, and President Truman, in a proclamation of September 28, 1945, declared that the natural resources of the subsoil and sea bed of the adjacent continental shelf appertain to the United States.<sup>157</sup> An accompanying proclamation established fishery conservation zones in certain undefined areas of the high seas contiguous to the United States.<sup>158</sup> The first

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<sup>155</sup> Cf. Mr. Olney to Sir Julian Pauncefote, June 22, 1896, *Foreign Relations of the United States*, 1896 (*supra*): "The only possession required is such as is reasonable under all the circumstances - in view of the extent of territory claimed, its nature, and the uses to which it is adapted and is put...."

See also M. F. Lindley, *op. cit.*, p. 158; and C. G. Fenwick, *op. cit.*, pp. 353-354.

<sup>156</sup> *Statutes of Great Britain*, 31-32 Vict., c. 45, s. 67; Sir Cecil J. B. Hurst, "Whose is the Bed of the Sea?" *The British Year Book of International Law*, Vol. 4 (1923-1924), pp. 34-43, especially 40-41.

<sup>157</sup> Great Britain, *Treaty Series*, No. 10 (1942), Cmd. 6400; *Statutory Rules and Orders*, Vol. 1 (1942), p. 919; *10 Federal Register* 12303, Proclamation No. 2667. Text printed in *The American Journal of International Law, Supplement*, Vol. 40 (1946), pp. 45-46.

<sup>158</sup> Text in *The American Journal of International Law, Supplement*, Vol. 40 (1946), pp. 46-47.

proclamation did not specify the width of the continental shelf, but a press release described it as that part of the adjacent sea bed covered by no more than 100 fathoms of water.<sup>159</sup> The American proclamations apparently set a pattern which has been hastily followed by many nations, including most of the coastal Latin American states and many of the Arabian states and sheikdoms.<sup>160</sup> Chile and Argentina, for example, have both made extensive claims of this nature, which are apparently designed to support their claims to portions of Antarctica, as well as to give them control over the resources of the sea bed. Whether such assertions of control over the sea bed are well founded in law is perhaps not yet clear, but if they are, Canada's title to the arctic islands becomes stronger, since they are made to appear more than ever as appurtenant to the mainland.

In 1907, in the course of his attempt to establish Canadian ownership of the archipelago, Senator Poirier remarked, "No one expects France to till the Sahara Desert in order to come within the definition of what is needed to perfect occupancy."<sup>161</sup> If Poirier had wished to exhaust such analogies, he could have added many others — the vast deserts in Arabia, Australian and northwestern China, for example, also the great mountain regions of the Himalayas, Andes, and Rockies. All of these are relatively empty, barren wastes, but that they are subject to sovereignty is not questioned. There are many small islands off the Norwegian coast, some of which are well beyond territorial limits and uninhabited. A better example still is the long Aleutian chain, which reaches farther from the mainland than the Canadian arctic archipelago does, and part of which is actually closer to Asia than to North America. According to a native of the Aleutians, who knows them as few others do, only six of the 150-odd islands are now inhabited.<sup>162</sup> Yet Norwegian and American ownership of these respective groups of islands is taken for granted. The recognized status of such territories and islands gives indirect support to the Canadian claim.

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<sup>159</sup> Cited in Richard Young, "Recent Developments with Respect to the Continental Shelf," *The American Journal of International Law*, Vol. 42 (1948), p. 851. Obviously, under the above definition, a continental shelf could be at times very narrow and at times very wide.

<sup>160</sup> See the following additional articles by Richard Young: "Saudi Arabian Offshore Legislation," *The American Journal of International Law*, Vol. 43 (1949), pp. 530-532; "Further Claims to Areas Beneath the High Seas," *ibid.*, pp. 790-792. See also the articles by F. A. Vallat in *The British Year Book of International Law*: "The Continental Shelf," *op. cit.*, Vol. 23 (1946), pp. 333-338; "Ownership of the Sea-Bed," *op. cit.*, Vol. 24 (1947), pp. 382-385; and also the following: Edwin Borchard, "Resources of the Continental Shelf," *The American Journal of International Law*, Vol. 40 (1946), pp. 53-70; J. W. Bingham, "The Continental Shelf and the Marginal Belt," *ibid.*, pp. 173-178.

<sup>161</sup> Dominion of Canada, *Senate Debates*, Feb. 20, 1907, p. 268. See also Gustav Smedal, *op. cit.*, p. 32, for a similar statement.

<sup>162</sup> Simeon Oliver (Nutchak), *Son of the Smoky Sea* (New York: Julian Messner, Inc., 1941), p. 15.

Summarizing the material of this chapter briefly, it is evident that the Canadian claim to the archipelago is based primarily upon the long background of predominantly British and Canadian discovery, annexation, and exploration, the transfer from Britain in 1880, the publicly expressed Canadian claim to the islands which was made in 1895 and repeated frequently thereafter, the almost total absence of legitimate foreign claims, and, perhaps more important than anything else, the steadily increasing effort to occupy and administer the islands. It is apparent, also, that the Canadian claim is strengthened by the factor of territorial propinquity with its attendant concepts of natural interest and national safety, by the recent liberal trend in judicial decisions involving similar regions, by the doctrines of the continental shelf and the sea bed, and by the fact that ownership of other similar territories is universally accepted. For these reasons it is believed that Canadian sovereignty over the archipelago, although never tested legally and often questioned, should no longer be considered a matter of doubt.

## CHAPTER 16

### THE SECTOR PRINCIPLE AND CANADA'S SECTOR CLAIM

The much-discussed sector principle has special significance for Canada, because there is a greater area of island territory north of the Canadian mainland than there is north of the mainland of any other nation bordering on the Arctic Ocean. If the sector principle came to be universally accepted among the nations and was formally incorporated into international law, Canada's title to almost all the arctic territories she has claimed would automatically be validated, and there would be no need to rely upon occupation or any other of the modes of acquiring territory discussed in the foregoing chapter.<sup>1</sup>

In plane geometry a sector of a circle is a portion of the circle plane bounded by two radii and the included arc, the resulting figure being shaped exactly like an ordinary piece of pie. Geographically, a polar sector is a region of similar shape, with either the North Pole or the South Pole at the center of the circle, with two meridians of longitude forming the two radii, and usually with either a parallel of latitude or an irregular territorial coastline as the arc of the circle.<sup>2</sup> The idea of dividing polar regions into such sectors is one of the most novel and important geographical concepts of the twentieth century, and has had some striking consequences.

What is generally regarded as the first pronouncement of the sector principle occurred in the Canadian Senate on February 20, 1907, when it was given expression by Senator P. Poirier.<sup>3</sup> It is clear from his speech, however, that the idea did not originate with him. He referred to a meeting held by the Arctic Club in New York the year before, and attended by the Canadian Captain Bernier, where the sector principle was proposed as a means of settling territorial questions in arctic regions.<sup>4</sup> This proposal, and Poirier's remark that the sector principle was "not a novel affair," indicate that the idea of arctic sectors was not unknown in 1907, but its actual origination remains a mystery.<sup>5</sup> One may wonder whether Poirier spoke upon his own initiative or at the urging of other interested parties — perhaps Bernier himself, who alleged that he had been carrying on a campaign for many

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<sup>1</sup> A possible exception to this statement might be northeastern Ellesmere, which lies immediately north of, not the Canadian mainland, but Greenland.

<sup>2</sup> Gustav Smedal, *op. cit.*, p. 54.

<sup>3</sup> Canada, *Senate Debates* (Feb. 20, 1907), pp. 266-273.

<sup>4</sup> *Ibid.*, p. 271.

<sup>5</sup> *Ibid.*, p. 271.

years in an effort to persuade the Canadian Government to make secure Canada's claim to the archipelago.<sup>6</sup> Poirier began his speech with the motion that "it be resolved that the Senate is of opinion that the time has come for Canada to make a formal declaration of possession of the lands and islands situated in the north of the Dominion, and extending to the North Pole."<sup>7</sup> He referred to various American acts of possession and the need for Canada to take action unless she were willing to forfeit her rights in the region. Then, after recounting at some length the background of exploration and other activities in the archipelago, he proceeded to enumerate the various grounds upon which Canada could claim ownership. In the course of these remarks he said:

We have a fourth claim, we can establish a fourth ground for ownership for all the lands and islands that extend from the arctic circle up the north pole. Last year, I think it was, when our Captain Bernier was in New York, a guest of the Arctic club, the question being mooted as to the ownership of the Arctic lands, it was proposed and agreed - and this is not a novel affair - that in future partition of northern lands, a country whose possession to-day goes up to the Arctic regions, will have a right, or should have a right, or has a right to all the lands that are to be found in the waters between a line extending from this eastern extremity north, and another line extending from the western extremity north. All the lands between the two lines up the north pole should belong and do belong to the country whose territory abuts up there.<sup>8</sup>

Poirier then proceeded to discuss the sectors which would result from the division he proposed, and which would, in his view, fall to "Norway and Sweden," (5° east to 32° east longitude), Russia (32° east to 170° west), the United States (170° west to 140° west), and Canada (141° west to 60° west). It is noticeable that he did not specifically assign a sector to Denmark, a suggested reason being that Denmark, although owning polar territory, did not itself extend to arctic regions.<sup>9</sup> He justified the theory of a division into sectors on the following grounds:

The partition of the polar regions seems to be the most natural, because it is simply a geographical one. By that means difficulties

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<sup>6</sup> J. E. Bernier, *Master Mariner and Arctic Explorer*, pp. 306-307 (*supra*). It may be recalled that the Canadian Order in Council of December 18, 1897, which delimited the provisional districts, stated that Franklin District was to include all lands and islands between the 141st meridian and Davis Strait, Baffin Bay, Smith Sound, Kennedy Channel, and Robeson Channel. This was almost identical with the later sector claim except that no northern limit was specified. See W. F. King, *op. cit.*, p. 16.

<sup>7</sup> Senator Poirier in Senate Debates, p. 266 (*supra*).

<sup>8</sup> *Ibid.*, p. 271.

<sup>9</sup> Gustav Smedal, *op. cit.*, p. 55.

would be avoided, and there would be no cause for trouble between interested countries. Every country bordering on the Arctic regions would simply extend its possessions up to the north pole.<sup>10</sup>

One feature of Poirier's speech requires comment. At one point he said "from 141 to 60 degrees west we are on Canadian territory," a statement which might be interpreted to mean that he considered Canada to be entitled to everything within the specified boundaries - in other words not only land, but ice and water as well.<sup>11</sup> He had, however, previously, specified "all the lands that are to be found in the waters," and he referred several times to "all the lands" and "all the land and islands," thus omitting ice and water regions from his definition of what should be subject to Canadian sovereignty.<sup>12</sup> Consequently it is debatable whether Poirier meant that the entire sector should be under Canadian sovereignty, or whether he actually intended to include only the land areas within the sector. It is possible that he had not given much consideration to this distinction, but one might conclude from the general import of his speech that he was primarily concerned with the "lands and islands" that he mentioned so frequently.

This may be a doubtful point, but in regard to another feature of his plan there would seem to have been no ambiguity. The sector he claimed for Canada lay between 60° and 141°, and he said, "I hold that no foreigner has a right to go and hoist a flag on it up to the north pole...."<sup>13</sup> From this and other remarks it is apparent that he saw Canada under the sector principle as possessor not only of all known islands within the prescribed limits, but also of any others, unknown at the time, which might be discovered in the future. This aspect of his speech is of particular interest in view of such events as Sverdrup's claim on behalf of Norway several years earlier, and Peary's claim to the regions around the North Pole two years later.

Although various Canadian Government officials have since given considerable weight to the sector theory, Poirier's proposal was not adopted at the time when it was made. He was answered by Sir Richard Cartwright, who as the Minister of Trade and Commerce in the Laurier Cabinet might be regarded as an official spokesman for the administration. Cartwright said in part:

I am not aware that there have been any original discoverers as yet who can assert a claim to the north pole, and I do not know that it would be of any great practical advantage to us, or to any other country, to assert jurisdiction quite as far north as that. However, I may state to my hon. friend that the importance of having the

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<sup>10</sup> Senator Poirier in Senate Debates, p. 271 (*supra*).

<sup>11</sup> *Ibid.*, p. 271.

<sup>12</sup> *Ibid.*, p. 271; *ibid.*, e.g., p. 267, p. 271; *ibid.*, e.g., p. 266, p. 267, p. 268, p. 271.

<sup>13</sup> *Ibid.*, p. 271.

boundary of Canada defined to the northward has not at all escaped the attention of the government.<sup>14</sup>

Cartwright assured Poirier that due attention would be paid to the matter, and suggested that since "negotiations" were in progress and the government were "exerting themselves," it might not "be the part of policy to formally proclaim any special limitation." He concluded by saying that Poirier would do well not to press his motion.<sup>15</sup>

The "negotiations" to which Cartwright referred arouse curiosity, and one may wonder whether or not they concerned either Peary or Cook, or perhaps both, as they were at that time preparing separate expeditions to reach the North Pole from the archipelago. Be that as it may, it is evident that Poirier's proposal was not forgotten. It was only about two and a half years later that Captain Bernier left his tablet on Melville Island claiming the entire sector for Canada.<sup>16</sup> Bernier commanded an official Canadian Government expedition, and had been given instructions as to what lands to annex.<sup>17</sup> It thus seems evident that the sector claim he made was asserted at the command of and on behalf of the Canadian Government, or at least of Canadian Government officials. His instructions must have been received before he departed in July 1908, so it is obvious that little time was lost in making use of Poirier's suggestion.<sup>18</sup>

Since Poirier's pronouncement in 1907 a number of nations have resorted to the sector principle to establish territorial claims in arctic and antarctic regions, and the validity of the device has become increasingly a matter of debate.

Great Britain was the first nation to follow Canada's lead, when she claimed a sector in the Antarctic. By Letters Patent of July 21, 1908, the Governor of the Falkland Islands was appointed Governor of South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands, and Graham's Land, all of which were to be dependencies of the Falkland Islands.<sup>19</sup> This declaration was followed by the Letters Patent of March 28, 1917, which stated that since doubts had arisen as to the limits of these dependencies, they should be "deemed to include and to have included all islands and territories whatsoever" between 20° and 50° west longitude, south of 50° south latitude, and between 50° and 80° west longitude, south of 58° south

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<sup>14</sup> Canada, *Senate Debates*, Feb. 20, 1907, p. 274.

<sup>15</sup> *Ibid.*, p. 274.

<sup>16</sup> J. E. Bernier, *Cruise of the "Arctic" 1908-1909*, p. 192, p. 195 (*supra*).

<sup>17</sup> *Ibid.*, p. 1. Bernier wrote, "Specific instructions were given as to the waters to be patrolled, explored, and lands to be annexed."

<sup>18</sup> *Ibid.*, p. 2.

<sup>19</sup> "Letters Patent of July 21, 1908;" published in the *Falkland Islands Gazette*, Sept. 1, 1908; in *British and Foreign State Papers*, 1907-1908, Vol. C1 (London, 1912), pp. 76-77; and in *The Polar Record*, Jan.-July, (published Dec.) 1948.

latitude.<sup>20</sup> This claim included, as a glance at a map will show, all the islands listed above as dependencies, together with the slice of the antarctic continent lying in the sixty degrees of longitude between 20° west and 80° west. It may be noted that the northern boundary was not a perfect arc, but that half of it ran along the fiftieth parallel and half along the fifty-eighth. It has been suggested that the main British purposes in making this claim, the first of its type in Antarctica, were to control whaling (especially Norwegian), collect license dues, and keep the number of whales from being depleted.<sup>21</sup>

The next British step was the proclamation of the Ross Sector, on the opposite side of the antarctic continent. By order in Council of July 30, 1923, the Ross Dependency was defined as including all islands and territories south of 60° south latitude and between 160° east and 150° west longitude, and was placed under the administration of the Governor General of New Zealand.<sup>22</sup> Unlike the Falkland Islands Dependency, the Ross Dependency constitutes a perfect sector in shape, but like the former, its northern boundary is in the ocean.

Ten years later Great Britain made her third and last sector claim in the Antarctic. At the Imperial Conference in London in 1926 it had been agreed that a British title existed to certain unclaimed areas in the antarctic continent, mainly by virtue of discovery.<sup>23</sup> These areas included part of Coats Land, Enderby Land, Kemp Land, Queen Mary Land, Wilkes Land, King George V Land, and Oates Land, and comprised a very large section of the antarctic coast located in what was for a time unofficially called "the Australian Sector."<sup>24</sup> On February 7, 1933, Great Britain took steps to make an official claim to this region, by means of an order in council which purported to place a huge sector of Antarctica under the jurisdiction of the Commonwealth of Australia.<sup>25</sup> It was to include all islands and continental territory south of 60° south latitude and between 160° east and 45° east longitude, or in other words between one quarter and one half of the entire continent. The small enclave Adelie Land, which was claimed, by France, was specifically excepted from the decree. Australia formally accepted jurisdiction of the territory by act of parliament on June 13, 1933.<sup>26</sup>

<sup>20</sup> "Letters Patent of March 28, 1917;" published in the *Falkland Islands Gazette*, July 2, 1917; in *British and Foreign State Papers*, 1917-1918, Vol. CXI (London, 1921), pp. 16-17; and in *The Polar Record*, Jan.-July (published Dec.) 1948, pp. 242-243.

<sup>21</sup> Gustav Smedal, *op. cit.*, p. 75.

<sup>22</sup> *British and Foreign State Papers*, 1923, Vol. CXVII (London, 1926), pp. 91-92; *London Gazette*, July 31, 1923.

<sup>23</sup> W. L. G. Joerg, *Brief History of Polar Exploration since the Introduction of Flying* (New York: American Geographical Society, 1930), p. 74.

<sup>24</sup> Gustav Smedal, *op. cit.*, p. 76.

<sup>25</sup> *British and Foreign State Papers*, Vol. CXXXVII (1934), pp. 754-755.

<sup>26</sup> *Ibid.*, Vol. CXXXVI (1933), p. 293.

Russia was another nation to make early use of the sector idea, and has become its strongest supporter. In September, 1916, the Russian Imperial Government notified the allied and friendly powers of the incorporation in the territory of the Russian Empire of Vilkitski, Tsar Nicholas II Land (now Severnaia Zemlya), Tsesarevich Alexei (now Small Taimyr), Starokadomski, and Novopashennyi Islands, and also stated that Russia considered Henrietta, Jeannette, Bennett, the New Siberian, Herald, Wrangel and Lonely Islands to be her property. The note stated that Novaya Zemlya, Kolguev, Vaigach, and other smaller islands near the continental coast were not specifically mentioned because they had for centuries been recognized as Russian.<sup>27</sup> Apparently no voice was raised in protest at this move. It is noticeable that Franz Josef Land was omitted, but it was claimed in the 1920's, and on June 1, 1930, its name was changed to Fridtjof Nansen Land.<sup>28</sup> On November 4, 1924, the Soviet Government in a note to a number of states repeated the modification of the Czarist Government in 1916, and expressly stated that all islands north of the Russian coast were considered by Russia to belong to her.<sup>29</sup> It was in this year, also, that the Soviet Government took forceful possession of Wrangel Island. Two years later, on April 15, 1926, the Soviet Government made what is generally regarded as the most sweeping and definitive sector claim yet put forth.

This claim took the form of a Decree of the Central Executive Committee of the U.S.S.R., and it declared the following to be Russian territory:<sup>30</sup>

...all lands and islands located in the Arctic to the North, between the coast line of the U.S.S.R. and the North Pole, both already discovered and those which may be discovered in the future, which at the time of the publication of the present decree are not recognized by the Government of the U.S.S.R. as the territory of any foreign state....

The decree went on to state with great precision that the lands and islands claimed were those which lay between longitude 32° 4' 35" east and 168° 49' 30" west. Since 1926 it has formed the basis for the Soviet sector claim, which has been supported by a large number of Soviet writers, and it has, according to a recent

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<sup>27</sup> Vladimir L. Lakhtine, *Prava na Severny Poliarny Prostranstva* (Moscow, 1928), rewritten in English under title "Rights over the Arctic," *American Journal of International Law*, XXIV (1930), pp. 703-717; T. A. Taracouzio, *The Soviet Union and International Law* (New York: The Macmillan Co., 1935), p. 56; D. H. Miller, *op. cit.*, p. 241.

<sup>28</sup> W. L. G. Joerg, *Brief History of Polar Exploration etc.*, p. 65.

<sup>29</sup> Vladimir L. Lakhtine, *op. cit.*, p. 708.

<sup>30</sup> *British and Foreign State Papers*, Vol. CXXIV (1926), pp. 1064-1065 (translation from *Izvestia*); V. L. Lakhtine, *op. cit.*, p. 709; T. A. Taracouzio, *Soviets in the Arctic* (New York: Macmillan Co., 1938), p. 381; and T. A. Taracouzio, *The Soviet Union and International Law*, p. 57. The wording of the decree varies slightly in these translations.

statement, never been repealed.<sup>31</sup> It has been pointed out that Finland's cession to Russia of the arctic coastal Petsamo District in the 1947 peace treaty would necessitate a change in the western boundary of the Soviet sector, and it at the same time bars Finland from having a sector of her own.<sup>32</sup> The Soviet decree of 1926 has been noted as the only instance in the Arctic where a sector claim has been incorporated into national legislation, and is cited as the most formal and authoritative action yet taken in affirmation of the sector principle.<sup>33</sup> Apparently little was done by the various Powers to dispute the Russian action, although Great Britain, Canada, and the United States had all had a certain amount of official or unofficial interest in Wrangel Island in preceding years, and Franz Josef Land had been regarded as unclaimed.<sup>34</sup> Norway showed some interest in the latter group of islands and continued sending expeditions there for some years, but finally gave up the attempt to gain possession of them.<sup>35</sup> Norwegian sovereignty over Spitsbergen (Svalbard), on the other hand, was recognized in 1920 by a special Spitsbergen Commission set up by the Paris Peace Conference, and was acceded to by Russia in 1924.<sup>36</sup> Since World War II there have been signs of renewed Russian interest in Spitsbergen, requests having been made in 1947 for bases, which Norway refused.<sup>37</sup>

Returning to the Antarctic, we find that in addition to the claims established on behalf of Great Britain, New Zealand, and Australia, four other nations have staked out more or less definite sectors, while the Soviet Government has recently indicated official interest in the disposal of antarctic lands. The four nations referred to are France, Argentina, Chile, and Norway.

French claims in the Antarctic were based initially upon the voyage of Dumont d'Urville in 1840 to the region since known as Adelie Land. Although it appears that British and perhaps other governments were notified of French interest in 1912, the official statements of claim were not made until 1924.<sup>38</sup> In that year a series of decrees placed Kerguelen, Saint Paul, Amsterdam, and the Crozet Islands, together with Adelie Land, under the administration of the Governor General of

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<sup>31</sup> John C. Cooper, "Airspace Rights over the Arctic" (unpublished manuscript specially prepared for *Encyclopedia Arctica*, compiled under Contract N60NR - 265, NR 162-218 between the Office of Naval Research in the U.S. Navy Department and the Stefansson Library), Nov. 30, 1949, p. 18.

<sup>32</sup> Elmer Plishke, "Territorial Sovereignty in the Arctic" (unpublished manuscript specially prepared for *Encyclopedia Arctica*, compiled under Contract N60NR-2565, NR 162-218 between the Office of Naval Research in the U.S. Navy Department and the Stefansson Library), Dec. 30, 1949, p. 17.

<sup>33</sup> *Ibid.*, p. 25; John C. Cooper, article previously cited in *Encyclopedia Arctica*, p. 18.

<sup>34</sup> W. L. G. Joerg, *Brief History of Polar Exploration since the Introduction of Flying*, pp. 62-69.

<sup>35</sup> *Ibid.*, pp. 65-66; also Elmer Plischke, article cited in *Encyclopedia Arctica*, pp. 29-30.

<sup>36</sup> Elmer Plischke, article cited in *Encyclopedia Arctica*, p. 23.

<sup>37</sup> *New York Times*, Jan. 10, 1947, March 4, 1947.

<sup>38</sup> David Hunter Miller, *op. cit.*, p. 248.

Madagascar.<sup>39</sup> Adelie Land was a small enclave in the antarctic continent which was stated to occupy the area between 136° 20' east longitude and 142° 20' east longitude, and between 66° and 67° south latitude. The French claim was reiterated in 1933 and 1938, and was enlarged so as to include all land in the sector south of latitude 60° south, between the previously named longitudinal limits, to the South Pole. Although there seems to have been some early British and Australian resentment at this French move, the enclave was specifically omitted in the British proclamation of the Australian sector in 1933, and in 1938 the two Commonwealth nations acknowledged the legitimacy of the French claim.<sup>40</sup>

During the past twelve years both Chile and Argentina have advanced claims to antarctic sectors, and have become increasingly insistent that they are entitled to the territories they have marked out for themselves. Their claims partially overlap each other, and both conflict with the British Falkland Islands sector. Chile, whose interest in Antarctica appears to be of relatively recent vintage, proclaimed by a presidential decree on November 6, 1940, that all islands and continental territory between 53° and 90° west were to constitute the Chilean Antarctic Territory.<sup>41</sup> Argentina appears to have older and somewhat stronger grounds for disputing British sovereignty. The Falkland Islands were during part of their history occupied by the Spanish, Argentina has occasionally protested against British occupation, and she maintains that she has never given up her rights there.<sup>42</sup> Several Presidential decrees in 1939 and 1940 announced Argentine interest in Antarctica, and the Argentine press subsequently has emphasized that Argentina considers herself possessor of all of the Falkland Islands Dependencies east of 68° 34' west longitude.<sup>43</sup> Recently the Argentine claim has been defined as including all islands and territories between 25° west and 74° west longitude.<sup>44</sup> It will readily be seen that the area between 53° and 74° is claimed by both Argentina and Chile, and that the entire Argentinean and most of the Chilean sectors lie within the British Falkland Islands Dependencies claim. There is evidence that Chile and Argentina have an understanding as to the disposal of the territory claimed by both of them, but neither has been able to resolve its dispute with Great Britain, whose claims both deny. The dispute reached a crucial stage shortly after World War II, when the three nations all sent warships to the area, but for the past three seasons they have

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<sup>39</sup> *Journal Officiel*, March 29, 1924, November 27, 1924, December 30, 1924.

<sup>40</sup> See Elmer Plischke, "Sovereignty and Imperialism in the Polar Regions," *Essays in History and International Relations in Honor of G. H. Blakeslee*, p. 115 (*supra*); *Polar Times*, December 1946 and June 1947; R. N. Rudmose Brown, *The Polar Regions* (New York: E. P. Dutton and Co., 1927), p. 178.

<sup>41</sup> *Chilean Decree No. 1747*, Nov. 6, 1940; printed in *El Mercurio* (Santiago), Nov. 7, 1940; reproduced in *Polar Record* (July, 1946, published April 1947), pp. 416-417.

<sup>42</sup> Julius Goebel, Jr., *op. cit.*, especially pp. 454-468.

<sup>43</sup> *Polar Record* (July, 1946, published April 1947), pp. 412-415.

<sup>44</sup> *Polar Times*, June 1947, p. 22.

maintained an agreement to keep warships away and to make no moves which could be interpreted as aggressive.<sup>45</sup> Both Chile and Argentina have refused to comply with Britain's suggestion that the dispute be referred to the International Court of Justice.<sup>46</sup>

The sector of antarctic territory claimed by Norway occupies all the space between the Falkland Islands Dependencies and the Australian sector, or from 20° west to 45° east longitude. The Norwegian claim was based primarily upon the extensive Norwegian antarctic whaling industry and upon various explorations, including Amundsen's successful journey to the South Pole in 1911-1912. Norway also regards herself as owner of Bouvet Island, formally renounced by Great Britain in 1928 after its annexation by Norway, and of Peter I Island, annexed in 1931.<sup>47</sup> The Norwegian antarctic sector was officially proclaimed by order in council on January 14, 1939, with the above-mentioned limits, and is known as Queen Maud Land.<sup>48</sup> It is especially interesting because in 1930, when conceding Canadian sovereignty over the Sverdrup Islands, Norway had flatly denied the validity of the sector principle.<sup>49</sup>

The United States has not claimed any antarctic territory, nor does it recognize the claims of any other nation. Yet grounds for a claim would not be hard to find, for Americans have been prominent in antarctic exploration, especially in recent years.<sup>50</sup> It is still a matter of doubt whether or not the American Captain Nathaniel Palmer discovered Graham Land in 1820-1821, but he certainly was one of the

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<sup>45</sup> *Ibid.*, Dec. 1946 and June 1947; *Polar Record*, (Jan.-July, 1948, published Dec. 1948); *ibid.* (Jan.-July, 1949, published Sept. 1949); *ibid.* (July, 1950); "The Falkland Islands" (No. P. 901/4) and "The Falkland Islands Dependencies" (No. P901/5), *Bulletins distributed by British Information Services* (Washington, D. C., January 1949); "Britain and the Antarctic" and "Supplement to Britain and the Antarctic" (No. 1D815), *Bulletins Distributed by British Information Services* (New York, December 1948); *New York Times*, Nov. 16, 1950.

<sup>46</sup> *Polar Record* (Jan. - July 1948, published Dec. 1948), pp. 228-229.

<sup>47</sup> Green H. Hackworth, *Digest of International Law*, Vol. I, pp. 468-470; also *British and Foreign State Papers*, Vol. CXXXII (1930), p. 863, pp. 865-866; *ibid.*, Vol. CXXXIV (1931), p. 1010.

<sup>48</sup> Elmer Plischke, "Sovereignty and Imperialism in the Polar Regions," *Essays in History and International Relations in Honor of G. H. Blakeslee*, p. 116 (*supra*); Jesse S. Reeves, "Antarctic Sectors," *The American Journal of International Law*, Vol. XXXIII (1939), p. 519; *Polar Times*, Dec. 1946 and June 1947; *Polar Record*, July 1939.

<sup>49</sup> Dominion of Canada, *Treaty Series* 1-18, 1930, No. 17.

<sup>50</sup> See Comdr. W. J. Lederer and S. V. Jones, "Who Owns Antarctica?" *Saturday Evening Post*, Dec. 13, 1947. This article discusses American activities in Antarctica, and is an example of current agitation in the United States for action to maintain and solidify American interests in the southern continent. See also Elmer Plischke, "Sovereignty and Imperialism in the Polar Regions," *Essays in History and International Relations in Honor of G. H. Blakeslee*, p. 117 (*supra*); *Polar Times*, Dec. 1946, June 1947, Dec. 1947.

earliest antarctic voyagers. In 1840 Lieutenant Charles Wilkes of the American Navy claimed other discoveries. The best basis for an American claim, however, would probably be the outstanding work of Byrd, Ellsworth, and Ronne during the past twenty-five years. They have made unofficial territorial claims on behalf of the United States, and much of their work has been done in the sector between the Ross Dependency and the Chilean claim, which happens to be the only remaining unclaimed part of the continent. Nevertheless the American Government has never shown any official inclination to support their efforts, and as recently as 1946 Under Secretary of State Dean Acheson reiterated that the United States neither made any claims nor recognized any, adding however that the American Government reserved any rights which it might have in the area.<sup>51</sup> The United States has recently become an exponent of a limited form of international regime for Antarctica, making this proposal to the seven territorial claimants in a note of August 1948.<sup>52</sup> This suggestion was turned down by most of the interested Powers, but the United States seems to have had some success as mediator in the dispute involving Britain, Chile, and Argentina.<sup>53</sup>

Besides Chile, Argentina, Australia, and New Zealand, the only independent nation in the southern hemisphere with territory facing Antarctica across the southern ocean is South Africa. She has claimed no antarctic territory, but in 1947-1948 several official government expeditions claimed the Prince Edward Islands group, half way between South Africa and Antarctica, and constructed a permanent wireless and meteorological station on the largest, Marion Island.<sup>54</sup> A South African accompanied the Queen Maud Land expedition of 1949.

The most recent definite assertion of interest in Antarctica has been made by Russia. Her pretensions are based primarily upon the voyage in antarctic waters of Captain Bellingshausen in 1819-1821, and upon recent whaling activities there.<sup>55</sup> The Russian press has for sometime been charging that the United States has imperialistic motives in Antarctica, and a Russian writer recently alleged that the United States has designs upon the whole continent.<sup>56</sup> The Soviet Government has apparently made no precise claim in antarctica, but it has recently been widely publicized that Russia maintains she has never renounced her antarctic rights, and

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<sup>51</sup> *Polar Times*, Dec. 1946; *New York Times*, Dec. 29, 1946.

<sup>52</sup> *Polar Record* (Jan. - July 1949, published Sept. 1949), p. 361.

<sup>53</sup> *Ibid.* See also *New York World Telegram*, Dec. 27, 1949.

<sup>54</sup> *Polar Record* (Jan. - July 1948, published Dec. 1948), pp. 243-244; *ibid.*, (July 1950), pp. 576-579.

<sup>55</sup> See Frank Debenham (ed.), *The Voyage of Captain Bellingshausen 1819-1821* (London: Hakluyt Society, 1945).

<sup>56</sup> E.G., referred to in Brian Roberts, "The Exploration of Antarctica," *Nature*, March 22, 1947, p. 398; V. Durdenevsky, "The Problem of Legal Status of the Polar Regions," *The Current Digest of the Soviet Press*, Nov. 18, 1950.

refuses to acknowledge any partition or disposal of antarctic lands in which she has not a share.<sup>57</sup>

Obviously the situation in the Antarctic is a confused one. Briefly summarized, it amounts to this: Great Britain, Australia, New Zealand, France, Norway, Chile, and Argentina have all put forward definite sector claims, some of which are conflicting, Russia has recently announced that she will not be excluded, South Africa has shown what may be an awakening interest, and the United States steadily refuses either to make a claim on its own behalf or to acknowledge any other claims.<sup>58</sup> Only the small sector between the Ross Dependency and the Chilean sector, from 150° west to 90° west longitude, remains unclaimed. In 1948 an American proposal for an international administration was turned down by most other interested nations, and, it may be added, the Trusteeship Council of the United Nations in 1947 turned down a suggestion that it assume responsibility for administering both north and south polar regions.<sup>59</sup>

In the Arctic no sector claims have been put forward other than the two already described, namely those of Canada and Russia. Yet five other nations either have at the present time or in the past have had territory bordering upon the Arctic Ocean. These five are the United States, Denmark, Norway, Iceland and Finland. Iceland and Finland are relatively unimportant in a discussion of the sector principle, partly owing to their small size and partly because they have been dependent nations throughout most of their history. Iceland has recently gained her independence from Denmark, but it would be difficult for her to assert a sector claim on her own behalf because Greenland extends farther to both east and west in a higher latitude, and Greenland is recognized as being Danish territory. Finland, under Russian rule before 1920, was given an arctic frontier by the Treaty of Dorpat [Tartu] on October 14 of that year, which she retained until it was ceded to Russia by the Treaty of 1947.<sup>60</sup> If Finland had claimed a sector, and based its size upon the size of her arctic frontier, it would have been a very small one, as the said frontier extended only from 31° to 32° east longitude.<sup>61</sup>

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<sup>57</sup> *New York World Telegram*, Dec. 27, 1949; *New York Times*, Nov. 20, 1949; *Letter by E. A. Kendall in Christian Science Monitor*, Aug. 29, 1950.

<sup>58</sup> It may be noted that several other nations, including Japan, Germany, Belgium, and Sweden, have been active in antarctic regions, either in whaling, or exploration, or both, but apparently none of these nations has ever made a definitive territorial claim in Antarctica. See J. S. Reeves, "Antarctic Sectors," *The American Journal of International Law*, Vol. 33 (1939), pp. 519-520 (*supra*).

<sup>59</sup> *Polar Times*, Dec. 1947, p. 15.

<sup>60</sup> United States, Department of State (Publication 2743), *Treaties of Peace with Italy, Bulgaria, Hungary, Rumania, and Finland*, 1947; also *The American Journal of International Law, Supplement*, Vol. 42 (1948), p. 204.

<sup>61</sup> Gustav Smedal, *op. cit.*, p. 73.

The oddness of Norway's position with respect to the sector principle has already been pointed out, in that she specifically denied its validity when she acknowledged Canadian sovereignty over the Sverdrup Islands in 1930, and then proceeded later to mark out a sector of her own in the Antarctic. It is of course possible that the official Norwegian attitude changed between 1930 and 1939; if not, her action in the Antarctic is in direct contradiction with her procedure in the Arctic. If a Norwegian arctic sector were claimed, it would presumably occupy the space from 31° east longitude as far west as approximately 5° east longitude (i.e., between Norway's eastern and western limits), and might extend considerably further west, since the region between 31° east and 60° west has been regarded by exponents of the sector principle as Danish and Norwegian, with a doubtful dividing line. Norway has gained a reasonably clear title of sovereignty to the only known islands of importance in these waters, namely the Spitsbergen or Svalbard group, Bear Island, and Jan Mayen Island, without resorting to the sector principle, but met with failure in her efforts to gain a foothold on Greenland.<sup>62</sup>

Denmark is not herself an arctic nation, but exponents of the sector principle have generally allotted her a sector because of her ownership of Greenland. She has not made any sector claim on her own behalf, perhaps because she would have little to gain from any application of the principle.<sup>63</sup> Her title to Greenland is now acknowledged, and Iceland, virtually autonomous since World War I, is now completely independent and a member of the United Nations. The icy region north and northeast of Greenland is impenetrable by ship, and there are no known islands in these waters apart from those in the immediate vicinity of the coast. Consequently Denmark's disregard of the sector principle is understandable.

Consistent with its policy in the Antarctic, the United States has thus far declined to claim an arctic sector. Although Alaska has a longitudinal span of about 28 degrees, the United States would, as far as is known, gain no land territory by making such a claim, since no islands have as yet been discovered in the Alaskan sector. The traditional attitude of the American Government towards the acquisition of north polar territories has been one of indifference. American explorers have at one time or another showed considerable interest in a number of islands outside the Alaskan sector, such as Jeannette, Henrietta, Bennett, Wrangel, Ellesmere, Baffin, Greenland, and Spitsbergen, but the American Government has never made any official effort to acquire them as territorial possessions. This in itself might be interpreted as showing a certain regard for the sector principle, in that other nations' sectors are respected, but that the United States denies the sector principle can easily be demonstrated.

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<sup>62</sup> Elmer Plischke, *Encyclopedia Arctica* article previously cited, pp. 21-25; *Decision of Permanent Court of International Justice in East Greenland Dispute, 1933 (supra)*.

<sup>63</sup> Gustav Smedal, *op. cit.*, p. 73.

In 1924 the Naval Committee of the [U.S.] House of Representatives discussed the proposed flight of the airship “Shenandoah” to the north polar regions. At that time Secretary of the Navy [Edwin] Denby, in referring to the large unexplored region north of Alaska, spoke as follows:

And, furthermore, in my opinion, it is highly desirable that if there is in that region land, either habitable or not, it should be the property of the United States.... And, for myself, I cannot view with equanimity any territory of that kind being in the hands of another Power.... We go quickly upon this expedition, because if we do not go this year, it will not be any use to go at all. If we do not go, that entire region will be photographed and mapped and probably controlled by another Power within two years.<sup>64</sup>

The proposed flight did not materialize, but Denby’s remarks are of interest because they have been given varying interpretations. One writer saw in them a denial of the sector principle, apparently believing that Denby proposed to rely upon other devices for achieving ownership such as exploration and possibly acts of appropriation and administration.<sup>65</sup> A recent writer, on the other hand, has suggested that Denby either implied or gave the impression that he intended to rely upon an application of the sector principle to assert sovereignty.<sup>66</sup> The American position was clearly stated some five years later, however, when a suggestion was made to President Hoover that the United States should take the lead in proposing a partition of the Arctic among Russia, Canada, Norway, Denmark, and itself.<sup>67</sup> The suggestion was referred to the Navy Department, and in an official letter from the Secretary of the Navy to the Secretary of State, dated September 23, 1929, the opinion was expressed that the proposed action

- a. is an effort arbitrarily to divide up a large part of the world’s area amongst several countries;
- b. contains no justification for claiming sovereignty over large areas of the world’s surface;
- c. violates the long-recognized custom of establishing sovereignty over territory by right of discovery;
- d. is in effect a claim of sovereignty over high seas, which are universally recognized as free to all nations, and is a novel attempt to create

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<sup>64</sup> U.S. Congress, House of Representatives, Committee on Naval Affairs, *Hearing on House Resolution 149*, “Contemplated Flight of the ‘Shenandoah’ to the North Polar Regions”, 1924, pp. 452-453. See also C. C. Hyde, *International Law*, Vol. I, p. 353.

<sup>65</sup> Gustav Smedal, *op. cit.*, p. 68.

<sup>66</sup> John C. Cooper, previously cited article written for *Encyclopedia Arctica*, p. 16, p. 26.

<sup>67</sup> *Ibid.*, p. 25.

artificially a closed sea and thereby infringe the rights of all nations to the free use of this area.<sup>68</sup>

The Secretary of the Navy then stated definitely that he considered that "this government should not enter into any such agreement as proposed."<sup>69</sup> This view is characteristic of American policy in regard to polar sovereignty and the sector principle — a policy which appears to have been followed with consistency. It was reaffirmed by the U.S. Naval War College in 1937, when the possibility of a polar state prohibiting arctic flights north of its mainland was being discussed. The opinion was expressed that no such right existed, beyond the normal three mile limit from the coast line.<sup>70</sup>

It is thus evident that the United States denies the sector principle as a means for settling the problem of territorial jurisdiction in both the Arctic and the Antarctic. The United States has, in fact, stressed actual occupation, settlement, and administration as a requisite for acquiring sovereignty over polar as well as other territories; and not only the sector principle, but also discovery and formal taking of possession (unless followed by occupation) have been denounced as a means of gaining ownership.<sup>71</sup>

Another matter which is relevant in connection with the American attitude towards acquisition of sovereignty over polar territories is the question of a possible application of the Monroe Doctrine. This was discussed some years ago in reference mainly to the Arctic, but it would seem more appropriate now to consider its relation to the Antarctic, where the dispute now in progress between Britain, Chile, and Argentina concerns an areas on the American side of the continent.<sup>72</sup> In the article referred to above David Hunter Miller seemed to conclude that the Monroe Doctrine was intended to apply to the American continents rather than to half the globe, in which case it would be difficult to include polar regions.<sup>73</sup> He also admitted that it was primarily "a national policy" rather than international law, so that while it might be invoked against European nations in polar regions, as an aid to policy, it could scarcely be resorted to as a juridical principle.<sup>74</sup>

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<sup>68</sup> *Ibid.*, pp. 25-26, quoting Green H. Hackworth, *Digest of International Law*, Vol. I, Sec. 67, p. 464.

<sup>69</sup> *Ibid.*, p. 26.

<sup>70</sup> U.S. Naval War College, *International Law Situations 1927*, p. 127.

<sup>71</sup> See Green H. Hackworth, *op. cit.*, Vol. 1, p. 399, pp. 452-453, for Secretary of State Hughes' statement in 1924 regarding the proposed declaration of American sovereignty over Wilkes Land, Antarctica. Although Wilkes Land had been discovered by an American, Hughes refused to assert ownership, on grounds of non-occupancy. For a recent American denial of the sector principle in the Antarctic see *The Polar Times*, Dec. 1946 (*supra*).

<sup>72</sup> David Hunter Miller, *op. cit.*, pp. 239-240.

<sup>73</sup> *Ibid.*, pp. 239-240.

<sup>74</sup> *Ibid.*, p. 240.

The question of the extension northwards of Alaska's eastern and western boundaries is also relevant in connection with the Alaskan sector, since in the treaties which defined them the eastern boundary was stated to run along the 141st meridian "in its prolongation as far as the Frozen Ocean", and the western boundary (approximately 169°) was said to "proceed north without limitation, into the same Frozen Ocean."<sup>75</sup> The latter in particular would seem to suggest a northward extension to the Pole, and one may agree with Miller that this treaty "comes very near to fixing the territorial rights of Russia and the United States, so far as those two countries could then fix them, up to the pole."<sup>76</sup> Such an agreement would of course not be binding upon any other nation unless it acceded. If the two treaties were given their strongest interpretation, an Alaskan sector would automatically be created. That such was the intention when the treaties were made seems doubtful, and that the American Government has denied the Alaskan sector, up till the present at least, is evident. At the same time it is possible, and perhaps probable, that if land were discovered north of Alaska the American attitude would change.<sup>77</sup>

The origin of the Canadian sector claim, the initial repudiation of it by Sir Richard Cartwright, and its later application in Captain Bernier's 1908-1909 voyage, have already been discussed. Since 1909 the Canadian Government has in numerous ways and upon various occasions indicated that it considers Canada to have sovereignty throughout the entire area between her northern mainland and the North Pole, but unlike Russia, Canada has never incorporated this claim into an act of the national legislature. There is plenty of evidence that Canada considers herself sovereign in this region - witness the variety of proclamations and voyages, the regulation of hunting, fishing, whaling, exploration, and scientific research, the annual ship patrol, and the police supervision described in Part III of this work. Canadian maps of an official nature show the sector plainly, between 60° and 141° west longitude, and continue the sector lines up to the North Pole.<sup>78</sup> Other nations and nationals of other nations have frequently been notified of the Canadian assertion of sovereignty, and the sector claim has been embodied in various orders in council.<sup>79</sup>

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<sup>75</sup> *Treaties and Conventions Between Great Britain and Foreign Powers*, Vol. III, p. 364; W. M. Malloy, *Treaties and Conventions Between the United States and Other Powers 1776-1909*, Vol. II, p. 1522.

<sup>76</sup> D. H. Miller, *op. cit.*, p. 247.

<sup>77</sup> C. G. Fenwick is obviously mistaken in assuming that the United States, Denmark, and Norway have all formally claimed arctic sectors. (*Op. cit.*, p. 354).

<sup>78</sup> E.g., Canada, Department of Mines and Resources (Mines, Forests, and Scientific Services Branch; Surveys and Mapping Bureau), *Northwest Territories and Yukon*, 1939 (reprinted 1948).

<sup>79</sup> E.g., that of December 18, 1897. (W. F. King, *op. cit.*, p. 16.)

In addition there have been a number of pronouncements by responsible government officials, which are often cited as evidence that Canada does assert a sector claim, even if it has not been incorporated into national law. Perhaps the outstanding instance occurred in the House of Commons in June 1925, while a bill was being discussed which proposed to make explorers and scientists obtain a Canadian license before entering the Northwest Territories. During the discussion one of the members said (or asked), "We claim right up to the North Pole," evoking from Minister of the Interior Charles Stewart the response, "Yes, right up to the North Pole."<sup>80</sup> Nine days later, in a continuation of the discussion, Mr. Stewart referred to the subject again:

Mr. Speaker, this Government has been very much alive to what we claim to be the possessions of Canada in the northern territory adjacent to the Dominion. Indeed, I made the statement in the House the other evening that we claimed all the territory lying between meridians 60 and 141. This afternoon, when dealing with the estimates of the Department of the Interior, I propose to bring down a map to make it clear what precautions we are taking to establish ourselves in that territory, and to notify the nationals of foreign countries passing over it that we think Canada should be advised of their plans and that they should ask for permits from the Canadian Government.<sup>81</sup>

It may be observed in passing that Mr. Stewart's remarks provoked an unfavorable response in American newspapers, where the opinion was expressed that the Canadian claim was too sweeping.<sup>82</sup>

Six years later Mr. [Thomas Gerow] Murphy, Stewart's successor as Minister of the Interior, referred again to the Canadian sector claim. In reference to the Norwegian renunciation in 1930 of all claims to the Sverdrup Islands, Murphy made the following comment, "This friendly action on the part of the Norwegian Government removes the one possible ground for dispute as to the Dominion's sovereignty in the whole Arctic sector north of the Canadian mainland."<sup>83</sup> This statement could hardly be interpreted other than as a reiteration of the stand taken by Stewart in 1925.

In 1938 Minister of Mines and Resources T. A. Crerar made a statement which was more extreme than that of either Stewart or Murphy. Speaking in the House of Commons, he said that no one had challenged Canada's claim, that the principles

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<sup>80</sup> Canada, *House of Commons Debates*, June 1, 1925, p. 3925.

<sup>81</sup> *Ibid.*, June 10, p. 4238.

<sup>82</sup> *New York Herald* and *Washington Post*, June 3, 1925. See also Gustav Smedal, *op. cit.*, p. 66.

<sup>83</sup> Canada, Department of the Interior, *Annual Report* (1931), p. 11.

by which Canada claimed sovereignty over the remote north were well established in international usage, and that the sector principle was “now very generally recognized.”<sup>84</sup> It need hardly be pointed out that all three parts of the above statement are open to question.<sup>85</sup>

On the whole, therefore, and contrary to the doubts which are sometimes expressed on this subject, it may be taken for granted that the Canadian sector claim has the official support of the Canadian Government.<sup>86</sup> The strange aspect of the case, as has already been pointed out, is that although Canada was the first to delimit a sector and although she has perhaps taken more practical steps than any other nation to enforce her authority within her sector, yet her claim has never been embodied in an act of the Canadian Parliament. This may have been thought unnecessary, or it may have been overlooked, or there may be other reasons; but irrespective of what they may be, it would probably be erroneous to conclude that this omission makes the Canadian sector claim unofficial.

Summarizing the situation in the Arctic, it may be said that of the seven nations which face the Arctic Ocean now or have faced it in the past, only two, Canada and Russia, have marked out arctic sectors for themselves, and of these two, only Russia has embodied her action in state legislation. Among the remainder, the United States formally denies the validity of the sector principle, Denmark has in the past been rather silent, and Norway has denounced the sector principle in the Arctic although, more recently, she has staked out a sector in the Antarctic. The two other arctic nations, Finland and Iceland, are of little consequence in regard to arctic sectors, as Finland has lost her arctic coastline and Iceland has only recently become independent, her sector in any case being cut off by Greenland. Neither Finland nor Iceland has ever claimed a sector.

Turning for a moment from the sectors themselves to the opinions of publicists and other authorities, it soon becomes apparent that a considerable number of interesting and conflicting viewpoints as to the sector principle have been held. Such viewpoints may be significant as indications of the policies of the countries to which the writers owe allegiance, or they may take an independent or contrary line.

The opinions of the Canadians Senator Poirier, Sir Richard Cartwright, Ministers of the Interior Stewart and Murphy, and Minister of Mines and Resources Crerar, have already been given, also that of the American Secretary of the Navy Denby in 1924 and of the American Naval War College in 1937. Essentially,

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<sup>84</sup> Canada, *House of Commons Debates* (1938), p. 3080.

<sup>85</sup> It is worthy of notice that in 1928, by order in council, the Government had appointed Mr. J. C. Patterson to investigate British and Canadian titles to arctic territory. Mr. Patterson died, however, and the investigation was not completed. See Canada, *House of Commons Debates* (June 1, 1928), Vol. 3, p. 3691; (June 12, 1929), Vol. 3, p. 3611.

<sup>86</sup> E.g., C. C. Hyde, *International Law*, Vol. I, p. 350; “Notwithstanding the absence of any precise declaration registering official support, Canada is understood to approve generally of the sector system....”

Poirier, Stewart, Murphy, Crerar, and Denby took views favorable to the sector principle, while Cartwright and the Naval War College were opposed.

Little reference was made in literature to the sector principle until the middle 1920's. Thus, James Brown Scott in 1909, Thomas Willing Balch in 1910, and Robert Lansing in 1917, all discussed various aspects of the question of sovereignty over polar areas without once mentioning the sector principle. Their points of view appear to indicate disapproval of the sector idea, however, as Scott stressed the necessity for occupation in order to achieve title, Balch ridiculed Britain's annexation of West Antarctica in 1908, and Lansing recommended an international rule for the inhabitants of Spitsbergen, leaving the land as "terra nullius."<sup>87</sup>

An early doubter of the validity of the sector principle was Vilhjalmur Stefansson, who pointed out to Canadian Government officials that under a strict application of the principle they might lose the part of Ellesmere north of Greenland, and who stressed the superior title given by such factors as discovery, exploration, occupation, and utilization.<sup>88</sup> At one time he hoped to find and occupy new polar islands outside the Canadian sector, and he made a determined but futile effort to bring Wrangel Island, north of Siberia, under Canadian sovereignty.<sup>89</sup>

Beginning about 1925 the sector principle began to receive a greater amount of attention from international lawyers and other writers, and in the next few years a sizable literature on the subject appeared. It is probable that the increased interest was occasioned by such events as the Wrangel Island episode, the Canadian-Danish dispute over Ellesmere, the Norwegian-Danish dispute over East Greenland, the recognition of Norwegian sovereignty over Spitsbergen, the British sector proclamations in the Antarctic, and the sweeping Russian sector decree of 1926.

In 1925 the famous French authority Paul Fauchille wrote approvingly of the sector principle, but recommended that sectors should be allotted to continents rather than individual states. Thus the Arctic would be divided into a European, an Asiatic, and an American sector, each to be reserved for the continent concerned,

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<sup>87</sup> James Brown Scott, *op. cit.*, p. 939, p. 941; T. W. Balch, *op. cit.*, pp. 268-269, 273-274; R. Lansing, *op. cit.*, p. 766 ff.

<sup>88</sup> V. Stefansson, *The Friendly Arctic*, pp. 691-692 (*supra*); *ibid.*, pp. 689-690. See also *The Adventure of Wrangel Island* (New York, 1925), p. viii (Introduction): "Every book on International law we could find said that an island previously uninhabited and beyond the defined limit of any country's territorial waters belonged to the nation that first effectively occupied it, and doubly so if the occupying nation happened to be the one which discovered it."

<sup>89</sup> V. Stefansson, *The Friendly Arctic*, p. 691. Note also, on the same page, Stefansson's statement that between 1919 and 1922 some Canadian maps omitted the sector lines, on the view that the sector principle might deprive Canada of additional territory, if new islands were found outside these limits; See *The Adventure of Wrangel Island (supra)* for details.

but with little concern for the private rights of separate states. This interesting proposal has apparently found few supporters.<sup>90</sup>

The American jurist David Hunter Miller wrote articles discussing the sector principle in 1925, 1927, and 1928.<sup>91</sup> He compared it to the "hinterland" theory and to the notion of "territorial propinquity," but concluded that such claims, based primarily upon what he called "contiguity," had no well-defined principle to support them.<sup>92</sup> He mentioned a three-fold sector division in the Arctic among Canada, the United States, and Russia, Canada having the sector between 60° west and 141° west, the United States that between 141° west and 169° west, and Russia that between 169° west and about 30° or 40° east. The remainder of the circle, from 60° west to 30° or 40° east, would be left unassigned. Miller did not specifically endorse the sector principle, but said it was "highly convenient," and added that if these three states were satisfied with such a division, the rest of the world would have to be.<sup>93</sup>

Several British writers discussed the question of polar sovereignty at about the same time that Miller wrote, but there is little uniformity in their views. M. F. Lindley gave a measure of approval to the sectoral idea on the basis that an arctic sector formed a sort of hinterland, but he advocated also an international agreement to avoid or settle disputes over territory.<sup>94</sup> R. N. Rudmose Brown discussed the matter of sovereignty in both polar regions as it stood at the time when he wrote (1927), and though he decided that the criteria of ownership of uninhabited lands were not settled and that discovery and exploration do not in themselves constitute title to ownership, yet he believed that the islands north of Canada and Russia had fallen under the sovereignty of those states by natural growth of territorial interests.<sup>95</sup> J. Gordon Hayes in writing of Antarctica criticized British annexations severely on the grounds that they were illogical and in some cases discourteous to other nations, but his doubts seemed to be applied more to the manner in which the sectors were drawn than to the legality of the device.<sup>96</sup>

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<sup>90</sup> Paul Fauchille, *op. cit.*, Vol. I, p. 659. See also G. Smedal, *op. cit.*, p. 64.

<sup>91</sup> D. H. Miller, "Political Rights in the Arctic," *Foreign Affairs* (Oct., 1925), Vol. IV, pp. 47-60; "National Rights in the Antarctic," *Foreign Affairs* (April, 1927), Vol. V, pp. 508-510. The two articles were combined and revised in "Political Rights in the Polar Regions," in W. L. G. Joerg, *Problems of Polar Research* (New York: American Geographical Society, 1928), pp. 235-250, which is the article here cited.

<sup>92</sup> D. H. Miller, *op. cit.*, p. 244.

<sup>93</sup> *Ibid.*, p. 247. It is rather surprising that Mr. Miller in this 1928 article showed no awareness of the Soviet sector decree of 1926. See p. 241.

<sup>94</sup> M. F. Lindley, *op. cit.*, pp. 5-6, 235.

<sup>95</sup> R. N. Rudmose Brown, *The Polar Regions* (New York: E. P. Dutton and Co., 1927), pp. 167-168.

<sup>96</sup> J. Gordon Hayes, *Antarctica* (London: Richards Press, Ltd., 1928), pp. 358-364.

The most vocal supporters of the sector principle have been a group of Russians, whose views were put forward following the Russian decree of annexation in 1926. In 1927 Leonid Breitfuss advocated a division of the Arctic into five sectors, including a Norwegian-Finnish, a Russian, an American, a Canadian, and a Danish sector. The Norwegian-Finnish sector would extend from 10° west to 32° 4' 35" east, the Russian from 32° 4' 35" east to 168° 49' 30" west, the American (Alaskan) from 168° 49' 30" west to 141° west, the Canadian from 141° west to 60° west, and the Danish (Greenlandic) from 60° west to 10° west. He justified such a division on the grounds of practicability and avoidance of uncertainty, and maintained that under this system an arctic state should have sovereignty over all undiscovered as well as known lands and islands within its sector. He also recommended that the old concept of freedom of the seas be modified so as to give a polar state a measure of control over its allotment of arctic water, ice, and air.<sup>97</sup> V. L. Lakhtine's division was essentially the same as Breitfuss's with respect to the Russian, Alaskan, and Canadian sectors, but he proposed to separate the Danish and Norwegian sectors at 10° east rather than 10° west longitude, thus cutting Breitfuss's Norwegian sector approximately in half.<sup>98</sup> In addition, he proposed to give Finland a separate sector, from 31° east to 32° 4' 35" east longitude, thus making six sectors instead of five. Lakhtine agreed with Breitfuss that a littoral arctic state should have a measure of sovereignty over the water, ice, and air within its sector, but went further in maintaining that this sovereignty should be essentially complete.<sup>99</sup> Two other Soviet writers who have taken a strong stand in support of the sector principle, and whose views are, if anything, more extreme than Lakhtine's, are E. A. Korovin and S. V. Sigris.<sup>100</sup>

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<sup>97</sup> Leonid Breitfuss, "Territorial Division of the Arctic" (translated from original German text by M. B. A. and R. M. Anderson), *Dalhousie Review*, 1929, pp. 467-468. Original text was "Die territoriale Sektoreinteilung der Arktis im Zusammenhang mit dem zu erwartenden transarkischen Luftverkehr" ("The Territorial Division of the Arctic into Sectors in Connection with Anticipated Transarctic Air Traffic"), *Petermanns Mitteilungen*, 1928. Breitfuss's proposal was first made in "O razgranichenii Severnoi Poliarnoi Oblasti" ("The Division of the North Polar Regions"), *Morskoi Sbornik*, Leningrad, 1927.

<sup>98</sup> Lakhtine erroneously, and perhaps inadvertently, gave 168° 49' 32" rather than 168° 49' 30" west longitude as the dividing line between the Russian and Alaskan sectors. (*Op. cit.*, p. 716.)

<sup>99</sup> *Ibid.*, pp. 704-715.

<sup>100</sup> E. A. Korovin, "Problema vozduшной okkupatsii v svyazi s pravom na poliarnye prostranstva," (Problems of Aerial Occupation in Connection with Rights in the Arctic"), *Vopr. Vozd. Prava*, Vol. I p. 104 ff; "S. S. S. R. i Poliarnye Zemli" ("The U.S.S.R. and the Land in the Arctic"), *Sov. Pravo*, (1926), No. 3, p. 43 ff; "S. S. S. R. i Severnyi Polius" ("The U.S.S.R. and the North Pole"), *Sov. Pravo* (1926) No. 3; as cited in T. A. Taracouzio, *Soviets in the Arctic*, p. 525 (*supra*); S. V. Sigris, "Sovetskoe Pravo v Poliarnykh Prostranstvakh" ("Soviet Law in the Arctic"), *Rabochii Sud*, 1928, p. 986 ff.

Turning to Canadian authorities other than those already considered, we find that a number have given express or implicit approval to the sectoral idea. There is among them, however, no such uniformity of opinion as among Soviet writers. A. R. Clute, writing in the *Canadian Bar Review* in 1927, discussed the status of the North Pole, and concluded that since it is located in the Arctic Ocean it is not subject to sovereignty, because the Arctic Ocean must be regarded as part of the open sea. He did not discuss the sector principle, but his attitude may be taken to constitute disapproval of it, at least insofar as it may be applied to water areas.<sup>101</sup> Somewhat later D. M. LeBourdais accepted the sector principle as valid, saying that it was “generally agreed” among arctic nations that they should observe it, with respect to both known and unknown islands. He described the sectors in general rather than particular terms, saying simply that Alaska’s comprised 30°, Canada’s 80°, Denmark’s 45°, Russia’s 160°, Norway’s 20°, and that Finland’s was negligible. It may be noted that he left some 25° unassigned.<sup>102</sup> Two other Canadian writers, V. K. Johnston, and Trevor Lloyd, have accepted Canada’s claims in the Arctic, but they appear to justify them upon grounds of occupation and acts of administration more than upon any alleged validity of the sector principle.<sup>103</sup> Yvon Beriault discussed the sector principle in considerable detail, and admitted that it was a political device rather than a rule of international law, but appeared to conclude that it would be a useful means of marking out polar territories the ownership of which had already been fairly well settled by an appropriate degree of occupation and administration.<sup>104</sup> In 1949 Dr. H. L. Keenleyside, Deputy Minister of Mines and Resources, wrote that the Canadian Arctic included “the Arctic Islands and their waters... and that segment of the ice-capped polar sea that is caught within the Canadian sector,” thus seeming to approve of the sector principle as it applied to land, water, and ice.<sup>105</sup> On the whole, however, there has been a surprising paucity of discussion of the sector principle among Canadian writers.

American writers present no uniformity of view either, but taken collectively they may be counted the most forthright and consistent opponents of the sector principle. W. L. G. Joerg indicated at least some approval of it, but only as applied to land and territorial waters. With this qualification, he thought that the United States, Canada, Denmark, Norway and Russia might be considered to divide the

<sup>101</sup> A. R. Clute, “The Ownership of the North Pole,” *Canadian Bar Review* (Toronto, January 1927), Vol. V, No. 1, pp. 19-26.

<sup>102</sup> D. M. LeBourdais, “Canada’s New Front Door,” *The Canadian Magazine*, March, 1938, p. 9.

<sup>103</sup> V. K. Johnston, *op. cit.*, especially pp. 40-41; See the articles by Trevor Lloyd previously cited, especially “Frontier of Destiny - The Canadian Arctic,” p. 9 (*supra*).

<sup>104</sup> Yvon Beriault, *Les Problèmes Politiques du Nord Canadien* (Ottawa: Université d’Ottawa, 1942), especially pp. 122-123.

<sup>105</sup> H. L. Keenleyside, “Recent Developments in the Canadian North,” *Canadian Geographical Journal*, Oct., 1949, p. 163.

Arctic among themselves. He omitted Iceland and Finland deliberately, and refrained from showing a dividing line between the Danish and Norwegian sectors.<sup>106</sup> Bruce Hopper says that the sector principle “has no legal standing in international law,” but also remarks that if it were applied, Russia would have a sector of 159°, Canada of 81°, Denmark of 69°, the United States of 28°, Norway of 21°, and Finland of 2°.<sup>107</sup> J. S. Reeves criticized the sector principle severely in 1934, but by 1939 had changed his mind sufficiently to write that “one may assert that the sector principle as applied at least to Antarctica is now a part of the accepted international legal order,” and to recommend that the United States claim a sector in Antarctica.<sup>108</sup> T. A. Taracouzio, who has discussed the sector principle with particular reference to Russian claims, does not concede that it is valid in international law, but thinks it could be applied in a limited way. Based on the principle of terrestrial attraction, it could be applied to settle the question of sovereignty over land and islands, both discovered and undiscovered, leaving areas of water, ice, and air space to be settled according to present principles of international law.<sup>109</sup> C. C. Hyde appears to be sympathetic towards the idea of polar lands being subject to sovereignty, but he does not accept the sector principle.<sup>110</sup> A students’ moot court at Colgate University gave a unanimous decision in 1947 against its validity.<sup>111</sup> Two Americans who have written extensively on the subject in recent years, John C. Cooper and Elmer Plischke, have been interested in the complications affecting trans-polar air traffic that would result from an unlimited application of the sector principle as proposed by Russian writers, and have also indicated strong disapproval.<sup>112</sup>

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<sup>106</sup> W. L. G. Joerg, *Brief History of Polar Exploration Since the Introduction of Flying* (New York: American Geographical Society, 1930), p. 61, also map p. 63.

<sup>107</sup> Bruce Hopper, “Sovereignty in the Arctic,” *Research Bulletin on the Soviet Union*, August 30, 1937, p. 83, p. 82.

<sup>108</sup> J. S. Reeves, “George V Land,” *The American Journal of International Law*, Vol. 28 (1934), pp. 117-119; J. W. Reeves, “Antarctic Sectors,” *op. cit.*, Vol. 33 (1939), p. 521.

<sup>109</sup> T. A. Taracouzio, *Soviets in the Arctic*, pp. 320-366, especially p. 366 (*supra*). See also the same author’s *The Soviet Union and International Law*, pp. 56-58.

<sup>110</sup> C. C. Hyde, *International Law*, Vol. I, p. 347; *ibid.*, p. 349, p. 355.

<sup>111</sup> Robert E. Elder (Colgate University), “Decision on Polar Sovereignty by Student Moot Court,” *The American Journal of International Law*, Vol. 41 (1947), pp. 656-659.

<sup>112</sup> John C. Cooper, *op. cit.*, especially p. 28, p. 35; Elmer Plischke has consistently opposed the sector principle, particularly in its Soviet interpretation. In addition to his dissertation and articles previously cited, see also the following:

“Trans-Arctic Aviation,” *Economic Geography*, July, 1943; “Trans-Polar Aviation and Jurisdiction over Arctic Airspace,” *The American Political Science Review*, Dec., 1943 (Vol. XXXVII, No. 6), pp. 999-1013.

The German geographer Sorge followed Breitfuss's plan closely. That is, he advocated dividing the Arctic into five sectors, which would belong to Norway, Russia, the United States, Canada, and Denmark.<sup>113</sup>

Scandinavian writers, with one outstanding exception, have apparently had little to say about the sector principle. This exception is, of course, the Norwegian Gustav Smedal, who in his 1931 monograph wrote one of the strongest denunciations of the sector principle which has yet appeared.<sup>114</sup> It may be noted that it was written mainly to dispute the Danish claim to East Greenland - a claim which would have been strengthened had the sector principle (especially as proposed by Breitfuss and Lakhtine) been accepted.

Some additional suggestions have been made as to the fate of arctic lands, most of them in favor of either leaving these territories as *res communis* or of instituting some form of international regime. Among the authorities previously cited, T. W. Balch, J. S. Reeves, and Elmer Plischke recommended a *res communis* status, Plischke also suggesting some form of international rule; Hopper and Taracouzio advised that an international conference be called to settle the question of sovereignty; and M. F. Lindley thought that an "international agreement" as to the validity of the sector principle was necessary.<sup>115</sup> More recently, Rudmose Brown has written an article supporting the idea that antarctic lands be regarded as "*res communis*;" Emily Greene Balch, Raymond Leslie Buell, and J. Daniel have all advocated some form of international regime for the Antarctic; and C. H. M. Waldock has suggested that the International Court of Justice determine the status of at least those antarctic territories in dispute between Great Britain, Chile, and Argentina.<sup>116</sup> The latter writer also expresses strong doubts about the sector

<sup>113</sup> Ernst Sorge, "Die Arktis," in Fritz Klute, ed., *Handbuch der Geographischen Wissenschaft* (Potsdam, 1933), pp. 496-543.

<sup>114</sup> Gustav Smedal, *op. cit.*, especially pp. 54-76.

<sup>115</sup> T. W. Balch, *op. cit.*, pp. 274-275; J. S. Reeves, "George V Land," *The American Journal of International Law* (1934), p. 119. Nevertheless, in 1939 Reeves wrote that the time when internationalization of the arctic was possible was "long past." See his "Antarctic Sectors," *The American Journal of International Law* (1939), p. 521 (*supra*); Elmer Plischke, "Trans-Polar Aviation and Jurisdiction over Arctic Airspace," *The American Political Science Review*, December, 1943, p. 1013 (*supra*); *ibid.*, p. 1013; Bruce Hopper, *op. cit.*, p. 83; T. A. Taracouzio, *Soviets in the Arctic*, p. 366 (*supra*); M. F. Lindley, *op. cit.*, p. 6, p. 235.

<sup>116</sup> R. N. Rudmose Brown, "Political Claims in the Antarctic," in *World Affairs*, 1947, published under the auspices of The London Institute of World Affairs (London: Stevens and Sons, Ltd., 1947), pp. 393-401. See especially p. 401; Emily Greene Balch, "The Polar Regions as Part of One World," *Survey Graphic*, September, 1948; Cited in Emily Greene Balch, *op. cit.*; J. Daniel, "Conflict of Sovereignities in the Antarctic," *The Year Book of World Affairs: 1949*, published under the auspices of The London Institute of World Affairs (London: Stevens and Sons, Ltd., 1949), pp. 270-271; C. H. M. Waldock, "Disputed Sovereignty in the Falkland Islands Dependencies," *The British Year Book of International Law*, Vol. XXV (1948), p. 312.

principle.<sup>117</sup> It is of interest that in this particular dispute both Argentina and Chile have maintained that an international conference may provide a solution to the problem, while Great Britain has desired to turn it over to the International Court of Justice.<sup>118</sup> P. C. Jessup in a fairly recent article has considered both possibilities.<sup>119</sup>

Considering the history of the sector principle, the various claims, counterclaims, and denials, and also the opinions of publicists on the subject, as above briefly outlined, it is apparent that the status of the sector principle in international law is, to say the least, doubtful. It would be futile here to attempt to pass judgment upon its validity, but a few comments of some relevance may perhaps be made.

Of fundamental importance is the point as to what is actually included in a sector claim. In other words, does the claim apply to land territory only, or are water, ice, and air space within the sector also considered to be subject to sovereignty? It has been noted that Senator Poirier seemed to be thinking mainly of lands and islands, and Smedal and Waldock have both stated that only land territory is claimed; but Hyde assumes that water and ice are included, and Russian writers have argued for control of air space also.<sup>120</sup> Most of the sector claims, including the Russian, have specified no more than lands and islands, or else have been framed in a somewhat ambiguous manner. The point has been, and remains, indefinite, but it is of considerable significance, since the more inclusive a claim is, the more unacceptable it becomes to nations other than the one making it.

A number of writers have observed that arctic and antarctic sectors differ, both geographically and in respect to the theories underlying their delimitation.<sup>121</sup> The north polar region is primarily one of water, floating ice, and islands, and is practically surrounded by the continental land masses of Eurasia and North America. The south polar region, on the other hand, is a huge continent, separated from other continents by a vast expanse of water which contains but few islands. This distinction has made difficult any standard application of the sector principle in polar areas.

Arctic sectors have been determined, theoretically, by meridian lines extending from eastern and western mainland extremities to the North Pole. In practice, however, this method has not been strictly followed. Thus, the eastern limit of Russia's sector is in the middle of Bering Strait, and the eastern limit of Canada's

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<sup>117</sup> *Ibid.*, p. 311, pp. 341-342, p. 345.

<sup>118</sup> *Ibid.*, p. 312.

<sup>119</sup> P. C. Jessup, "Sovereignty in Antarctica," *The American Journal of International Law*, Vol. 41 (1947), p. 119.

<sup>120</sup> Gustav Smedal, *op. cit.*, pp. 55-58; C. H. M. Waldock, *op. cit.*, p. 341; C. C. Hyde, *International Law*, Vol. I, p. 349.

<sup>121</sup> C. C. Hyde, *International Law*, Vol. I, p. 350-351; Green H. Hackworth, *op. cit.*, p. 461; Gustav Smedal, *op. cit.*, pp. 59-60; R. N. Rudmose Brown in *World Affairs*, 1947, p. 396 (*supra*); C. H. M. Waldock, *op. cit.*, pp. 339-340.

bears no exact relationship to her eastern mainland extremity. If the as yet undetermined Danish-Norwegian sector line were fixed, it obviously could have nothing to do with the Danish mainland, which lies south of Norway, and it would have to pass through the Arctic Ocean between Norway and Greenland.

In Antarctica the sector claims are determined to an even lesser extent by mainland extremities. The Chilean, Argentinean, New Zealand, and Australian sectors are all opposite the home territory of these states, but the intervening distances are great, and in each case the sectors are many degrees larger in width than the states themselves. In the British, French, and Norwegian sectors even this relationship is lacking.

As has been suggested, north polar sectors are like hinterland claims in reverse, in that they extend from the coastline outwards to the sea rather than from the coastline into the interior.<sup>122</sup> In Antarctica the sector claims extend from islands or homeland across great breadths of water to the continent, or perhaps, as Waldock insists is true of British, French, Norwegian, New Zealand, and Australian sectors, from the coastline to the interior.<sup>123</sup> Waldock maintains that these sectors are based upon discovery of and claims to parts of the antarctic coastline, and if this view is correct, one may also agree with his statement that antarctic sectors are really based upon continuity, or a revival of the hinterland doctrine.<sup>124</sup> There are, however, a number of relevant factors, which vary in importance from one instance to another. Thus, Argentina and Chile stress contiguity; France, Great Britain, Australia, and Norway stress discovery, prior claim, and acts of administration; while the British claim is also based partly upon possession of the Falkland Islands.

Some of the sectors are quite irregular in shape. In the Arctic the eastern limit of the Canadian sector is made to deviate from the 60th meridian so as to leave all of Greenland in Danish possession, and similarly the western limit of Russia's sector deviates in order to leave all of Spitsbergen to Norway. These sectors also have irregular southern limits, since they follow the mainland coastline. In the Antarctic the British and Argentine sectors are irregular in shape, and all antarctic sectors have as their northern limit parallels of latitude located in the ocean rather than along a coastline. The arbitrary and variable manner in which sectors are marked out merely emphasizes the fact that the primary purpose of the nations concerned is simply to secure desired territory.

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<sup>122</sup> Naval War College, *op. cit.*, (1937), p. 95 (*supra*).

<sup>123</sup> C. H. M. Waldock, *op. cit.*, p. 341.

<sup>124</sup> *Ibid.*, pp. 340-341. Another writer says that the British claim to sovereignty over the "Australasian" sector of Antarctica is based on discovery. See A. H. Charteris, "The Commonwealth of Australia and Antarctica," *The British Year Book of International Law*, Vol. XVIII (1937), p. 177.

The question has occasionally been raised as to whether polar lands should be regarded as *res communis* or "*res nullius*."<sup>125</sup> The essential distinction is that if they are *res communis* they must belong permanently to all nations in general and can be made the property of no one nation in particular; while if they are *res nullius* their original status is as unowned territory, but territory which can be made subject to the ownership of a single state if the necessary steps are taken to accomplish this end. Although suggestions have been made that they should be *res communis*, and although this status might have certain advantages, it is quite evident that the trend is in the opposite direction, and that the great majority of interested states are asserting that polar lands may be made subject to sovereignty.<sup>126</sup> Consequently the argument that the sector principle cannot be applied to polar regions because they are, or should be, *res communis* seems to be losing ground.

If polar lands are *res nullius* rather than *res communis*, the vital question is by what means they may be brought under sovereignty. Occupation is admittedly difficult, and there is little opportunity for administration. On the other hand, if the sector principle were accepted, occupation would become less essential. The United States has consistently denied the various claims in the Antarctic on the grounds that the sector principle is invalid and the degree of occupancy insufficient for ownership. Other nations have continued to assert the sector principle and have apparently taken the view that their occupancy is sufficient for the purpose or else that occupation is unnecessary in those regions. The opposition of the United States thus appears to be one of the major obstacles preventing validation of sector claims in the Antarctic. It is a question what the United States would do if other nations' sector claims were accompanied by an appropriate measure of occupation. Two alternatives would be to acknowledge the sectors as such, or to acknowledge certain territorial rights while continuing to deny the validity of the sector principle itself.

It is undeniably true, as both Cooper and Plischke have observed, that the sector principle has never been formally incorporated into international law.<sup>127</sup> There has never been a comprehensive international agreement or treaty on the subject, no arbitration tribunal has ever passed an opinion on its validity, and it has never come before either the Permanent Court of International Justice or the International Court of Justice. If the sector principle has to be formally incorporated into international law for sector claims to become legal, they are beyond question invalid.

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<sup>125</sup> J. S. Reeves in *The American Journal of International Law* (1934), p. 119 (*supra*); C. G. Fenwick, *op. cit.*, p. 354; C. H. M. Waldock, *op. cit.*, pp. 314-315.

<sup>126</sup> T. W. Balch, *op. cit.*, p. 275; R. N. Rudmose Brown in *World Affairs*, 1947, p. 401 (*supra*); Cf. C. C. Hyde, *International Law*, Vol. I, p. 347: "Whether the polar areas as such may be subjected to rights of sovereignty appears no longer to be a moot question. States are in fact asserting that they may be; and that is decisive."

<sup>127</sup> John C. Cooper, *op. cit.*, p. 28; Elmer Plischke, "Trans-Polar Aviation and Jurisdiction over Arctic Airspace," *op. cit.*, p. 1012 (*supra*).

However, is formal incorporation of the sector principle necessary for some or most of the sector claims to become accomplished facts? In discussing this question Waldock notes that Reeves in 1939 considered the sector claims in Antarctica to be “a part of the accepted international legal order.”<sup>128</sup> At the same time Waldock expresses doubt that state practice alone is sufficient, or in this case general enough, to establish a new rule of international law.<sup>129</sup> Regarding this point it may be observed that if state practice has significance, then the sector principle is strengthening, because an increasing number of nations have endorsed it in recent years. Plischke presents a somewhat distorted view of this aspect of the question, in stressing that Russia is the only arctic nation which has formally endorsed the sector principle.<sup>130</sup> The statement in itself is correct, but Canada’s claim is formal also in every sense except that it has not been embodied in an act of the Canadian Parliament, and in the Antarctic Great Britain, New Zealand, Australia, France, Norway, Chile, and Argentina have all claimed sectors. Norway cannot be cited as an opponent of the sector principle because, although she denied it in the Arctic, she later claimed a sector in the Antarctic. It would be closer to the truth, as a matter of fact, to say that of all nations possessing or claiming territory in the two polar regions, Denmark is the only one besides the United States which does not endorse the sector principle, and the United States is the only nation which specifically denies its validity. If Hyde’s comment that polar areas may be subjected to rights of sovereignty simply because states assert that they maybe were applicable also to the sector principle, then sector claims might become effective simply because a majority of interested states endorsed them.<sup>131</sup> There is some disagreement about sectors, in the Antarctic particularly, but there is also a good measure of agreement and mutual recognition; and if the disagreements were satisfactorily ironed out there would be little to prevent sector claims from being “faits accomplis” except legal theory.

There are, however, a number of other states, which have as yet remained silent on the subject, but which might insist upon having their say if the question were ever to be finally settled. These include interested polar states such as Sweden, Iceland, and Finland, also interested non-polar states such as Germany, Belgium, and Japan, and finally the large remainder of essentially uninterested non-polar states. If the sector principle were ever brought before the bar of world opinion, for example in a vote of the General Assembly of the United Nations, the outcome would be uncertain, but the odds would almost certainly be against its acceptance. A decision might serve a useful purpose, however, in clearing the air and removing

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<sup>128</sup> J. S. Reeves in *The American Journal of International Law* (1939), p. 521 (*supra*); as cited in C. H. M. Waldock, *op. cit.*, p. 338.

<sup>129</sup> C. H. M. Waldock, *op. cit.*, pp. 338-339.

<sup>130</sup> Elmer Plischke, “Trans-Arctic Aviation,” *op. cit.*, p. 289.

<sup>131</sup> See p. 373 above, footnote 3.

doubt, since the present unstable situation, especially in the Antarctic, should unquestionably not be dragged on indefinitely. Whether such a decision should come from the General Assembly, the International Court of Justice, an international conference, or perhaps from some other agency, would have to be determined, but the decision should be made.

In conclusion, one may say that the status of the sector principle is obviously uncertain and undefined. This being the case, it cannot be relied upon exclusively as a device for establishing a territorial claim. Some of the sectors, especially the Russian and Canadian, may be considered essentially valid, at least as far as land areas are concerned, but their validity has been established more by discovery, exploration, administration, and occupation than by the sector principle. All nations making sector claims have, in fact, attempted to fortify their claims with whatever devices have been available, and this is undoubtedly the wisest course if the lands in question are really desired. The sector principle might have some usefulness as a device for delimiting land territories to which a good title already exists or is in process of creation by other means, but even here its applicability is somewhat doubtful. When applied to regions of water, ice, and air, the matter becomes more complicated still.

## CHAPTER 17

## JURISDICTION OVER POLAR WATERS

In antiquity it was common for people to assert and practise exclusive jurisdiction over portions of the sea, although there is little evidence to indicate any clearly recognized legal concept of maritime dominion.<sup>1</sup> The Greek writer Eusebius lists seventeen nations which held dominion over parts of the sea in ancient times.<sup>2</sup> In classic Greece a number of city states including Athens and Sparta claimed jurisdiction over parts of the Aegean Sea.<sup>3</sup> It is true that in the period of Roman ascendancy the Corpus Juris Civilis of Justinian asserted that the air and the sea are common to all men, and subject only to the *jus gentium*, but Rome nevertheless looked upon the Mediterranean as a Roman sea, and her state policy undoubtedly aimed at maritime dominion in this region.<sup>4</sup> Pitman Potter sees little contradiction in this apparent discrepancy, explaining that the Justinian laws were national rather than international in scope and dealt only with Roman state and Roman subjects.<sup>5</sup> He adds that neither in Greek nor Roman times was the maritime dominion of these states recognized by other states.<sup>6</sup>

During the long period of the Middle Ages, from the decline of the Roman Empire until the onset of the Renaissance and Reformation, the question of maritime law gradually emerged from its previously informal condition and became a vital legal issue among the nations.<sup>7</sup> A number of maritime codes developed, which attempted to regulate commerce and navigation. These included the Rhodian

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<sup>1</sup> Pitman B. Potter, *The Freedom of the Seas in History, Law, and Politics* (New York: Longmans, Green and Co., 1924), p. 11 ff. This is one of the good brief treatments of maritime jurisdiction. Others are H. A. Smith, *The Law and Custom of the Sea* (London: Stevens and Sons, Ltd., 1948); T. W. Fulton, *The Sovereignty of the Sea* (London: Wm. Blackwood and Sons, 1911); A. P. Higgins and C. J. Colombos, *The International Law of the Sea* (London: Longmans, Green, and Co., 1943); L. F. Brown, *The Freedom of the Seas* (New York: E. P. Dutton and Co., 1919); P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (New York: G. A. Jennings Co., Inc., 1927); W. Arnold-Forster, *The New Freedom of the Seas* (London: Methuen and Co., Ltd., 1942); P. M. Ogilvie, *International Waterways* (New York: Macmillan Co., 1920); W. E. Masterson, *Jurisdiction in Marginal Seas* (New York: Macmillan Co., 1929).

<sup>2</sup> Cited in P. B. Potter, *op. cit.*, p. 13.

<sup>3</sup> P. B. Potter, *op. cit.*, p. 16 ff.

<sup>4</sup> *Ibid.*, pp. 25-32. See also P. T. Fenn, "Justinian and the Freedom of the Sea," *The American Journal of International Law*, Vol. 19 (1925), pp. 716-727.

<sup>5</sup> P. B. Potter, *op. cit.*, p. 32.

<sup>6</sup> *Ibid.*, p. 33.

<sup>7</sup> *Ibid.*, p. 36. See also L. Oppenheim, *op. cit.*, p. 533 ff.

Sea Law of the Mediterranean, which was compiled about the eighth century A.D. from the ancient Rhodian Code of the third or second century B.C., the Basilika or Byzantine law of the seventh century A.D., the Assizes of Jerusalem used so extensively by the Crusaders, the Rolls of Oleron dating from about the twelfth century A.D. and adopted by most Western European states, the Laws of Wisby or Gothland, and perhaps most important of all, the Consolato del Mare, which appeared in the Mediterranean during the fourteenth century A.D.<sup>8</sup> Such maritime codes, although not promulgated by any sovereign authority and not universally recognized, nevertheless had a wide acceptance. Yet they did not prevent the assertion of sovereignty over portions of the sea by a great number of states, and it became standard practice during the Middle Ages for a state to attempt to control any part of the sea which seemed to come within its orbit.<sup>9</sup> Thus Pisa, Tuscany, Genoa, Venice, and the Papacy all asserted jurisdiction over adjacent Mediterranean waters. After the great voyages of Columbus and da Gama, Spain and Portugal made much more sweeping claims, the former attempting to exclude other nations from the Pacific and the latter attempting to exclude them from the Indian Oceans. In addition northern states such as England, France, and Denmark made extensive assertions of sovereignty over northern waters. In fact, by about 1550 A.D. practically all known parts of the world's oceans and seas were claimed by some maritime state, and some parts were claimed by several.<sup>10</sup>

Such sweeping assertions of right were enforced insofar as the various states had power to enforce them; but they were essentially only pretensions, which depended upon force for whatever validity they might have, and when force proved inadequate to maintain exclusion of other nations, the pretensions lost their meaning.<sup>11</sup> Also, the nations advancing such claims found that as their commerce expanded they suffered under similar claims made by other nations, and consequently were glad to abandon them and assert instead the principle of the freedom of the high seas.<sup>12</sup>

An early exponent of the principle of freedom of the seas was Queen Elizabeth of England, who protested sharply against the extravagant claims of both Spain and Portugal.<sup>13</sup> When the Spanish ambassador Mendoza alleged that Drake's voyage in the "Golden Hind" was an infringement of Spanish maritime dominion, she replied

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<sup>8</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 23-29. See also P. M. Ogilvie, *op. cit.*, pp. 24-41.

<sup>9</sup> P. B. Potter, *op. cit.*, p. 36 ff.

<sup>10</sup> *Ibid.*, pp. 36-41. See also H. M. Cleminson, "Laws of Maritime Jurisdiction in Time of Peace with Special Reference to Territorial Waters," *The British Year Book of International Law*, Vol. VI (1925), p. 146; L. F. Brown, *op. cit.*, pp. 3-10; P.M. Ogilvie, *op. cit.*, p. 58; H. A. Smith, *op. cit.*, pp. 41-42.

<sup>11</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 48-49.

<sup>12</sup> *Ibid.*, pp. 48-49; P.M. Ogilvie, *op. cit.*, p. 101.

<sup>13</sup> H. A. Smith, *op. cit.*, p. 42.

tartly that "Spain has no right to debar English subjects from trade or from freely sailing that vast ocean, seeing that the use of the sea and air is common to all; neither can a title to the ocean belong to any people or private persons for as much as neither nature nor public use and custom permitteth any possession thereof."<sup>14</sup> This statement is sometimes taken to be the first proclamation of the freedom of the seas in the modern sense.<sup>15</sup> After Elizabeth's time this liberal policy suffered a temporary recession, and the Stuarts with their exaggerated ideas of kingly powers asserted sovereignty over "British seas."<sup>16</sup> Nevertheless this attitude could not be maintained permanently, and one outstanding authority has written that these English pretensions had been abandoned by the eighteenth century.<sup>17</sup>

Meanwhile other nations had begun to lend their support to Elizabethan England in proclaiming the freedom of the seas. The Dutch in particular had widespread and growing commercial interests, and so attacked Spanish and Portuguese monopolies in both the East and the West. Other nations followed suit, and consequently during the seventeenth century the principle of free ocean traffic became a widely accepted doctrine among nations.<sup>18</sup>

Long before freedom of the seas had been widely accepted in state practice, however, it had been discussed pro and con by writers and jurists, with the weight of opinion gradually veering in its favor. Early in the sixteenth century the Spanish canonist Vitoria had asserted the freedom of the seas as an abstract principle, but with reservations.<sup>19</sup> Other sixteenth century writers who expressed generally favorable views were Nicholas Everard, the great Spanish jurist Vasquez, the equally brilliant French scholar H. Donellus, and finally Alberico Gentilis.<sup>20</sup> On the other hand a number of writers, including William Welwood and Sir John Burroughs of England and Pado Sarpi of Venice, defended the concept of maritime sovereignty.<sup>21</sup>

By far the most notable discussion of this question, however, was the famous Grotius-Selden controversy of the early seventeenth century. The young Dutch advocate Hugo Grotius, a counsel for the Dutch East India Company, published his pamphlet "Mare Liberum" in 1609. This pamphlet is generally regarded as the outstanding presentation of the case for freedom of the seas, for that era at least. It was answered by the English jurist John Selden in a treatise which, composed in 1617 and 1618 and revised and enlarged later, appeared in 1635 under the title

<sup>14</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, p. 41, quoting Camden, *History of Elizabeth*.

See also H. A. Smith, *op. cit.*, p. 42.

<sup>15</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, p. 41; also H. A. Smith, *op. cit.*, p. 42.

<sup>16</sup> T. W. Fulton, *op. cit.*, p. 118 ff; L. F. Brown, *op. cit.*, pp. 3-10.

<sup>17</sup> T. W. Fulton, *op. cit.*, p. 537.

<sup>18</sup> L. F. Brown, *op. cit.*, pp. 16-18; H. A. Smith, *op. cit.*, p. 3, p. 43.

<sup>19</sup> Vitoria, *De Indis*, Vol. III, p. 10, cited in H. A. Smith, *op. cit.*, p. 42.

<sup>20</sup> Cited in P. B. Potter, *op. cit.*, pp. 43-54.

<sup>21</sup> Cited in A. S. Hershey, *op. cit.*, p. 321, footnote 2. See also A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 50-51.

"Mare Clausum." In the meantime Grotius had expounded his principles further in "De Jure Belli ac Pacis," published in 1625. Grotius was interested chiefly in combatting Spanish and Portuguese trade monopolies; while Selden wrote as an Englishman of the Stuart period who was concerned with proving the validity of Stuart claims to maritime dominion. Potter remarks that Selden's work was superior from a strictly legal standpoint, but that Grotius's principle has stood the test of time better.<sup>22</sup>

After the middle of the seventeenth century the problem of maritime jurisdiction and international practice in connection therewith were complicated by a number of factors, and several lines of development may be observed.<sup>23</sup> Although the principle of freedom of the seas steadily gained headway, bitter personal argument and international controversy did not abate, and some of the keenest disputes occurred in connection with colonial trade in the eighteenth century and over neutral rights during the Napoleonic Wars.<sup>24</sup> The great increase in trade and commerce, and the general adoption of mercantilism and trade monopolism, made the problem more acute.<sup>25</sup> The increasing discussion of rights and duties of belligerents and neutrals in wartime added another complicating factor, and the growing tendency to distinguish between inner and outer seas still another.<sup>26</sup>

During the American and French Revolutions, and during the Napoleonic Wars which followed, French and American writers took the lead in defending the concept of freedom of the seas. The British navy was just entering upon its greatest period of supremacy, however, and as long as Great Britain continued to pursue restrictive policies, the principle had little real application. Oddly enough, these restrictive policies were in large measure abandoned shortly after the Battle of Trafalgar, or in other words just when they could have been most rigorously applied. The Admiralty Instructions of 1805 repeated as usual the command which had been in force for many years to the effect that foreign ships should strike their topsail and take in their flag when in so-called British waters, but these instructions were omitted the following year, and the measure was quietly dropped.<sup>27</sup> Later the British navy led in suppressing piracy on the high seas, and the final victory for freedom of the seas may be said to have been won in 1824, when Great Britain joined the United States in protesting against Russia's claim to exclusive use of the

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<sup>22</sup> P. B. Potter, *op. cit.*, pp. 57-80, especially p. 64, p. 79. See also A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 50-52; L. F. Brown, *op. cit.*, pp. 16-22; A. S. Hershey, *op. cit.*, pp. 321-322; W. Arnold-Forster, *op. cit.*, pp. 9-10; T. W. Fulton, *op. cit.*, pp. 338-377.

<sup>23</sup> P. B. Potter, *op. cit.*, p. 81.

<sup>24</sup> *Ibid.*, p. 81 ff.

<sup>25</sup> *Ibid.*, pp. 83-84.

<sup>26</sup> *Ibid.*, pp. 85-90.

<sup>27</sup> P.M. Ogilvie, *op. cit.*, p. 97, pp. 105-108; A. P. Higgins and C. J. Colombos, *op. cit.*, p. 43; P. B. Potter, *op. cit.*, p. 90.

Bering Sea within one hundred Italian miles of the coast.<sup>28</sup> Since that time Great Britain has supported the freedom of the seas as a general principle, in common with other maritime powers who had, according to Ogilvie, relinquished all extensive claims to dominion in the seas by the beginning of the nineteenth century.<sup>29</sup>

The embodiment of the principle in a formal statement did not come until later. It was not until the middle of the nineteenth century, in fact, that a beginning was made on the codification of maritime international law, and not until the twentieth century that any noteworthy results were achieved.<sup>30</sup> However, during the last 150 years publicists almost without exception have given the weight of their support to the concept of the freedom of the high seas, and it has been endorsed in a number of judicial decisions, notably those of Lord Stowell in the case of "LeLouis" in 1817, and Judge Story in "The Marianna Flora" in 1826.<sup>31</sup> The International Law Association at its Vienna Conference in 1926 formally adopted the principle of "absolute liberty and equality" of navigation on the high seas; and the same principle was adopted by the Institute of International Law at its Lausanne Conference in 1927.<sup>32</sup> At the conference for the codification of international law held at The Hague in 1930, the report of the committee on territorial waters showed that all nations admit the principle of freedom of maritime navigation.<sup>33</sup>

It is now, therefore, a generally accepted rule of international law that the open sea is free for the common use of all nations, at least in peacetime.<sup>34</sup> This means that the high seas may be used by all for any legitimate purpose such as travel, trade, fishing, the laying of submarine cables, and so on, except for whatever restrictions may be imposed by treaty or by agreement, to conserve natural resources or prevent accidents.<sup>35</sup> The terms "open sea" and "high seas" are somewhat imprecise, and their exact meaning might be a matter of debate, but probably few would quarrel with Oppenheim's broad definition that they are "the coherent body of salt water all over the greater part of the globe, with the exception of the maritime belt and the territorial straits, gulfs, and bays, which are part of the sea, but not parts of the open

<sup>28</sup> A. S. Hershey, *op. cit.*, p. 322; A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 45-49; T. W. Fulton, *op. cit.*, p. 581 ff. See also W. Arnold-Forster, *op. cit.*, chap. 2; and P. M. Ogilvie, *op. cit.*, pp. 121-127.

<sup>29</sup> P. M. Ogilvie, *op. cit.*, pp. 100-101.

<sup>30</sup> P. B. Potter, *op. cit.*, p. 96.

<sup>31</sup> Cited in A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 51-52.

<sup>32</sup> *34th Report*, p. 101 ff., cited in A. P. Higgins and C. J. Colombos, *op. cit.*, p. 52. See also H. M. Cleminson, *op. cit.*; *Annuaire*, Vol. 34 (1927), p. 339, cited in A. P. Higgins and C. J. Colombos, *op. cit.*, p. 52.

<sup>33</sup> "Report of the Second Committee of the Hague Conference," *The American Journal of International Law*, Vol. 24 (1930), *Supplement*, p. 234.

<sup>34</sup> A. S. Hershey, *op. cit.*, p. 323; L. Oppenheim, *op. cit.*, p. 540; P. B. Potter, *op. cit.*, p. 100.

<sup>35</sup> A. S. Hershey, *op. cit.*, pp. 324-325.

sea.”<sup>36</sup> Oppenheim adds that all salt water seas are parts of the open sea, provided they are not isolated from the general body of salt water extending over the globe, and provided that the salt water approaches to them are navigable and open to the vessels of all nations.<sup>37</sup> Such inland salt water seas as the Caspian would thus be excepted from the above definition, but, presumably, such exterior bodies of water as the White Sea and Hudson Bay would be considered part of the open sea. Oppenheim says specifically that the Arctic and Antarctic Oceans, as well as the Indian, Atlantic, and Pacific, belong to the open sea.<sup>38</sup>

The open sea is but one of the three major categories into which the surface waters of the world are commonly divided. The other two are internal waters and territorial waters.<sup>39</sup> An important distinction between these two and the high seas is that, while the latter are in international law free for the common use of all, both internal waters and territorial waters fall under the sovereignty of particular states.

Internal waters comprise all those which lie within the base or inner line of territorial waters, irrespective of whether they be salt water or fresh; and they include all rivers, lakes, the waters within ports, and also certain other land-locked waters more difficult to define.<sup>40</sup> As Smith says, “The common legal feature of all these waters is that over them the state concerned has precisely the same sovereign authority as it has over its land territory,” which means that this authority is essentially unlimited, except insofar as the state itself may consent to limitation by treaty.<sup>41</sup> In cases where a river, or a lake, or a chain of rivers and lakes, forms the boundary between two states, it is common for the two states to agree upon a dividing line running through the water system; and in cases where a river forms part of the boundary of, or flows through, a considerable number of states, efforts have sometimes been made to provide for joint control or internationalization of the river.<sup>42</sup>

Territorial waters are those included within a maritime zone or belt adjacent to a state's territory, between the outer limits of this territory and its internal waters on the one hand and the high seas on the other.<sup>43</sup> It is not possible to define this so-called marginal sea with greater precision because, although there is general agreement that there should be a belt of territorial waters under the jurisdiction of the littoral state, there is no commonly accepted understanding as to what its width should be or how it should be delineated. This question has been discussed and

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<sup>36</sup> L. Oppenheim, *op. cit.*, p. 538.

<sup>37</sup> *Ibid.*, p. 538.

<sup>38</sup> *Ibid.*, p. 539.

<sup>39</sup> H. A. Smith, *op. cit.*, p. 4; A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 58-59.

<sup>40</sup> H. A. Smith, *op. cit.*, p. 4.

<sup>41</sup> *Ibid.*, p. 4.

<sup>42</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, p. 121, p. 142; *ibid.*, p. 142 ff; A. S. Hershey, *op. cit.*, pp. 308-311.

<sup>43</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, p. 58.

disputed for several centuries, and, up till the present time at least, a solution has defied the best efforts of all concerned.

A famous early work on the subject of territorial waters was Bynkershoek's "De Dominio Maris," which appeared in 1702.<sup>44</sup> Bynkershoek laid down a modified principle of effective occupation as the criterion for ownership of territorial waters, and then made his classic suggestion that a nation's dominion should extend seawards to the limit of the range of a shore-based cannon.<sup>45</sup> Later the suggestions of a number of men including Galiani and Azuni had the effect of standardizing this distance at three nautical miles.<sup>46</sup> It soon became outmoded, owing to the steadily increasing range of cannon; but it has nevertheless remained as a partially recognized standard, and has been found acceptable by a considerable number of nations. It was never universally accepted, however, and has come under severe attack, particularly in recent years.

A number of writers have attempted to summarize and classify the various opinions that have been expressed regarding the three-mile limit and the subject of territorial waters in general.<sup>47</sup> Their work shows conclusively that there has never been uniformity or agreement, either in the opinions of publicists or in state doctrine and practice. It may be added that on the whole the weight of opinion in favor of the three-mile limit is not impressive. George Grafton Wilson, for example, found that of the fifty authorities whose opinions he examined, six approved a limit of fifty miles or more, three approved the horizon as a limit, nineteen approved the limit of the cannon shot, five approved the three-mile limit, three approved the limit of navigable depth, one approved a limit of effective control, one of ten miles, and the remainder endorsed various other views.<sup>48</sup> Jessup considered the attitudes of some twenty-four states, and found that seven supported the three-mile limit, five adhered to it but did not defend it, four had a neutral attitude, four denied its binding force, three claimed a four-mile limit, but only one (Italy) denied it

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<sup>44</sup> Cornelius van Bynkershoek, *De Dominio Maris Dissertatio*, edited in translated form by James Brown Scott (New York: Oxford University Press, 1923).

<sup>45</sup> *Ibid.*, p. 43; *ibid.*, p. 44. See also Wyndham L. Walker, "Territorial Waters: The Cannon Shot Rule," *The British Year Book of International Law*, Vol. XXII (1945), pp. 210-231. Walker disputes strongly the common ideas that Bynkershoek himself invented the cannon shot rule, and that he was responsible for the three-mile limit.

<sup>46</sup> T. W. Fulton, *op. cit.*, pp. 555-565.

<sup>47</sup> In addition to the classifications discussed briefly here, see also the following, Henry G. Crocker, *The Extent of the Marginal Sea* (Washington: Government Printing Office, 1919) - an excellent compilation of the views of publicists and national and international documents; and Thomas Baty, "The Three-Mile Limit," *The American Journal of International Law*, Vol. 22 (1928), pp. 503-537.

<sup>48</sup> George Grafton Wilson, *Handbook of International Law*, 2nd edition (St. Paul: West Publishing Co., 1927), p. 91.

outright.<sup>49</sup> Fulton's earlier analysis, which considered in considerable detail both the views of writers and state practice, revealed the same lack of unity.<sup>50</sup> The utter lack of agreement among nations was perhaps best shown, however, at the 1930 Hague Conference for the Codification of International Law, which considered this question, among others, and failed completely to achieve a satisfactory solution. J. S. Reeves lists twenty nations as favoring the three-mile limit, in their opinions expressed at the Conference, twelve in favor of a six-mile limit, three in favor of a four-mile limit, one (Russia) opposing any definite limit but advocating maximum freedom of navigation, and one (Czechoslovakia) abstaining because it had no coastline.<sup>51</sup> That little progress towards standardization has been made since 1930 is shown by H. A. Smith in a work published as recently as 1948. According to his classification, Great Britain, the Dominions, the United States, Germany, Japan, Holland, Denmark, China, and Poland support the three-mile limit, in some cases with qualifications; Sweden and Norway claim four miles; Italy, Greece, Spain, Portugal, and most of the Latin American Republics claim six miles, in some cases with special extensions; Russia formerly claimed twelve miles and perhaps does so still; and France's position is doubtful.<sup>52</sup> A recent constructive step was a recommendation by the United Nations General Assembly to the International Law Commission (elected November 3, 1948) that it add the topic of the regime of territorial waters to the topics which are to receive priority in the work of codification.<sup>53</sup>

In summary, it may be said that world opinion undoubtedly endorses the territorial sea as such, but a standard and universally acceptable width has never been agreed upon. The minimum width of the territorial sea may be taken to be three nautical miles, however, since no state claims or endorses a shorter distance. But one may justifiably doubt the validity of Jessup's conclusion that "the three-mile limit is today an established rule of international law."<sup>54</sup>

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<sup>49</sup> P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, pp. 62-63 (*supra*).

<sup>50</sup> T. W. Fulton, *op. cit.*, pp. 650-692.

<sup>51</sup> Jesse S. Reeves, "Codification of the Law of Territorial Waters," *The American Journal of International Law*, Vol. 24 (1930), p. 492. See also the following relevant articles in the same volume: M. O. Hudson, "First Conference for the Codification of International Law," pp. 447-466; S. Whittemore Boggs, "Delimitation of the Territorial Sea," pp. 541-555; David Hunter Miller, "The Hague Codification Conference," pp. 674-693.

<sup>52</sup> H. A. Smith, *op. cit.*, pp. 12-13. See also T. A. Taracouzio, *The Soviet Union and International Law*, p. 63. Taracouzio's rather lengthier classification agrees generally with Smith's, but he lists Portugal as claiming a twelve-mile limit, Greece a three-mile limit, and adds Finland and Iceland as claiming a four-mile limit. He cites Russian decrees of May 24, 1921, and June 15, 1927, establishing a twelve-mile territorial zone for the Soviet Union.

<sup>53</sup> Yuen-Li Liang, "Notes on Legal Questions Concerning the United Nations," *The American Journal of International Law* (1950) Vol. 44, pp. 527-542, especially pp. 528, 533-534.

<sup>54</sup> P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, p. 66 (*supra*). See T. Baty, *op. cit.*, p. 517, for a point of view similar to Jessup's.

A number of rules relating to territorial waters have received common acceptance. As far as the delimitation of the territorial belt is concerned, the starting or base line from which territorial waters are measured is normally the line of mean low-water spring tides along the coast.<sup>55</sup> A number of methods have been proposed for drawing the line of the exterior limit, perhaps the most suitable being a line forming the locus of all points which are exactly three nautical miles (or any other agreed distance) from the nearest point on the coast. The geographer S. W. Boggs favors this method.<sup>56</sup> The rights of a state over its territorial waters are not usually considered as complete as over its land territory or internal waters, but they include at least five major categories which give almost full control-jurisdiction over foreign ships of war and merchant vessels, police functions, customs and revenue functions, fishery rights, and maritime ceremonial.<sup>57</sup> The outstanding limitation is that foreign merchant vessels are by common agreement granted the right of innocent passage through territorial waters, at least in peacetime. The rights of such vessels in wartime, and of warships at all times, are more doubtful.<sup>58</sup> In addition it is also an accepted rule that foreign vessels may seek temporary refuge within territorial waters in storms or in other cases of genuine distress or emergency.<sup>59</sup> On the high seas a state maintains control of its own vessels at all times; but in territorial waters, although the same rule generally applies in such matters as internal discipline, a foreign ship is, in some degree at least, subject to the jurisdiction of the local state, when this is demanded.<sup>60</sup>

The problem of the territorial belt is often complicated by the presence of bays and islands. As far as islands are concerned, H. A. Smith gives the following brief analysis of their relationship to territorial waters. If an island is within six miles of the mainland (assuming the three-mile limit), the base line of territorial water runs round the island, and an area of internal waters is enclosed. If the island is more than six miles from the mainland, there must be an open channel of high sea between the two. The same solution is applied to archipelagoes.<sup>61</sup>

Bays are generally considered to be territorial waters when their entrances are no more than six miles in breadth.<sup>62</sup> In the case of funnel-shaped bays, the base line is

<sup>55</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 74-75.

<sup>56</sup> S. W. Boggs, "Delimitation of the Territorial Sea," *op. cit.*, pp. 543-544.

<sup>57</sup> See A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 81-103.

<sup>58</sup> A. S. Hershey, *op. cit.*, p. 297; T. J. Lawrence, *op. cit.*, p. 182-184; A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 81-82; P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, p. 119 ff.

<sup>59</sup> P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, p. 194 ff.

<sup>60</sup> *Ibid.*, pp. 121-122, 137-139, 191-194.

<sup>61</sup> H. A. Smith, *op. cit.*, p. 8. See also A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 75-76; J. L. Brierly, *op. cit.*, p. 163-164.

<sup>62</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, p. 111; P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, pp. 355-358. See also Sir Cecil Hurst, "The Territoriality

usually drawn at the first point where the two shores are not more than six miles apart.<sup>63</sup> In addition, there are a number of "ten-mile bays" which have been sanctioned by agreement, convention, or custom; but, according to H. A. Smith, these may be regarded as exceptions.<sup>64</sup> Still wider bays have been claimed as territorial waters, apparently with success, including Delaware and Chesapeake Bays in the United States and Conception Bay in Newfoundland, whose entrances are more than ten, twelve, and twenty miles in breadth respectively.<sup>65</sup> However, an international adjudication rejected the British claim to the Bay of Fundy, which has an entrance of about sixty-five miles in width.<sup>66</sup>

A number of states have claimed limited rights of jurisdiction over special contiguous zones beyond their territorial waters. These special zones differ greatly in size, in manner of delimitation, and in the form of jurisdiction which is asserted over them. It is not customary to claim sovereignty over such zones in the sense that sovereignty is claimed over territorial waters, but rather the right is demanded to make regulations affecting such matters as defense, customs, revenue, sanitation, smuggling, and fisheries. Great Britain passed a number of so-called "Hovering Acts" beginning in 1736, designed to enforce customs and excise laws beyond the limits of territorial waters.<sup>67</sup> Following the purchase of Alaska the United States attempted to control seal fishing more than three miles from land in the Bering Sea.<sup>68</sup> Russia, who had already failed in 1821 - 1825 in her attempt to assert sovereignty over the same seas, in 1909 claimed a zone within twelve miles of her shores for customs regulation, in 1911 a similar zone for fisheries regulation, and in 1921 and 1927 a zone of twelve miles for territorial waters.<sup>69</sup> In 1921 Norway proclaimed a ten-mile zone for customs regulation, and similar steps have been taken by many European and Latin American states.<sup>70</sup> It may be noted that the Draft of the Institute of International Law in 1927 provided for a zone of six marine miles for the territorial sea, and a supplementary zone of six miles for the control of

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of Bays," *The British Year Book of International Law*, Vol. III (1922-1923), pp. 42-54.

Hurst approves the ten-mile entrance.

<sup>63</sup> H. A. Smith, *op. cit.*, p. 8. The above assumptions are again based on the three-mile limit.

<sup>64</sup> *Ibid.*, pp. 11-12.

<sup>65</sup> *Ibid.*, p. 10; A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 114-115; P.M. Ogilvie, *op. cit.*, pp. 129-131.

<sup>66</sup> J. B. Moore, *International Arbitrations*, Vol. 4, p. 4342.

<sup>67</sup> E.g., 9 Geo. II, c. 35 (1736); 4 Geo. III, c. 15, s. 33 (1763); 24 Geo. III, c. 47 (1784); 42 Geo. III, c. 82 (1802.) See also H. G. Crocker, *op. cit.*, pp. 535-541; P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, pp. 77-79.

<sup>68</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 99-100.

<sup>69</sup> *Ibid.*, p. 91, 95; P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, pp. 26-31, 86-87; T. A. Taracouzio, *The Soviet Union and International Law*, p. 63.

<sup>70</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, p. 91; See P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, especially Chapters 1 and 2, for a good treatment of this whole subject.

customs, sanitation, etc.<sup>71</sup> All of the American nations except Canada adopted the Declaration of Panama in 1939, establishing a wide security zone of as much as several hundred miles in breadth around their shores.<sup>72</sup> On September 28, 1945, President Truman proclaimed the right of the United States to establish fishery conservation zones in certain undefined contiguous areas of the high seas, and conceded the right of other states to do likewise.<sup>73</sup> Some of the above claims have not been sustainable; the British Hovering Acts were repealed in 1876, an arbitration tribunal ruled against the American attempt to regulate the Bering seal fisheries, and Russia conceded the right of British nationals to fish within the twelve-mile (but not the three-mile) limit.<sup>74</sup> Nevertheless there is a distinct trend in the opposite direction; and it is quite apparent that, particularly in such matters as defense, customs, and fisheries, control does not always stop at the limit of territorial waters, either in theory or in fact. The trend may be accounted for partly by the fact that jurisdiction may actually be made effective over a greater breadth of water than formerly and partly because, as Smith points out, a narrow three-mile limit is no longer sufficient to afford protection for all the legitimate interests of the shore state.<sup>75</sup>

Claims to various resources of the sea bed beyond territorial waters, to the subsoil under the sea bed, and to continental shelves are also becoming increasingly common. Such claims are not usually of significance in this connection, in theory at least, since they leave the free status of the high seas above the subterranean areas unmolested.<sup>76</sup> However, it is difficult to believe that navigation would remain entirely unrestricted in some cases, for example where oil derricks are erected in areas normally forming part of the high seas; and some of the recent decrees, particularly those of Chile and Argentina dealing with the regions south of them, have apparently claimed jurisdiction over water as well as sea bed. One writer who has recently discussed the subject says flatly that such claims are illegal.<sup>77</sup> Certainly,

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<sup>71</sup> *Annuaire de l'Institut de Droit International*, Vol. 33 (1927), p. 99.

<sup>72</sup> "Declaration of Panama," *The American Journal of International Law, Supplement*, Vol. 34 (1940), pp. 17-18.

<sup>73</sup> "Proclamation by the President with Respect to Coastal Fisheries in Certain Areas of the High Seas," *The American Journal of International Law, Supplement*, Vol. 40 (1946), pp. 46-47.

<sup>74</sup> *Statutes of Great Britain*, 39-40 Vict., c. 36, s. 179; J. B. Moore, *A Digest of International Law*, Vol. 1, pp. 890-923; Great Britain, Treaty Series (1930), No. 22. See also A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 101-102; T. A. Taracouzio, *Soviets in the Arctic*, p. 356.

<sup>75</sup> H. A. Smith, *op. cit.*, pp. 17-18.

<sup>76</sup> See the relevant documents and articles cited in the concluding pages of Chapter 15 (*supra*).

<sup>77</sup> F. A. Vallat, "The Continental Shelf," *The British Year Book of International Law*, Vol. XXIII (1946), p. 337.

if they received sanction, Chile and Argentina between them would be able to assert sovereignty over the only practicable water route from the Atlantic to the Pacific that would remain, if the Panama Canal should ever become unavailable.

The basic rules of international law as applied to water regions may now be briefly summarized. There are three zones of water: the high seas, internal waters, and, between them, the marginal belt. By historical development and common consent it has been established that the high seas should be free for the use of all nations. Over its internal waters, on the other hand, each state exerts as complete control as over its land territory. It is also agreed that each state shall have control over its marginal belt, although with certain accepted limitations such as the right of innocent passage, which is extended to foreign vessels. The width of the territorial sea has never been agreed upon, but it is at least three nautical miles. A number of states have claimed a wider marginal belt, and in addition it has been common practice to claim limited rights of jurisdiction over special contiguous zones beyond territorial waters. There may be a trend in favor of the extension of the marginal belt, and there is unquestionably a trend in favor of the establishment of the contiguous zone.

With the above facts in mind we now turn to the special problem of sovereignty over polar waters in general and the Canadian arctic waters in particular. Obviously the important question is whether the above rules, applicable throughout the rest of the world, apply without distinction to the polar regions. If they do, it follows that the sector principle is illegal, at least insofar as it may be applied to water regions other than internal and territorial, and all sector claims which include such regions are invalid. If they do not, then one of the strongest objections to the sector principle is removed. Polar seas differ from other seas in certain respects, the main distinction being that they contain vast quantities of permanent and semi-permanent ice; but there are also parts of the polar seas which are predominantly water the year round.<sup>78</sup> It is evident that the sector principle as applied to water areas outside the marginal belt is in flat contradiction to the ordinary rules of international law as applied to similar regions; and unless two mutually contradictory principles can exist side by side one or the other must ultimately prevail.

A number of writers have stated categorically that the same rules should apply, or do apply, in arctic waters as elsewhere.<sup>79</sup> In support of this argument the statement is sometimes made that there is no definitive rule in international law authorizing any distinction to be made between polar waters and other waters, as far

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<sup>78</sup> The question of ice in relation to jurisdiction in the polar regions is discussed in the following chapter.

<sup>79</sup> John C. Cooper, article cited in *Encyclopedia Arctica*, pp. 35-36 (*supra*); Elmer Plischke, article cited in *Encyclopedia Arctica*, pp. 42-43 (*supra*).

as sovereignty is concerned.<sup>80</sup> Doubtless this is true, but the converse is probably true also, that there is no definitive rule in international law to the effect that such distinction shall not be made. The absence of such a rule, and the different physical and geographical conditions which prevail in polar regions, probably figure largely in the thinking of those exponents of the sector principle who maintain that polar waters should be subject to sovereignty.<sup>81</sup>

It may be observed here that, just as it is vital to know whether certain polar lands are to be regarded as *res nullius* or “*res communis*,” so it is necessary to know to which of these two categories polar waters belong. The essential point is that if they are *res nullius* they are unowned but are subject to acquisition, while if they are *res communis* they must remain permanently for the common use of all nations. The high seas are generally regarded as “*res communis*,” although there have been numerous attempts to appropriate parts of them or bring them under a limited form of jurisdiction.<sup>82</sup> Probably even ardent supporters of the sector principle would not deny the *res communis* status of the high seas in principle, but they might claim that polar waters are not part of the high seas, being instead more comparable to territorial waters. The potency of this argument would diminish as the distance of the waters in question from land territory increased.

If polar waters are to be regarded as part of the high seas and not subject to acquisition, then sector claims in both Arctic and Antarctic, when applied to water regions beyond land territory and the marginal sea, are clearly illegal. The only possible validity of sector lines would be to show the confines within which lands and islands are claimed. The question must be considered unsettled, however, since no authoritative international tribunal, conference, or treaty has ever dealt conclusively with the subject. It can only be asserted, on the basis of the available evidence and the opinions expressed, that extensive claims to water regions beyond commonly accepted territorial limits are of extremely dubious validity, and if put to the test would probably not meet with the approval of the majority of the family of nations.

As far as the Canadian sector is concerned, the water regions may be considered briefly in five divisions, namely those north of the archipelago, those in the archipelago, those of Beaufort Sea, those of Baffin Bay and Davis Strait, and those of Hudson Strait and Hudson Bay.

The waters north of the archipelago may be disregarded in this chapter, since they are completely unnavigable and are usually predominantly ice.<sup>83</sup>

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<sup>80</sup> Elmer Plischke, *ibid.*, pp. 42-43.

<sup>81</sup> E.g., the Russian writers Breitfuss, Korovin, Sigrist, and Lakhtine, as cited in T. A. Taracouzio, *Soviets in the Arctic*, pp. 348-361 (*supra*).

<sup>82</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, pp. 52-53. See also P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, pp. 75-76, and P. E. Corbett, *The Settlement of Canadian-American Disputes* (New Haven: Yale University Press, 1937), pp. 102-105.

<sup>83</sup> See Chapter 18 (*ff.*).

The waters in the archipelago are more important, since they contain several possible sea passages between the Atlantic and the Pacific and, with improvements in technology or a slight change in climate, could become of some practical importance. To what extent the waters of such an archipelago can be claimed as territorial is debatable, but it may be said to depend upon historical as well as geographical factors, and, in cases where the islands of an archipelago clearly form a unit, the three-mile limit does not always apply.<sup>84</sup> Even under a rigid construction of the three-mile limit, much of the water area in the Canadian arctic archipelago would be territorial, owing to the great number of small islands. If the three-mile limit were relaxed somewhat, still more of the waters within the archipelago would become territorial, including all the important navigable passages except, perhaps, the Lancaster Sound - Barrow Strait - Melville Sound - McClure Strait route. There would seem to be little reason for protesting the territoriality of other water regions which are isolated and completely unnavigable. In these circumstances it appears that it would not be entirely unreasonable for Canada to claim that the waters within the archipelago are territorial, and such a claim, if confined to these waters, could be made entirely independently of the sector principle.

The waters of Beaufort Sea, on both the Canadian and Alaskan sides of the 141st meridian, are different in that they contain no known islands at any distance from the mainland coast. For this reason, a Canadian claim to the portion of Beaufort Sea east of the 141st meridian would be less justifiable than a claim to the waters within the archipelago, and might meet with strong and understandable American objections. Also, if Canada made such a claim she could hardly object to the consequences of similar claims on the part of the United States and Russia, in which case the sea route between Vancouver and the Mackenzie River would pass through American and Russian waters.<sup>85</sup>

The eastern boundary of the Canadian claim is complicated by the fact that its southern limit is almost undefinable. That is, the so-called sector line runs south from the North Pole along the sixtieth meridian (rather than north from some specified point on the Canadian mainland) until it almost reaches Greenland, then passes south through the middle of the channel between Greenland and the archipelago, presumably to some terminal point, but one which has apparently never been accurately determined. Strong objections can be made to the three major possibilities that present themselves as southern terminal points. Cape Chidley, at the northernmost limit of the Quebec - Labrador boundary, might have been chosen, especially before the entry of Newfoundland into the Dominion, but how

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<sup>84</sup> A. P. Higgins and C. J. Colombos, *op. cit.*, p. 76.

<sup>85</sup> Similarly, if a Norwegian arctic sector were accepted, the sea route from the Atlantic or North Sea to the Russian arctic port of Murmansk would pass through waters which would be under Norwegian control. How Russian sector enthusiasts would view this possibility is an interesting question.

the sector line would run from the middle of Davis Strait to this point is problematical. It may be noted here that if the line were run due north from Cape Chidley, Canada would lose parts of both Baffin and Ellesmere and gain part of Greenland. A second possible choice, since the entry of Newfoundland at least, is the eastern limit of this province. If this point were chosen, the sector line would have to run through part of the Atlantic which could reasonably be classed only as part of the high seas. Again it may be observed that if the line were run due north from Newfoundland's eastern limit, Canada would gain much of Greenland. The third possibility is some point in the middle of Davis Strait, which would necessarily be arbitrary, illogical, and probably unreasonable, since it would fall in part of the high seas far from land and sometimes open to navigation, and consequently belonging of right to all nations.<sup>86</sup> In short, it would be difficult for Canada to make a reasonable claim to sovereignty over any sizable portions of Baffin Bay and Davis Strait, especially in the more southerly parts; and since these waters are useful also to other nations, notably Denmark, it would doubtless be wise not to press such a claim.

As far as Hudson Bay and Hudson Strait are concerned, there is no doubt that the Canadian Government regards these as territorial waters. Hudson Bay is a huge body of salt water, approximately five hundred miles in length (exclusive of James Bay) and five hundred in width. It is connected with the Atlantic through Hudson Strait, which is also about five hundred miles long, with an entrance of about fifty miles in width. Hudson Bay is thus almost completely surrounded by Canadian land territory, except for Hudson Strait. In support of its claim that Hudson Bay and Strait are territorial Canada could cite the following supporting facts — the Charter of the Hudson's Bay Company in 1670 granted it exclusive control of these waters; the Company asserted, and the British Government respected, this exclusive privilege for two hundred years; the rights of the Company were specially reserved in a treaty with the United States in 1818; the Canadian Government has regulated fishing, whaling, etc., and collected customs in these waters since the beginning of this century without effective protest from other nations; and a Canadian fisheries act has specifically stated that these waters are territorial.<sup>87</sup> Additional support for such a claim could also be found in the fact that the Bay and Strait are frozen for about eight months of the year, during which the only means of entrance is by land over Canadian territory, and also in the fact that other bays, notably Conception,

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<sup>86</sup> The location of a southerly terminal point for the dividing line between the Danish and Norwegian sectors, and indeed between the Russian and Alaskan sectors, poses a similar problem.

<sup>87</sup> *Treaties and other International Acts of the United States of America*, edited by David Hunter Miller (Washington: Government Printing Office, 1931), Vol. 2, p. 659; *Statutes of Canada*, 6 Edw. VII, c. 13 (July 13, 1906). The relevant part of the Act reads "In as much as Hudson Bay is wholly territorial water of Canada...." See also 4-5 George V, c. 8 (May 27, 1914).

Delaware, and Chesapeake, are acknowledged as territorial although possessing entrances considerably greater than six marine miles in width. The main arguments against the territoriality of Hudson Bay and Strait are the huge size of the Bay and the unusually great width of the Strait, which make the notion of territoriality seem extreme. T. W. Balch has argued strongly against the territoriality of Hudson Bay, but a number of others have accepted or defended it, notably W. F. King, Sir Richard Cartwright, Leonid Breitfuss, and V. K. Johnston.<sup>88</sup> The international status of Hudson Bay has never been tested legally, but in view of the peculiar geographical and historical factors involved, as well as the analogies that can be drawn with somewhat similar bodies of water, it does not appear unreasonable for Canada to claim that both Hudson Bay and Hudson Strait are under Canadian jurisdiction.

It may be said in summary that, of the four divisions of arctic and sub-arctic waters discussed here, Canada can with considerable justification assert sovereignty over the waters of Hudson Bay and Hudson Strait, and also over those within the archipelago; but the reasonableness of any claim to those parts of Beaufort Sea, Baffin Bay, and Davis Strait which are far from land is more doubtful. If the sector principle as applied to water regions were fully accepted, all such bodies of water in both Arctic and Antarctic would become subject to sovereignty, but as shown the sector principle, especially as applied to water, is of extremely doubtful validity.

The distinction between territorial waters and special zones of limited jurisdiction should be kept in mind. This distinction might provide a satisfactory solution to the problem of the status of arctic waters in general. That is, if it is unreasonable for Canada to claim parts of Beaufort Sea, Baffin Bay, and Davis Strait as territorial, it might not be unreasonable to claim limited rights of jurisdiction over them. It would not be any more extreme, for example, than the Truman Proclamation of 1945 respecting control of fisheries beyond territorial limits. If such a scheme were applied, Canada would treat as territorial all waters within an appropriate or agreed distance of her coast, possibly including most or all of the waters within the archipelago and Hudson Bay and Strait; and would have limited rights of jurisdiction, in such matters as customs, fisheries, and defense, over other waters adjacent to her land territory. This solution, if adopted, need have no relation to or dependence upon the sector principle, and would presumably be part of a larger scheme applied generally to the polar regions. It would undoubtedly be more acceptable if it received international recognition, and particularly if such areas of limited jurisdiction could be precisely determined on a basis satisfactory to all

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<sup>88</sup> T. W. Balch, "Is Hudson Bay a Closed or an Open Sea?" *The American Journal of International Law*, Vol. 6 (1912), pp. 409-459; "The Hudsonian Sea is a Great Open Sea," *ibid.*, Vol. 7 (1913), pp. 546-565; W. F. King, *op. cit.*, pp. 25-26; Canada, *Senate Debates* (Feb. 20, 1907), p. 274; Leonid Breitfuss, *op. cit.*, p. 468; V. K. Johnston, "Canada's Title to Hudson Bay and Hudson Strait," *The British Year Book of International Law*, Vol. XV (1934), pp. 1-20.

concerned. The more remote parts of the Arctic Ocean near the North Pole would remain unassigned.

## CHAPTER 18

### JURISDICTION OVER POLAR ICE

The problem of sovereignty in the polar regions is greatly complicated by the presence of ice. The relationship of ice to territorial jurisdiction has not been extensively discussed until comparatively recent times; and, up till the present at least, international law has failed to make specific regulations governing this subject. It is of obvious importance, however, owing to the wide distribution of ice formations in the polar regions and also because of certain peculiarities and variability in their structure and behavior.

There are various types of polar ice, and the terminology is rather specific. The most obvious distinction is that between inland ice and sea ice. Inland ice is that which covers land, and sea ice is that which covers the waters of the ocean. Today there are only two inland ice masses of continental or near-continental dimensions, the Antarctic ice cap and the Greenland ice cap, both of which practically cover the lands for which they are named.<sup>1</sup> There are numerous other inland ice masses of small size, notably those in Ellesmere and Baffin Islands, Spitsbergen, and Fridtjof Nansen Land.

In Antarctica the main body of the ice, which rises to elevations of as much as 10,000 feet in the interior, overrides the coast in most places and projects into the ocean, ending in lofty ice cliffs.<sup>2</sup> The subjacent land is often completely covered and imperceptible, although in other cases its presence is made apparent by breaks in the ice or by projecting rocks and hills. The ice which projects into the ocean is termed shelf ice, the outstanding example being the Ross Ice Barrier, which is approximately 400 miles long and 300 miles wide.<sup>3</sup>

In Greenland the main body of ice does not as a rule extend to the sea, so that shelf ice is absent. The ice moves slowly in a seaward direction, however, and gradually divides into broad tongues or valley glaciers, parts of which may eventually reach the ocean.<sup>4</sup>

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<sup>1</sup> Otto Nordenskjöld, "The Ice in the Polar Regions," in Otto Nordenskjöld and Ludwig Mecking, *The Geography of the Polar Regions*, edited by W. L. G. Joerg (New York: American Geographical Society, 1928), p. 28; R. N. Rudmose Brown, *The Polar Regions*, p. 99 (*supra*); *ibid.*, p. 106. See also Ludwig Mecking in *The Geography of the Polar Regions*, p. 251 ff. (*supra*).

<sup>2</sup> R. N. Rudmose Brown, *The Polar Regions*, p. 85, pp. 99-100 (*supra*); Otto Nordenskjöld, *op. cit.*, pp. 28-29 (*supra*).

<sup>3</sup> Otto Nordenskjöld, *op. cit.*, pp. 30-33; Sir Clements Markham, *The Lands of Silence*, pp. 11-12 (*supra*).

<sup>4</sup> Otto Nordenskjöld, *op. cit.*, p. 28; R. N. Rudmose Brown, *The Polar Regions*, pp. 106-109.

Icebergs are huge floating masses of ice which, having originally formed part of the continental ice mass, break off from the latter as its outlying portions are pushed into the ocean. Once afloat they drift aimlessly with wind and current until they are all melted. They usually come either from glaciers, as in Greenland, or from shelf ice, as in Antarctica. It is probably not correct to class them as inland ice, although they usually originate inland. In some cases in Antarctica, the shelf ice from which they break is formed by the melting, packing, and freezing of snow on sea ice.<sup>5</sup>

Another type of land ice is the fresh-water ice found on the surface of lakes and rivers. It flows oceanward in the spring breakup, and usually melts completely during the summer.

Turning to sea ice, and speaking of arctic sea ice in particular, there are three principal types, namely fast ice, pack ice, and the arctic pack. These are arranged so that the first two form two concentric belts around the third, central mass, which is the arctic pack. This is the state of the ice cover during the greater part of the year, usually nine or ten months at least. But in summer the fast ice as such disappears, joining the pack ice, so that for two or three months of the year the ice cover of the Arctic consists of only pack ice and the arctic pack.<sup>6</sup>

The arctic pack consists of the older, more or less permanent mass of ice which fills the central and largest part of the Arctic Ocean.<sup>7</sup> It exists in the form of huge, drifting ice fields so large that their extent often cannot be determined from a ship's mast. It has been estimated by Transehe that the arctic pack occupies about 70% of the entire conventional area of the Arctic Ocean, and by the Russian Admiral Makarov that even in summer time the arctic pack itself contains 90% ice surface.<sup>8</sup> It goes without saying that these percentages will fluctuate from season to season, and that they will be greater in winter than in summer.

Fast ice is immobile young ice attached to the shore. It develops during the months from the beginning of the formation of new ice until the following May or June, then breaks up and becomes part of the pack ice. Transehe estimates that in winter the fast ice occupies about 5% of the Arctic Ocean, leaving about 25% which is occupied by pack ice.<sup>9</sup>

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<sup>5</sup> J. Gordon Hayes, *Antarctica* (London: Richards Press Ltd., 1928), pp. 33-65, especially pp. 56-63; Ludwig Mecking in *The Geography of the Polar Regions*, pp. 286-290 (*supra*); R. N. Rudmose Brown, *The Polar Regions*, pp. 72-82, 93-98; Sir Clements Markham, *The Lands of Silence*, pp. 9-11.

<sup>6</sup> N. A. Transehe, "The Ice Cover of the Arctic Sea, with a Genetic Classification of Sea Ice," in W. L. G. Joerg (ed.), *Problems of Polar Research*, pp. 91-94 (*supra*). See also, in the same book, A. Kolchak, "The Arctic Pack and the Polynya," pp. 125-141; and, on antarctic ice, R. E. Priestley and C. S. Wright, "Some Ice Problems of Antarctica," pp. 331-341, especially p. 340.

<sup>7</sup> N. A. Transehe, *op. cit.*, pp. 92-93, 95-99.

<sup>8</sup> *Ibid.*, pp. 92-93; cited in N. A. Transehe, *op. cit.*, p. 96.

<sup>9</sup> N. A. Transehe, *op. cit.*, pp. 92-94, 99-104.

Pack ice is the moving sea ice, between the arctic pack and the fast ice in winter, and between the arctic pack and the coast in summer. It continually receives additions from both the arctic pack and the fast ice in summer time, and, in winter, portions of it rejoin both of the other two types.<sup>10</sup>

There are other varieties of sea ice, which are for the most part smaller in size and importance than the three principal categories just discussed. These include ice floes (areas of ice of considerable size but smaller than ice fields), pancake ice (small cakes of new ice), hummocks (heaped-up products of marginal crushing) and anchor ice (submerged ice attached to the bottom).<sup>11</sup> These and other types serve to indicate the variety and change-ability of arctic sea ice.

Antarctic waters are also characterized by the presence of great quantities of floating sea ice, much of which originates in the breaking off of huge icebergs from the shelf ice. In the Antarctic, however, there is nothing to compare with the arctic pack, since the southern hemisphere is centered by a large continent rather than a polar ocean.

It is impossible to make a close estimate of the proportion of ice to total area, in either arctic or antarctic waters. The difficulty is caused by the fact that there is uncertainty as to what are and what are not polar waters, and also because the proportion of ice to water continually fluctuates, from place to place, from season to season, and from year to year. Transehe estimates that in certain coastal waters of arctic Eurasia, and also along the Alaskan coast, the proportion of water in summer is on the average nearly 50% of the total area, but he admits that such estimates are variable.<sup>12</sup> However, the polar sea north of Norway is normally predominantly water, while parts of Beaufort Sea in the same latitude are normally predominantly ice, during the entire year.

If the ice in polar waters remained stationary, the problem of territorial sovereignty as affecting ice might be somewhat simpler. But this, as has been suggested, is not the case. As T. W. Balch remarked, "... the ice at the North Pole is never at rest. It is in continual motion."<sup>13</sup> In the Antarctic as well as the Arctic, both ice and water drift constantly, although at times imperceptibly, impelled by currents of water and wind.

The Arctic Ocean receives a great inflow of fresh water from the many large arctic rivers. Murray has estimated that 8,600,000 square miles of land drain into the Arctic Ocean.<sup>14</sup> It also receives a considerable inflow of salt water, the Gulf Stream flowing into it between North America and Europe, and another smaller current flowing northwards through Bering Strait. As Rudmose Brown suggests, it

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<sup>10</sup> *Ibid.*, pp. 92-95, 99.

<sup>11</sup> *Ibid.*, pp. 105-117.

<sup>12</sup> *Ibid.*, p. 105.

<sup>13</sup> T. W. Balch, "The Arctic and Antarctic Regions and the Law of Nations," *op. cit.*, p. 266.

<sup>14</sup> Cited in R. N. Rudmose Brown, *The Polar Regions*, p. 72.

may thus be regarded as a vessel into which water is always being poured.<sup>15</sup> Since its size remains constant or nearly so, it must in consequence overflow, and so there are also cold currents of water flowing south from the Arctic Ocean towards more southerly latitudes. The main outlet is between Spitsbergen and Greenland, but there are lesser ones through Davis and Bering Straits.

In addition to the steady flow of waters into and out of the north polar sea, there are continual movements of the water within the Arctic Ocean itself.<sup>16</sup> The outstanding movement is a steady drift from east to west, along the northern coasts of North America, Asia, Europe, and back to the place of beginning. This drift takes the form of a rough circle, around a center which Kolchak located in about 83° to 85° north latitude and 170° to 180° west longitude.<sup>17</sup> It is caused primarily by prevailing winds and the rotation of the earth, and has been confirmed by the movements of such ice-bound ships as DeLong's "Jeannette," Nansen's "Fram," and Stefansson's "Karluk."

Attempts have been made to measure the speed of the drift, but it depends upon a number of variable factors and consequently is itself highly variable. From the "Corwin" in 1881 ice floes were observed drifting at the rate of about fifty miles per day, and in 1913 a member of the "Karluk's" crew estimated that the ship on one occasion was drifting at two miles per hour, or in other words at about the same rate.<sup>18</sup> However, Captain Bartlett's own observations indicate that the "Karluk" moved in a highly variable manner, both as to direction and rate, and that she at times practically stood still.<sup>19</sup> Nansen's account of the drift of the "Fram" confirms this phenomenon.<sup>20</sup> Consequently any attempt to make a standard estimate of the speed of the arctic drift is doomed to failure.

In connection with the question of sovereignty, the chief consequence of the presence of ice in polar regions is in the complications which it causes. These complications may be traced to a number of underlying facts or circumstances. The first is that, although international law has succeeded in establishing some fairly definitive rules respecting the acquisition and ownership of both land and water, it

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<sup>15</sup> R. N. Rudmose Brown, *The Polar Regions*, p. 72.

<sup>16</sup> *Ibid.*, pp. 72-82; A. Kolchak, *op. cit.*, pp. 129-134.

<sup>17</sup> A. Kolchak, *op. cit.*, p. 133. It may be noted that this center is near Stefansson's "Pole of Inaccessibility." See V. Stefansson, "The Region of Maximum Inaccessibility in the Arctic," *The Geographical Review*, Vol. 10 (1920), pp. 167-172.

<sup>18</sup> John Muir, *The Cruise of the Corwin*, edited by W. F. Bade (Boston: Houghton Mifflin Co., 1917), p. 180; Ernest F. Chafe, "The Voyage of the 'Karluk,' and its Tragic Ending," *The Geographical Journal*, Vol. LI (1918), p. 309.

<sup>19</sup> R. A. Bartlett and R. T. Hale, *The Last Voyage of the Karluk* (Boston: Small, Maynard and Co., 1916), p. 38, 39, 40, 42, 49, 50-51, etc.

<sup>20</sup> Fridtjof Nansen, *Farthest North* (London: A. Constable and Co., 1897), Vol. I, p. 435, 449, 465-466, etc.

has not as yet laid down any comprehensive regulations for the ownership of ice.<sup>21</sup> The second is that, although ice is somewhat similar to both land and water, it is not exactly comparable to either one or the other. Chemically it is the same as the latter, being only water in frozen form, but physically it bears a closer resemblance in some respects to land, since it is a solid upon which man can travel, establish temporary, semi-permanent, or permanent habitations, and land airplanes. The third complicating factor, as brought out in the preceding pages, is that the ice and water in the polar seas exist in proportions which change continually, from place to place, from season to season, and from year to year. The ice is found in a variety of continually changing forms, and, like the water, is in constant but irregular motion.

An examination of state legislation, the work of international conferences, and the decisions of judicial tribunals reveals little of significance in relation to sovereignty over ice. The sector principle in itself might be taken to imply that jurisdiction over polar ice regions is claimed, and this principle is, as we have seen, supported in either Arctic or Antarctic by Russia, Canada, Great Britain, Australia, New Zealand, France, Norway, Chile, and Argentina. Yet there seems to be little in the various decrees of these nations setting out their sector claims to indicate that sovereignty over ice is asserted. Sector decrees have generally been quite vague in respect to this matter, and there is apparently no instance where sea ice formations are specifically included in a claim.

In actual practice some states, for example Russia and Canada, have demanded the right to collect customs duties, regulate fishing and whaling, and perform other acts of sovereignty in their sectors. Yet the Russian decree of 1926 referred only to "all lands and islands," and certain Canadian speeches and proclamations, including Poirier's speech in 1907 and Captain Bernier's proclamation in 1909, also mentioned specifically only lands and islands.<sup>22</sup> It is true that the Canadian Minister of the Interior Charles Stewart in 1925 stressed that Canada claimed everything in her sector up to the North Pole, but this was only a statement by a government official (albeit a high ranking one) rather than an act of parliament, and it might or might not have been intended to include ice formations. The Canadian Fisheries Acts of 1906 and 1914 claimed Hudson Bay, stating that it was "wholly territorial water of Canada," but the basis for the claim apparently was that Hudson Bay was held to be an inland sea, and the fact that it is largely frozen over during much of

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<sup>21</sup> It is perhaps necessary to observe at this point that the following discussion is concerned primarily with sea ice, and particularly sea ice beyond territorial limits. It may be taken for granted that ice above land is owned if title to the land is secure, and the same may be said for sea ice within acknowledged territorial limits.

<sup>22</sup> Quoted in V. Lakhtine, *op. cit.*, p. 709; Canada, *Senate Debates*, Feb. 20, 1907, pp. 266-273; J. E. Bernier, *Cruise of the "Arctic" 1908-1909*, p. 192, 195 (*supra*).

the year does not seem to have been a subject for consideration.<sup>23</sup> As far as Russia is concerned, the Russian demand for a twelve-mile territorial zone would seem to be in itself a disavowal of the sector principle as applied to ice, for, although ice and water are obviously both claimed within twelve miles, the fact that such a claim is made seems to be a denial that it is intended to extend further.<sup>24</sup>

The British Government's *Ross Dependency Whaling Regulations* of October 24, 1929, purported to license and control whaling in this sector, but Great Britain later assured Norway that these regulations would only be applied in the Ross Sector's territorial waters.<sup>25</sup> Britain also declared to the League of Nations that she claimed no rights in the high seas beyond the limits of territorial waters, and New Zealand subscribed to this declaration.<sup>26</sup>

The United States has in various ways made it clear that it opposes the principle of jurisdiction over ice formations beyond territorial waters. The American Government declined to take any action in 1909, when Peary telegraphed President Taft that he placed the North Pole at the latter's disposal. Smedal interprets their reluctance to mean that they believed this icy region could not be the subject of sovereignty.<sup>27</sup> Clearer still was a State Department release of May 22, 1937, which was reported by the Associated Press as follows:

State Department officials said today that no question of sovereignty over the area about the North Pole has ever arisen because there is no land there. For hundreds of miles in every direction from the Pole, geographers said, there is nothing but open sea, filled most of the time with large ice floes.<sup>28</sup>

It is evident, on the whole, that there is little definite guidance in state law and practice concerning jurisdiction over polar ice. Sector states have apparently been reluctant to incorporate the concept in national legislation, and the actions of some of them have been somewhat self-contradicting. The United States has probably taken the strongest and most forthright stand against the idea.

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<sup>23</sup> Canada, *House of Commons Debates*, June 1, 1925, pp. 3925-3926, June 10, 1925, p. 4238; *Statutes of Canada*, 6 Edw. VII, c. 13 (July 13, 1906); 4-5 George V, c. 8, s. 9, (May 27, 1914); also *Revised Statutes of Canada*, c. 73 (1927).

<sup>24</sup> *Sobr. Zak. i Rasp. S. S. S. R.*, (June 15, 1927), p. 122; cited in T. A. Taracouzio, *The Soviet Union and International Law*, p. 63, footnote 57 (*supra*).

<sup>25</sup> *New Zealand Gazette*, Oct. 31, 1929; cited in Gustav Smedal, *op. cit.*, p. 58; *Tidens Tegn*, Nov. 19, 1929; cited in Gustav Smedal, *op. cit.*, p. 58.

<sup>26</sup> *Conference pour la Codification du Droit International*, 1929, p. 22, 28, 31; cited in Gustav Smedal, *op. cit.*, p. 58.

<sup>27</sup> Gustav Smedal, *op. cit.*, p. 29.

<sup>28</sup> Associated Press Dispatch of May 22, 1937, as printed in *The New York Times* of May 23, 1937, p. 2, and cited in C. C. Hyde, *International Law*, Vol. I, p. 348, footnote 5.

Legal cases and other occurrences involving jurisdiction over ice appear to be few and far between. One instance occurred in 1904, when some gamblers who had been driven out of the town of Nome in Alaska established a gaming house on the ice a short distance beyond the three-mile limit. In February of that year the American authorities put a stop to their activities.<sup>29</sup> At least one outstanding authority has defended the American action on the grounds that according to common sense rather than a rigid interpretation of a doubtful rule there is a clear right of protective jurisdiction.<sup>30</sup>

It is more instructive to turn to the opinions of writers on the subject, as the question of sovereignty over ice has been by no means neglected in literature, particularly in recent years. There are two extreme points of view. The first is that polar ice formations should be subject to the same unlimited form of sovereignty as is land. The basis for this view is provided either by the sector principle or by the fact that ice is a solid like land. The other extreme point of view is that, since ice is chemically the same as water, and is actually only water in solid or frozen form, it should for the purposes of sovereignty, be treated as water is. It would thus not be liable to ownership, except within territorial limits. It will become apparent that there are supporters of both extremes, and also varying shades of opinion in between.

Among writers who dispute the proposition that polar seas and ice are subject to sovereignty, the name of the American jurist James Brown Scott is prominent. In 1909 he discussed the claims of Cook and Peary to the North Pole, and concluded that although title by discovery could be applied to land, it did not apply to open seas beyond territorial waters, to icebergs, or to floating fields of ice. Therefore, he said, "we may eliminate from consideration polar discoveries disconnected with land, unless we are prepared to insist that a different law obtains in the arctic regions...."<sup>31</sup> Taracouzio interprets Scott's preoccupation with floating ice to mean that he admits that sovereignty can be extended over stationary ice formations, which would appear to be an extremely doubtful interpretation of Scott's remarks unless by "stationary ice formations" Taracouzio means ice above land rather than immobile ice above water.<sup>32</sup>

T. W. Balch, while admitting that polar ice is a solid substance upon which habitations can be built, pointed out that it is of uncertain permanence and is continually moving. Consequently he believed that the recognized principle of the

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<sup>29</sup> A. S. Hershey, *op. cit.*, p. 300, footnote 11; A. P. Higgins and C. J. Colombos, *op. cit.*, p. 80, footnote 2.

<sup>30</sup> Philip Marshall Brown, "Protective Jurisdiction over Marginal Waters," *Proceedings of the American Society of International Law* (Washington, 1923), p. 21. See also p. 23, p. 29, for comments about the uncertain status of the three-mile rule. See also Louis Rolland, *op. cit.*, (*infra*).

<sup>31</sup> James Brown Scott, *op. cit.*, pp. 938-939.

<sup>32</sup> T. A. Taracouzio, *Soviets in the Arctic*, p. 347 (*supra*).

freedom of the high seas should be applied to polar ice beyond the three-mile limit.<sup>33</sup>

In Oppenheim's textbook on international law reference was made to Peary's raising of the American flag at the North Pole in 1909. Noting that the question was raised as to whether the North Pole could be the object of occupation, he wrote, "The question must, it is believed, be answered in the negative since there is no land at the North Pole."<sup>34</sup> He evidently believed that polar ice cannot be the object of occupation, which for him was a prerequisite for ownership.

Writing in 1927, A. R. Clute said that the Arctic Ocean was to be classed as an open sea, and consequently the term "freedom of the open sea" should apply to it as well as to other oceans, even though it is partly frozen over. He added that a claim to the North Pole would not be recognized by the Law of Nations.<sup>35</sup>

Rudmose Brown also discussed the question of sovereignty over the North Pole, and seems to have had the same opinion as Clute. He said that although Peary had hoisted the Stars and Stripes there, the United States could not claim a point in the ocean, since the international practice of recognizing the neutrality of the high seas would make such an annexation invalid.<sup>36</sup>

J. Gordon Hayes said that the claims to sea boundaries made in the British antarctic sector decree of 1917 were merely "vain conceits," which international jurists would be unlikely to uphold. He added that the territorial waters around all the islands, where the title to the islands was secure, were as secure as the islands themselves. He apparently did not believe that either water or ice beyond territorial limits could be subject to sovereignty.<sup>37</sup>

Gustav Smedal says that the ice which partly covers the Arctic Ocean cannot be rendered susceptible of sovereignty. It is not natural, he adds, to compare this ice cover to solid land.<sup>38</sup> Nevertheless, he admits that ice is different from water, and that it is consequently too one-sided to submit all ice areas to exactly the same principles as apply to the open sea.<sup>39</sup>

Taracouzio also admits that the physical properties of ice are different from those of water, and thus the arguments against jurisdiction over the open seas may not be completely valid for ice.<sup>40</sup> He also acknowledges that ice can be occupied.<sup>41</sup>

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<sup>33</sup> T. W. Balch, "The Arctic and Antarctic Regions and the Law of Nations," *loc. cit.*, p. 266.

<sup>34</sup> L. Oppenheim, *op. cit.*, p. 508, footnote 6. See also earlier editions, e.g., 4th edition, 1928, Vol. I, p. 450; 2nd edition, 1912, Vol. I, p. 292.

<sup>35</sup> A. R. Clute, *op. cit.*, pp. 21-22.

<sup>36</sup> R. N. Rudmose Brown, *The Polar Regions*, pp. 169-170.

<sup>37</sup> J. Gordon Hayes, *op. cit.*, p. 360.

<sup>38</sup> Gustav Smedal, *op. cit.*, p. 29.

<sup>39</sup> *Ibid.*, p. 27. Taracouzio's interpretation of Smedal's opinion is obviously incorrect. See his *Soviets in the Arctic*, p. 347, and then compare with Gustav Smedal, *op. cit.*, p. 27.

<sup>40</sup> T. A. Taracouzio, *Soviets in the Arctic*, p. 351.

<sup>41</sup> *Ibid.*, p. 346.

However, he later alleges that international law makes no distinction between ice and water, and concludes by suggesting that water areas "irrespective of congelation" should "remain subject to the principles prevailing in the present Law of Nations."<sup>42</sup>

Two other writers who have more recently disputed the concept of sovereignty over ice are Elmer Plischke and John Cooper. Plischke says that under present law "states possess no jurisdiction over ice formations beyond the limits of their territorial waters."<sup>43</sup> Cooper takes a similar view, saying that as a general law the normal rules are applied in determining territorial waters in the Arctic, and that otherwise "the ice-covered areas of the Arctic Ocean must be treated as high seas."<sup>44</sup>

The above writers, as a group, all oppose the principle that polar ice regions may be brought under sovereignty, at least beyond territorial waters. Two writers who take a stronger view still are A. P. Higgins, who edited the eighth edition of W. E. Hall's "Treatise of International Law," and the French jurist Paul Fauchille. Both feel that sovereignty cannot be acquired over polar regions in general, since, in their view, it is impossible to settle them permanently. Since they make no distinction between land, water, and ice, it appears that they rule out the possibility of sovereignty over each and all of them.<sup>45</sup> Fauchille, it may be noted, also rejects the idea that territorial waters may be measured from the edge of the ice belt clinging to the shore.<sup>46</sup>

A writer who has preferred to remain non-committal is W. L. G. Joerg. He notes that physical conditions differ radically in the polar regions from elsewhere, chiefly owing to the presence of ice, so that from the standpoint of ship navigation a solid mass extends from the North Pole down to the northern coasts of the continents. He also makes the interesting observation that the ice-covered polar sea, in its relationship to the airplane, is like solid ground, and in its relationship to the submarine, is like open water, since the airplane can land upon it and the submarine can navigate through its lower depths. He concludes that the question "requires, for an equitable solution, the consideration of factors that are different from those that obtain in other parts of the world."<sup>47</sup>

Some writers have conceded that sovereignty may reasonably be granted over certain forms or types of floating ice. There is, for example, little dispute about ice within acknowledged territorial waters, and this ice is generally agreed to be under the sovereignty of the littoral state. A more delicate problem is posed by large masses of permanent ice attached to the coast, especially in the case of huge masses of shelf

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<sup>42</sup> *Ibid.*, p. 359; *ibid.*, p. 366.

<sup>43</sup> Elmer Plischke, article previously cited in *Encyclopedia Arctica*, p. 45.

<sup>44</sup> John C. Cooper, article previously cited in *Encyclopedia Arctica*, p. 36; *ibid.*, p. 37.

<sup>45</sup> W. E. Hall, *A Treatise of International Law*, 8th edition, edited by A. P. Higgins, p. 125, footnote 1; Paul Fauchille, *op. cit.*, p. 658. See also Gustav Smedal, *op. cit.*, pp. 31-32.

<sup>46</sup> Paul Fauchille, *op. cit.*, p. 203. (Cited in P. C. Jessup, *The Law of Territorial Waters*, p. 70).

<sup>47</sup> W. L. G. Joerg, *Brief History of Polar Exploration Since the Introduction of Flying*, pp. 77-78 (*supra*).

ice such as the Ross Barrier, which may not only obscure the coastline but also make its location impossible. The additional problem is then raised as to how territorial waters can be drawn, and where their starting point should be.

A number of authorities agree that in general such permanent coast ice is subject to sovereignty. Among the writers previously cited Hayes, Smedal, Plischke, and Cooper take this view, and Rolland and the United States Naval War College expressed the same opinion. Hayes maintains that ownership of any coast ought to include ownership of all shelf ice in front of it.<sup>48</sup> Smedal, speaking particularly of the Ross Barrier, admitted that part of it was over land and part over water, but preferred to treat the entire mass as land and thus subject to sovereignty.<sup>49</sup> Plischke suggests granting a state jurisdiction over shelf ice to its seaward limits, and over other permanent shore ice to an agreed maximum, plus the marginal belt.<sup>50</sup> Cooper makes the somewhat rigorous qualification that a state shall occupy such permanent ice throughout the entire year and prove its occupancy, in which case territorial waters may be measured from the edge of the occupied area.<sup>51</sup> Rolland maintained that permanent shore ice must be considered a continuation of the land and subject to the same sovereignty as the land itself.<sup>52</sup> The Naval War College decided that a measure of jurisdiction over permanent ice should reside in the adjacent state, and noted that the low water mark along a cliff might be compared with the low water mark along permanent ice.<sup>53</sup>

Joerg again does not take a definite point of view. Speaking of antarctic shelf ice, he observes that it is difficult to tell where land ends and sea begins, but that to the navigator the edge of the shelf ice is the border between the two. He questions, however, that this interpretation would prevail in a settlement of territorial jurisdiction.<sup>54</sup>

Waultrin believed that sovereignty can be acquired over immobile ice.<sup>55</sup> This view appears to carry the idea of sovereignty a little further than simply including permanent shore ice, since immobile or nearly-immobile ice may be located at a great distance from the nearest coastline. Smedal places T. W. Balch in the same category as Waultrin, but Lakhtine takes an opposite view of Balch's remarks.<sup>56</sup>

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<sup>48</sup> J. Gordon Hayes, *op. cit.*, p. 361.

<sup>49</sup> Gustav Smedal, *op. cit.*, pp. 30-31.

<sup>50</sup> Elmer Plischke, article previously cited in *Encyclopedia Arctica*, p. 44.

<sup>51</sup> John C. Cooper, article previously cited in *Encyclopedia Arctica*, pp. 32-33, 36.

<sup>52</sup> Louis Rolland, "Alaska, Maison de Jeu Etablie sur les Glaces au dela de la Limite des Eaux Territoriales," *Revue Generale de Droit International Public* (Paris, 1904), pp. 340-345.

<sup>53</sup> U.S. Naval War College, *op. cit.*, (1937) p. 83.

<sup>54</sup> W. L. G. Joerg, *Brief History of Polar Exploration Since the Introduction of Flying*, p. 78.

<sup>55</sup> Rene Waultrin, "Le Probleme de la Souverainete des Poles," *Revue Generale de Droit Internationale Public* (Paris, 1909), pp. 649-660.

<sup>56</sup> Gustav Smedal, *op. cit.*, p. 31; V. L. Lakhtine, *op. cit.*, p. 712.

There remain to be considered those writers who have supported the concept that polar ice formations in general are subject to sovereignty. These writers are principally Russian, but there are one or two outstanding exceptions. M. F. Lindley saw no reason why the polar regions should not be appropriated, but thought that little use would be served in appropriating areas at or near the Poles.<sup>57</sup> He did not mention polar ice regions specifically, but it appears that he considered both ice and land areas to be susceptible to jurisdiction, since the north polar region is of the former class and the south of the latter. C. C. Hyde takes an even stronger view, writing as follows:

... such rights (i.e., of sovereignty) are preferred in relation to areas of which the surface is a field of ice which in some situations appears to be the habitual covering of water rather than of land that projects itself above the level of the sea. It is not apparent why the character of the substance which constitutes the habitual surface ... should necessarily be decisive of the susceptibility to a claim of sovereignty of the area concerned. This should be obvious in situations where the particular area is possessed of a surface sufficiently solid to enable man to pursue his occupations thereon....<sup>58</sup>

Unquestionably the strongest endorsement of sovereignty over polar ice formations has come from Russian writers, principally Leonid Breitfuss, V. L. Lakhtine, E. A. Korovin, and S. V. Sigrist. These four differ somewhat in their views, but all support the sector principle, and advocate some form of jurisdiction over polar ice on a sectoral basis.

Breitfuss, perhaps the least extreme of the four, considered that polar states were entitled to exercise jurisdiction within their sectors "not only on the dry land, but also in a certain measure, still to be determined internationally, upon the waters, covered with ice-fields, which touch these lands and islands...."<sup>59</sup>

Lakhtine divided polar areas into the following categories: discovered lands and islands, undiscovered lands and islands, ice formations, sea regions, and air regions.<sup>60</sup> He believed that floating ice should be assimilated legally to open polar seas, while more or less immovable ice formations should have a legal status equivalent to polar land territory. He divided waters free from any ice cover into three categories: first, bays, landlocked seas, and mouths of rivers, second, territorial waters, and third, all other waters within the sector. His divisions appear somewhat irrelevant, however, since in his view everything, including land, water, ice, and air,

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<sup>57</sup> M. F. Lindley, *op. cit.*, p. 6.

<sup>58</sup> C. C. Hyde, *International Law*, Vol. I, pp. 347-348.

<sup>59</sup> Leonid Breitfuss, *op. cit.*, p. 467.

<sup>60</sup> V. L. Lakhtine, *op. cit.*, p. 704.

belongs to the adjacent polar state. His opinion may best be expressed by quoting him:

Thus the proposed legal status for the high seas of the Arctic, is, in its essential part, nearly identical with that of 'territorial waters.'

Summing up we reach the following conclusions:

1. Polar States wield sovereignty over sea regions covered with ice, according to their sectors of attraction.
2. Littoral States wield sovereignty over land-locked seas free from ice, and over gulfs and bays.
3. Littoral States are entitled to a somewhat limited sovereignty over all remaining sea regions free from ice, as well as over territorial waters, maritime belts and waters between islands according to their sectors of attraction.<sup>61</sup>

Probably no statement on the subject has aroused more controversy than Lakhtine's. Taracouzio calls his plan a "triple theory," and it must be admitted that in practice it might lead to various complications.<sup>62</sup> Korovin and Sigrist dispose of the possibility of such complications very neatly by simply assigning everything within a sector unreservedly to the littoral state. Korovin acknowledges the legality of the Soviet Decree of 1926, but considers it deficient in that it claims specifically only lands and islands, which to him is in conflict with the whole idea of the measure. The decree, he says, "must be understood to include in the conception of 'lands and islands,' as expressed by Soviet legislators, also ice formations and the seas surrounding them, for otherwise the polar sector adjacent to the U.S.S.R. would have to be considered as an open sea with all the consequences resulting from such an interpretation."<sup>63</sup>

Sigrist writes in a similar vein:

We refuse to admit any legal difference between frozen land and immobile ice; indeed, transportation is just as possible over such ice as it is over land which is frozen and covered with snow....

The stretches of water, surrounded by immobile ice or by islands, may be fully assimilated with inland seas belonging to the state of which its shores are a part.<sup>64</sup>

In reference to the Decree of 1926, he says:

Interpreting this decree from the standpoint of the underlying idea,

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<sup>61</sup> *Ibid.*, pp. 713-714.

<sup>62</sup> T. A. Taracouzio, *Soviets in the Arctic*, p. 360.

<sup>63</sup> E. A. Korovin, "Problema Vozdushnoi Okkupatsii," *Voprosy Vozd. Prava*, Vol. I, pp. 109-110, as cited in T. A. Taracouzio, *Soviets in the Arctic*, pp. 348-349.

<sup>64</sup> S. V. Sigrist, *op. cit.*, p. 984, cited in T. A. Taracouzio, *ibid.*, p. 349.

and not literally, we must admit that to the U.S.S.R. belong not only 'lands and islands already discovered and those which may be discovered in the future,' but also the areas among them irrespective whether there be there immobile or floating ice.... In the spirit of the Decree we must maintain that the whole region from the Soviet mainland to the Pole is Soviet possession....<sup>65</sup>

Surveying all the opinions which have been considered, it is evident that they do not fit into a single pattern. About all one can say is that Soviet writers generally approve the concept of sovereignty over ice, while the majority of non-Soviet writers take the opposite view, at least as far as ice above the high seas is concerned. There is a considerable weight of opinion among the latter, however, in favor of granting sovereignty over shelf ice and other permanent shore ice.

It is evident that the entire problem is extremely complicated, and a ready solution has not yet appeared. One of the best illustrations of the complexities which may be encountered is that given by Taracouzio in his detailed discussion of the question in its relation to Soviet Russia.<sup>66</sup> Referring particularly to the writings of Breitfuss, Lakhtine, Korovin, and Sigrist, he subjects their theories to searching examination and criticism, which demonstrate how difficult it might be to apply them in practice. He makes a telling point in showing how indefinite and impractical is some of the terminology used by the Russian writers, particularly such imprecise phrases as the following - "relatively immobile ice," "more or less immovable ice," "ice of considerable size," "floating ice," "water free from any ice cover," "open water," "land-locked seas," and "somewhat limited sovereignty," all of which are used in the attempt to formulate rules for sovereignty over ice and water. It should be noticed, however, that even if jurisdiction were strictly limited to land, inland waters, and territorial waters, the matter of terminology would still cause difficulty in the polar regions, though perhaps to a lesser degree. This would be especially true in the case of territorial waters, shore ice, and shelf ice.

Taracouzio also gives a number of specific examples which indicate how complex the problem of jurisdiction might become. Suppose, he says, that four groups of fishermen have established themselves on a field of fast ice eighteen miles wide along the Russian coast, a British group one mile, a British and a Norwegian group ten miles, and a British group sixteen miles, from the shore. Is Soviet sovereignty being violated? If the ice field is considered "terra firma" the answer is "Yes" in all cases. If it is considered to be comparable to water, only the first, British group (within three miles) and the Norwegian group are violating Soviet sovereignty. The second British group is covered by the British-Russian agreement of 1930 granting British fishermen the right to fish beyond a three-mile limit, and

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<sup>65</sup> *Ibid.*

<sup>66</sup> T. A. Taracouzio, *Soviets in the Arctic*, pp. 346-361.

the third British group is beyond the Soviet Government's own twelve-mile limit. Although Taracouzio does not mention this point, it may be noted that if the sector principle were applied without limitation, all four groups would be there illegally, at least in the view of the littoral state.

Taracouzio then considers the consequences if the ice field detached itself from the shore and drifted away, leaving a channel two and a half miles wide between it and the mainland. Have the first British group and the Norwegian group the right to fish now, the British group now being three and a half miles from the mainland and the Norwegian group twelve and a half? Or are all four groups present illegally because the ice field is now to be considered an island? Taracouzio then wonders about the consequences if the channel becomes six, twelve, or fourteen miles wide. Obviously the complications of such a situation are practically unlimited.<sup>67</sup>

Taracouzio gives a number of other cogent illustrations, of which one will be quoted here. He says:

A group of Norwegian hunters have established themselves for the season on a floating ice field, not 'considerable' in size, yet sufficiently large to pursue their trade. This ice field drifts into the Soviet sector into a sea, not 'mare clausum,' which up to that time had been 'free from ice.' Does the appearance of this ice field suffice to place this sea under Soviet sovereignty? Is the hunting still legal?<sup>68</sup>

These questions are left unanswered, but the mere posing of them serves to illustrate the legal problems that are raised if attempts are made to subject polar ice to sovereignty. The reply of a sector enthusiast would probably be that all ice within a sector, and all habitations and structures thereon, are subject to the jurisdiction of the littoral state as long as they remain within its sector, but pass beyond control if they drift outside of sector limits. However, this argument would depend upon the sector principle for validity, and if the sector principle is not valid, neither is the argument.

In conclusion, there is little dispute that ice within territorial limits belongs to the littoral state, although doubt remains as to how territorial limits should be determined. There is also considerable support for the theory that permanent shore ice, and shelf ice, should also be subject to sovereignty. Beyond this there appears to be little agreement, and the problem remains unanswered. Beyond a doubt it would be of benefit if an acceptable solution could be achieved upon an international basis, through the United Nations, its component body the International Court of Justice, or, perhaps, by means of an international conference. It must be admitted that a

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<sup>67</sup> *Ibid.*, p. 356.

<sup>68</sup> *Ibid.*, p. 358.

decision satisfactory to all would probably be difficult to attain, but unless and until such a decision is made, the matter will remain unresolved.

The main problem will be to adapt the acknowledged principle of the freedom of the high seas to the special conditions which prevail in the polar regions, and to reconcile the need for maintaining this principle with the legitimate desire of arctic states for security along their northern frontiers. The central question, which must be answered, is what allowances, if any, are to be made for the facts that the polar seas are largely frozen over, and are capable of sustaining traffic and habitation in a manner somewhat similar to land. It is not likely, for example, that either Canada or the United States would at the present time welcome the establishment of Russian bases on the ice ten or twenty miles north of their arctic shores, even if these bases were maintained only part of the year. In such circumstances it would seem reasonable, if polar states are to be denied outright sovereignty over such regions, that they are at least entitled to assurance that other states are not privileged to establish a measure of occupation over the same areas.

One point remains to be noted. Taracouzio says that "the existing rules on maritime domain are not affected by changes in the physical composition of its elements, as international law makes no distinction between ice and water."<sup>69</sup> Similar assertions are made by Cooper and Plischke.<sup>70</sup> The statement hardly constitutes a valid argument, for, while it is true that there is no definitive rule in international law that ice and water are to be treated differently, the converse is also true, and there is no definitive rule that they shall be treated as if they were the same. It seems correct to say that international law has not as yet resolved the question, and that, while ice and water are the same in some respects, they are different in others. These differences should be taken into consideration. What consequences there might be, if any, is uncertain, but the problem cannot be dismissed simply by assuming that the absence of a particular law or rule is in itself proof that a law or rule to the opposite effect exists.

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<sup>69</sup> *Ibid.*, p. 359.

<sup>70</sup> John C. Cooper, *article written for Encyclopedia Arctica*, p. 37 (*supra*); Elmer Plischke, *article written for Encyclopedia Arctica*, p. 45 (*supra*).

## CHAPTER 19

### JURISDICTION OVER POLAR AIRSPACE

The problem of jurisdiction in polar regions involves not only land, water, and ice, but also jurisdiction over the airspace above all three. It is quite possible that the latter aspect will become of greater practical importance than any of the others, in north polar regions at least, owing to the probability that these regions will become the main highway for a large portion of the world's air commerce.<sup>1</sup> There is little land near the North Pole, and the usefulness of what there is remains doubtful; the possibility of greatly increased traffic through arctic waters is even more dubious; and the chance of travelling either over or under arctic ice on a commercial scale is more uncertain still; but there is no reasonable doubt that in the near future a great deal of air traffic will follow the shorter routes over the so-called top of the world. In these circumstances the question of jurisdiction over arctic airspace may become of paramount importance.

The establishment of rules governing air transportation and rights over airspace is a development of comparatively recent times.<sup>2</sup> The epoch-making flight of the Wright Brothers occurred as recently as 1903, and although there had been a considerable amount of doctrinal discussion prior to this date, both the problem of jurisdiction over airspace and the progress that has been made towards its solution are essentially products of the present century.

Although formation of air rules has come only with the advent of the airplane, this is not entirely a modern problem. In the ancient world, when airspace was considered of little importance in respect to sovereignty, Justinian Law declared the

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<sup>1</sup> See Chapter 3 (*supra*) for a discussion of this question.

<sup>2</sup> Regarding jurisdiction over airspace the following may be consulted: J. M. Spaight, *Aircraft in War* (London: Macmillan and Co., Ltd., 1914); J. M. Spaight, *Aircraft in Peace and the Law* (London: Macmillan and Co., 1919); Kenneth W. Colegrove, *International Control of Aviation* (Boston: World Peace Foundation, 1930); Carl Zollman, *Law of the Air* (Milwaukee: Bruce Publishing Co., 1927); Laurence C. Tombs, *International Organization in European Air Transport* (New York: Columbia University Press, 1936); John C. Cooper, *The Right to Fly* (New York: Henry Holt and Co., 1947); C. N. Shawcross, K. M. Beaumont, and P. R. E. Browne, *Shawcross and Beaumont on Air Law* (London: Butterworth and Co., Ltd., 1951); O. J. Lissitzyn, *International Air Transport and National Policy* (New York: Council on Foreign Relations, 1942); H. D. Hazeltine, *The Law of the Air* (London: Hodder and Stoughton, 1911). See also the additional books, articles, and documents cited in the remainder of the chapter.

air, like the high seas, to be free to all mankind.<sup>3</sup> An opposite principle, of indefinite origin but expressed by Coke and Blackstone and incorporated into certain national codes including the German, French, and Swiss, was that the lord of the soil was also lord of the heavens.<sup>4</sup> These are the two opposing views which have occupied the center of the stage in discussions concerning aerial jurisdiction, although, as Hershey points out, the extreme theory of outright ownership of air or airspace has generally been abandoned, as far as the State is concerned, in favor of that of *imperium* or territorial sovereignty.<sup>5</sup> There have also been a number of intermediate principles, notably one holding that airspace is subject to the jurisdiction of the subjacent state but also to a servitude of innocent passage in favor of other states. A fourth theory, of considerable interest, is that the subjacent state should exert sovereignty over a lower stratum of airspace which might be considered analogous to territorial waters, while higher strata, like the high seas, should remain free to all.<sup>6</sup>

During the years immediately preceding the First World War, considerable time and effort were devoted to the increasingly important problems of air law and aerial jurisdiction. In 1889, when the balloon was still the only successful means of flight, the First International Congress of Aeronautics met in Paris. Later meetings of the Congress were held at Paris in 1890, at Milan in 1906, at Nancy in 1909, and at Turin in 1911. The main emphasis at all of these meetings was on the mechanics of flying, but jurisdictional subjects were also discussed, including the question of freedom of passage over territory.<sup>7</sup>

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<sup>3</sup> Simeon E. Baldwin, "The Law of the Airship," *The American Journal of International Law*, Vol. 4 (1910), p. 95. See also A. S. Hershey, *op. cit.*, p. 340.

<sup>4</sup> Simeon E. Baldwin, *op. cit.*, p. 97; A. S. Hershey, *op. cit.*, pp. 340-341. Hershey remarks that this principle was a Roman tradition revived in the Middle Ages (*op. cit.*, p. 340, footnote 7). Spaight, Baldwin, and De Montmorency all question, in various ways, that it came from the Roman code. See J. M. Spaight, *Aircraft in Peace and the Law*, p. 54 (*supra*); S. E. Baldwin, *op. cit.*, p. 97; J. E. G. de Montmorency, "The Problems of Air Law," *The British Year Book of International Law*, Vol. 2 (1921-1922), p. 168.

See also A. S. Hershey, "The International Law of Aerial Space," *The American Journal of International Law*, Vol. 6 (1912), pp. 381-388, for an early treatment of this subject by the writer. (Reference to Hershey in the following page are to his text book rather than this article.)

<sup>5</sup> A. S. Hershey, *op. cit.*, p. 341, footnote 8; In respect to the fundamental distinction between air and airspace, see Carl Zollman, *Law of the Air*, p. 3 (*supra*). The air is a moving, drifting substance somewhat analogous to flowing water, but airspace is stationary and permanent. Sovereignty is now generally thought of in connection with airspace.

<sup>6</sup> C. G. Fenwick, *op. cit.*, p. 408; L. Oppenheim, *op. cit.*, pp. 469-470. See also A. K. Kuhn, "The Beginnings of an Aerial Law," *The American Journal of International Law*, Vol. 4 (1910), pp. 109-132, especially pp. 112-116; and H. D. Hazeltine, *op. cit.*, Lecture 1, for excellent treatments of these theories of aerial jurisdiction.

<sup>7</sup> Kenneth W. Colegrove, *op. cit.*, pp. 40-41 (*supra*).

Much more significant were a series of meetings held by the Institute of International Law (Institut de Droit International). At its Oxford meeting in 1880 the Institute included the subject of aviation in its draft project of a convention on the laws of war.<sup>8</sup> At the Neuchatel meeting in 1900 the celebrated French jurist Paul Fauchille proposed that an international code of air law be established.<sup>9</sup> He followed up this proposal at Brussels in 1902 with his well-known thesis: "The air is free. The states have no authority over it in time of peace or in time of war other than that which is necessary for their own preservation."<sup>10</sup> At the session at Ghent in 1906 Fauchille with the help of Ernest Nys and others defended his thesis, which was attacked principally by the English jurist John Westlake. Westlake argued that the comparison between the air and the high seas, drawn by Fauchille's supporters, is not a valid one, since an object departing from a coast becomes steadily less dangerous to the riparian state, but an object ascending in the air does not become less dangerous to the state beneath. His own counter proposal laid down the following rule: "The state has a right of sovereignty over the aerial space above its soil, saving a right of inoffensive passage for balloons or other aerial machines."<sup>11</sup> However, Westlake could attract only three votes in support of his proposal, and Fauchille's was finally adopted by a vote of fourteen to nine.<sup>12</sup> At the Madrid session of the Institute five years later a number of principles proposed by Fauchille were adopted, including the following: "International aerial circulation is free, saving the right of subjacent states to take certain measures, to be determined, to insure their own security...."<sup>13</sup>

The concept of freedom of the air also held sway at the prewar meetings of the Comité Juridique International de l'Aviation. This organization was founded in 1909, by the two French jurists Delayen and d'Hooghe, and meetings were held at Paris in 1911, Geneva in 1912, and Frankfurt in 1913. At the first congress the members expressed strong support for the principle of freedom of the air.<sup>14</sup>

In spite of these developments the trend of events did not favor the universal application of Fauchille's thesis. At Madrid in 1913 the annual conference of the International Law Association took as strong a stand against freedom of the air as

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<sup>8</sup> *Annuaire de l'Institut de Droit International*, Vol. V (1880), p. 163. See also K. W. Colegrove, *op. cit.*, p. 42 ff.

<sup>9</sup> K. W. Colegrove, *op. cit.*, p. 42.

<sup>10</sup> *Annuaire*, Vol. XIX (1902), p. 19; K. W. Colegrove, *op. cit.*, p. 42.

<sup>11</sup> *Annuaire*, Vol. XX (1906), pp. 327-328; K. W. Colegrove, *op. cit.*, p. 42. See also James W. Garner, *Recent Developments in International Law* (University of Calcutta: 1922 Tagore Law Lectures, 1925), p. 157.

<sup>12</sup> J. W. Garner, *op. cit.*, p. 157; K. W. Colegrove, *op. cit.*, p. 42.

<sup>13</sup> *Annuaire*, Vol. XXIV (1911), p. 346; K. W. Colegrove, *op. cit.*, p. 43. See also James Brown Scott, *Resolutions of the Institute of International Law* (New York: Oxford University Press, 1916), p. 171.

<sup>14</sup> K. W. Colegrove, *op. cit.*, pp. 44-45.

the Institut de Droit International had in favor of it. It may be noted that whereas the Institut proposed primarily free international air traffic with the secondary right of the individual state to take necessary but limited measures of control, the Association proposed primarily sovereignty and control by the subjacent state with, subject to this right, freedom of passage for others - two suggestions directly opposite to each other in meaning and implication.<sup>15</sup>

The International Juridical Congress for the Regulation of Air Locomotion, which met at Verona in 1910, also gave primary emphasis to sovereignty of the subjacent state and relegated freedom of the air to second place.<sup>16</sup>

The Powers which met at the First Peace Conference at The Hague in 1899 made an auspicious start in the direction of international control of air, particularly in wartime, by agreeing to ban for five years the discharge of projectiles and explosives from the air. However, when the Second Hague Conference gathered in 1907, circumstances had changed greatly, as the Wright brothers had succeeded in flying an airplane and Count Zeppelin had flown his dirigible. The same proposal was again made, and accepted by some smaller nations, but the larger Powers now refused to accept a limitation on their sovereignty which might handicap them in a future war.<sup>17</sup>

Probably the most important international meeting on air jurisdiction before World War I was the International Conference of Air Navigation in 1910, which met in Paris at the invitation of the French Government. Eighteen European states were represented, and many of them, led by France and Germany, favored freedom of aerial movement. This point of view was vigorously and uncompromisingly opposed by the British delegation, which, in line with Westlake's opinion, refused to abandon the claim to national sovereignty over airspace. It is likely that the British were somewhat alarmed at the new possibilities and dangers offered by aerial transportation, as demonstrated in particular by Bleriot's flight across the English Channel in 1909. At any rate, the conference foundered on this basic disagreement, and adjourned without signing any treaty.<sup>18</sup>

The growing interest in the regulation of air traffic was reflected in the enactment of a considerable amount of national legislation shortly before the onset of the war.<sup>19</sup> Among these measures were two acts of the British Parliament in 1911 and 1913, a decree issued by the French Ministry of the Interior in 1911, an Austrian decree in 1912, several German decrees in 1910, an Italian decree in 1914, and, on the other side of the Atlantic, a number of acts passed by individual states in

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<sup>15</sup> International Law Association, *Report of the Twenty-Eighth Conference* (Madrid, 1913), p. 533, p. 545. See also K. W. Colegrove, *op. cit.*, pp. 43-44. Colegrove remarks that the Conference was dominated by Anglo-American views.

<sup>16</sup> K. W. Colegrove, *op. cit.*, p. 44.

<sup>17</sup> K. W. Colegrove, *op. cit.*, pp. 46-48.

<sup>18</sup> K. W. Colegrove, *op. cit.*, pp. 48-52.

<sup>19</sup> See K. W. Colegrove, *op. cit.*, p. 46, for a good brief summary of this legislation.

the United States between 1911 and 1913.<sup>20</sup> It is noteworthy that, irrespective of the attitudes taken by the nations in international conferences, all national legislation, without exception, made the most unequivocal claims to sovereignty over airspace.

The pre-World War I period had thus failed to settle the thorny problem of jurisdiction over airspace. Early and somewhat idealistic hopes for freedom of airspace had at first appeared to have a good chance of realization, but had encountered a mounting tide of opposition. Although a number of international conferences had declared themselves in favor of freedom of airspace, a number of others had taken the opposite view, and such national legislation as had been enacted had without exception supported the principle of national jurisdiction over airspace. In general French jurists had taken the lead in defending the freedom of the air, while British jurists had led the opposite camp.<sup>21</sup>

Any hopes that the doctrine of free airspace might prevail were rudely dispelled by the outbreak of war. As Spaight remarks, the instant hostilities began "air frontiers closed with a Janus-like clang," and all theories of freedom of airspace were dropped in the face of the need to control superjacent air in the interests of national defense.<sup>22</sup> Both belligerents and neutrals asserted full jurisdiction and did their best to maintain it throughout the war, with the result that by the war's end jurisdiction over national airspace had become a settled fact as far as state practice was concerned.<sup>23</sup>

After the war the principle of jurisdiction over national airspace was formally accepted in the Convention for the Regulation of Aerial Navigation, which was drawn up by the Aeronautical Commission of the Peace Conference in 1919.<sup>24</sup> This convention attempted to establish a world-wide system of law to govern aviation, and has since served as a model for later air conventions. In its first and second articles the signatory states recognized the complete jurisdiction of a state over the

<sup>20</sup> *Statutes of Great Britain*, 1-2 Geo. V, c. 4 (June 2, 1911), and 2-3 Geo. V, c. 22 (Feb. 14, 1913); *Journal Official*, (Nov. 25, 1911), pp. 9347-9349; *Reichsgesetzblatt im Reichsrat* (Dec. 21, 1912); cited in K. W. Colegrove, *op. cit.*, p. 46; *Raccolta Ufficiale delle Leggi e dei Decreti di Regno d'Italia* (Rome, 1914), Vol. 4, No. 1008, p. 3332; *Acts and Resolves of Massachusetts* (May 16, 1913), chap. 663, pp. 609-612.

<sup>21</sup> Laurence C. Tombs, *op. cit.*, p. 5; John C. Cooper, *The Right to Fly*, pp. 18-22 (*supra*); K. W. Colegrove, *op. cit.*, pp. 42-52.

<sup>22</sup> J. M. Spaight, *Aircraft in Peace and the Law*, p. 8.

<sup>23</sup> *Ibid.*, pp. 8-10; Carl Zollmann, *op. cit.*, pp. 3-4; John C. Cooper, *The Right to Fly*, p. 22; C. G. Fenwick, *op. cit.*, pp. 408-409.

<sup>24</sup> For the text of this convention, see *The American Journal of International Law, Supplement*, Vol. 17 (1923), pp. 195-215; John C. Cooper, *The Right to Fly*, Appendix I, pp. 291-305; K. W. Colegrove, *op. cit.*, Appendix I, pp. 149-172.

For a good summary of developments in air law until 1930, especially in the postwar period, see Manley O. Hudson, "Aviation and International Law," *The American Journal of International Law*, Vol. 24 (1930), pp. 228-240.

airspace above its land and territorial waters, but also agreed to grant freedom of innocent passage in time of peace, subject to certain conditions. These significant articles were framed in the following terms:

Art. 1. The high contracting parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory.

For the purpose of the present convention the territory of a state shall be understood as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto.

Art. 2. Each contracting state undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting states, provided that the conditions laid down in the present convention are observed.<sup>25</sup>

Other important provisions gave each contracting state the right to define prohibited areas above its territory, to prescribe routes through its airspace, and to inspect foreign planes upon landing or departure. Military planes were forbidden passage without special authorization.<sup>26</sup>

The Convention came into force on July 11, 1922, after it had been ratified by fourteen of the signatory states. Later nineteen other nations became parties to it.<sup>27</sup> It is probably the most important international document on the subject of airspace jurisdiction, which has been put into effect, until the Chicago Convention of 1944 at least, and its primary principle of national sovereignty over airspace has not been seriously challenged. Nevertheless, it was incomplete in that it did not have universal application, as the United States, after having signed the convention, failed to ratify it, and Russia, Germany, and a number of other states also were not members.<sup>28</sup>

The now-dominant concept of national jurisdiction over airspace was maintained in other postwar international agreements and also in national legislation. It was reaffirmed by the Ibero-American Convention of October 25-30, 1926, at Madrid, which was attended by Spain, Portugal, and nineteen Latin

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<sup>25</sup> Colegrove has observed that the above principles, adopted by the Convention in 1919, were essentially the same as those proposed by Professor Westlake at the 1906 meeting of the Institut de Droit International at Ghent (*op. cit.*, p. 59).

<sup>26</sup> *Convention*, Articles 3, 15, 21, and 32. See A. K. Kuhn, "International Aerial Navigation and the Peace Conference," *The American Journal of International Law*, Vol. 14 (1920), pp. 369-381, for an interesting commentary on the Convention.

<sup>27</sup> Laurence C. Tombs, *op. cit.*, pp. 44-46.

<sup>28</sup> *Ibid.*, p. 46; John C. Cooper, *The Right to Fly*, p. 34.

American Republics.<sup>29</sup> It was also reaffirmed by the Pan American Convention on Commercial Aviation, which met at Havana in 1928, and was attended by the twenty-one states of the Pan American Union.<sup>30</sup> In both cases the terminology of the document drawn up and signed closely resembles that of the Convention of 1919. In 1930, when questions to be considered at the coming Hague Conference were being discussed, all states partaking in the discussions agreed that the sovereignty of a state extends to the air above its territorial waters.<sup>31</sup>

The British Air Navigation Act of 1920 asserted that “the full and absolute sovereignty and rightful jurisdiction of His Majesty extends, and has always extended, over the air superincumbent on all parts of His Majesty’s dominions and the territorial waters adjacent thereto.”<sup>32</sup> The American Federal Air Commerce Act of 1926 made a similar assertion of sovereignty.<sup>33</sup> Other states have followed the British and American examples. Of particular note is the Soviet Air Code, which was promulgated on April 27, 1932, in the following terms:

1. The air code is in force throughout the land and fluvial territory of the Union of S.S.R. and the territorial waters established by the laws of the Union of S.S.R., and within the air space of the Union of S.S.R.

By the air space of the Union of S.S.R. is understood the air space above the land and fluvial territory of the Union of S.S.R., and above the territorial waters established by the laws of the Union of S.S.R.

2. To the Union of S.S.R. belongs the complete and exclusive sovereignty over the air space of the Union of S.S.R.<sup>34</sup>

It is significant, as Cooper observes, that although neither the United States nor Russia was a party to the 1919 Convention, both have asserted jurisdiction over national airspace as categorically as other states which ratified the said Convention.<sup>35</sup>

The Chicago Convention of 1944 has now replaced both the Paris Convention

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<sup>29</sup> Manley O. Hudson, *International Legislation* (Washington: Carnegie Endowment for International Peace, 1931), Vol. III, pp. 2019-2032, especially pp. 2019-2020. See also Laurence C. Tombs, *op. cit.*, p. 50.

<sup>30</sup> Manley O. Hudson, *International Legislation*, Vol. IV, pp. 2354-2369, especially pp. 2356-2357. See also *The American Journal of International Law, Supplement*, Vol. 22 (1928), pp. 124-133.

<sup>31</sup> *The American Journal of International Law, Supplement*, Vol. 24 (1930), pp. 26-27.

<sup>32</sup> Great Britain, *Statutes*, 10 and 11 George V (1920), c. 80.

<sup>33</sup> *U.S. Statutes at Large*, Vol. 44 (1926), p. 568. The principle was again affirmed in the Civil Aeronautics Act of 1938. (*U. S. Statutes at Large*, Vol. 52 (1938), p. 1028.)

<sup>34</sup> *Sobr. Zak. i Rasp. S. S. S. R.*, 1932, Vol. I, p. 304 ff; as translated and reprinted in T. A. Taracouzio, *The Soviet Union and International Law*, Appendix 12, p. 401.

<sup>35</sup> John C. Cooper, *Encyclopedia Arctica Article*, pp. 6-11.

of 1919 and the Havana Convention of 1928, and lays down the basic principles of air law as affecting most of the nations of the world except Russia.<sup>36</sup> Respecting status of airspace the relevant provisions are as follows:

Article 1. The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Article 12. For the purposes of this Convention the territory of the State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, or mandate of such State.<sup>37</sup>

In these articles and, it may be noted, in a considerable number of others, the Chicago Convention was essentially a restatement of the 1919 Convention. One article of especial interest was Article 12, which said, in part: "Over the high seas the rules in force shall be those established under this Convention."<sup>38</sup> The statement is somewhat ambiguous, but one writer interpreted it to mean that traffic through the air above the high seas should be free to all, as is navigation through the high seas themselves.<sup>39</sup>

The basic rules of International law as applied to jurisdiction over airspace have thus been firmly established since the end of the First World War. They have been well stated by O. J. Lissitzyn in what he terms "three simple, yet fundamental principles" as follows:

1. Each state has sovereignty and jurisdiction over the air space directly above its territory (including territorial waters).
2. Each state has complete discretion as to the admission or non-admission of any aircraft to the air space under its sovereignty.
3. Air space over the high seas, and over other parts of the earth's surface not subject to any state's jurisdiction, is free to the aircraft of all states.<sup>40</sup>

Lissitzyn adds "Although of recent origin, these principles are now among the least disputed in international law."<sup>41</sup> Their fundamental meaning is that the status of airspace depends essentially upon the status of the regions directly below, and if the latter is known, the former follows as a consequence. However, there appears to be at least one exception to this rule, which might have some interesting

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<sup>36</sup> *Ibid.*, p. 8. The text of the Chicago Convention may be found in John C. Cooper, *The Right to Fly*, Appendix 4, pp. 331-343.

<sup>37</sup> *Ibid.*, pp. 331-332.

<sup>38</sup> *Ibid.*, pp. 334-335.

<sup>39</sup> This is approximate to Cooper's interpretation. See his *Encyclopedia Arctica* Article, p. 9.

<sup>40</sup> O. J. Lissitzyn, *International Air Transport and National Policy*, p. 365 (*supra*).

<sup>41</sup> *Ibid.*, p. 365.

consequences. It is recognized that under ordinary circumstances foreign states have a right of innocent passage through the territorial waters of the littoral state, but apparently this right does not extend to plane traffic through the airspace above. That is, the airspace above territorial waters is subjected to the same unlimited sovereignty as airspace above solid ground, and the subjacent state is under no obligation to grant innocent passage through it.<sup>42</sup> This discrepancy could lead to complications and even difficulties, as, for example, if a hydroplane entered the territorial waters of a foreign state on the surface, wished to make a hasty takeoff in the face of an approaching storm, and then found that it could not do so without violating the sovereignty of the littoral state.

Referring particularly to polar regions, several conclusions may be reached without great difficulty. Where a state has clear title to land territory, whether it be an island, an archipelago, or a portion of a continent, it also has exclusive jurisdiction over the airspace above this territory, and also over the airspace above its territorial waters. Also, where a region of water is recognized as forming part of the high seas, the airspace above this water is not subject to the jurisdiction of any one state, and aircraft using this airspace will have to observe only the laws of their own governments and those formulated for universal application by the family of nations. However, if the title to land territory is in doubt, or if the width of the territorial belt is in dispute, or if the status of other waters is not decided, the status of the airspace above all these regions will be correspondingly uncertain. Additional complicating factors in the polar regions, as described earlier, are the presence of large areas of sea ice and the doubtful legal validity of the sector principle.

There is no serious problem concerning airspace above lands in the Arctic. The titles to these lands (principally the Canadian and Russian arctic islands, Greenland, Iceland, and Spitsbergen) are now reasonably secure, and consequently jurisdiction over the airspace above them must be regarded as an established fact. The question of sovereignty over airspace above antarctic lands is more difficult, since antarctic land claims appear to depend largely upon the sector principle, and, insofar as they depend upon the sector principle, have no more validity than the principle itself. Perhaps the most delicate problem, however, is the status of the airspace above polar sea regions beyond territorial waters, especially those sea regions which contain both water and ice. This problem is encountered in both polar regions, but is more crucial in the Arctic, because it is here that such regions are most extensive and where most aerial traffic will occur. The problem is complicated by the fact that it is not discernible at the present time to what extent such regions of water and ice are claimed or might be claimed under the sector principle, or to what extent such claims might be enforced or sustained if they were put forward. As has been mentioned earlier, no sector decree is known to claim specifically regions of water and ice, or the airspace above them. Nevertheless, sector states have on various

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<sup>42</sup> Manley O. Hudson, "Aviation and International Law," *op. cit.* p. 239.

occasions made efforts to control navigation, fishing, and whaling beyond commonly accepted territorial limits, and the status of these sea regions, with the airspace above them, remains doubtful.<sup>43</sup>

The Russian sector decree of 1926, as has been noted, referred only to lands and islands, and did not claim the waters of the Soviet arctic sector, the ice therein, or the airspace above the latter two. The Russian Air Code of 1932 defined Soviet airspace as being that above the "land and fluvial territory" of the U.S.S.R. and above the "territorial waters established by the laws of the Union of S.S.R."<sup>44</sup> This appears to be a denial of the sector principle as applied to both water and airspace, because the authoritative document defining Soviet territorial waters, namely the law of 1927, specified a breadth of twelve miles for the marginal belt.<sup>45</sup> This is wider than usual, but is certainly not the equivalent of claiming an entire sector of water and airspace.

Soviet writers have criticized these decrees on the grounds that they are inadequate, maintaining that all water, ice, and airspace, as well as land, within the Russian sector should belong to the Soviet Union. Breitfuss in the statement already quoted added airspace to the dry lands, waters, and icefields which were to be subjected to a "certain measure" of sovereignty, "still to be determined internationally."<sup>46</sup> Korovin has maintained that Russian sovereignty should extend to the airspace above the entire Soviet sector.<sup>47</sup> Lakhtine's theory is somewhat modified and considerably more complicated, but essentially, as Taracouzio points out, it amounts to the same thing.<sup>48</sup> He says in part:

... inasmuch as the conclusions already reached are to the effect that Polar States exercise sovereignty over known and unknown territory lying in their sectoral regions of attraction, and over more or less immovable permanent ice formations covering the north part of the Arctic Ocean, as well as over national and territorial waters, it must be acknowledged that the Polar States exercise sovereignty also over the atmosphere above these territories, ice, and waters.

The problem yet remaining to be solved is that of the right of Polar States to sovereignty over the aerial space above the remaining

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<sup>43</sup> It is recognized, of course, that the phrase "commonly accepted territorial limits" is imperfect, and it is only used for want of a better. The lack of a standard breadth for the marginal belt adds still another complicating factor to an extremely confused situation.

<sup>44</sup> As translated and reprinted in T. A. Taracouzio, *The Soviet Union and International Law*, Appendix 12, p. 401.

<sup>45</sup> *Ibid.*, p. 63.

<sup>46</sup> L. Breitfuss, *op. cit.*, p. 467.

<sup>47</sup> E. A. Korovin, "Voprosy Vozdushnoi Okupatsii," *Voprosy Vozdushnogo Prava*, Vol. I, p. 109 ff., as cited in T. A. Taracouzio, *Soviets in the Arctic*, p. 362.

<sup>48</sup> T. A. Taracouzio, *Soviets in the Arctic*, p. 362.

water area of the Arctic Ocean, free from ice, i.e., the high seas.

Inasmuch as the legal status of these water areas is closely assimilated to that of territorial waters over which a State does exercise a limited sovereignty; and since, according to the international law of today a littoral State exercises unlimited jurisdiction over the atmosphere above its territorial waters, there is no reason for treating the question of the legal status of these Arctic regions in a different manner....

Hence we conclude that each Polar State exercises sovereignty over the aerial space above the whole region of attraction of its sector.<sup>49</sup>

This Soviet concept of sovereignty over entire sectors of arctic airspace has been attacked by a number of other writers, particularly Americans. To quote Taracouzio:

That the sector theory in its Soviet interpretation cannot be accepted for the air space in the Arctic, however, is substantiated by legal consideration. True, international law is dynamic and therefore the respective changes could be introduced so as to meet the contentions of Korovin and Lakhtine. Difficulty, however, in such case would arise from the collision of such a change with the principles governing the legal status of the high seas. Indeed, the rule is that the high seas as well as the air over them are free. It has been shown that the Arctic cannot be exempt from the doctrine prevailing in regard to the freedom of the seas. Hence also the impossibility of subjecting the air over the Arctic high seas to the sovereignty of the sector states, for otherwise - particularly in view of the facilities afforded by modern technical development - full advantage could not be taken of this principle of the high seas.<sup>50</sup>

Plischke contends that the Soviet interpretation of the sector principle cannot be applied to arctic airspace primarily because the sector principle has not yet been recognized in international law. He then continues by giving essentially the same line of reasoning as Taracouzio's in the passage just quoted.<sup>51</sup> Cooper says briefly and pointedly, "Airspace over the high seas is free to the use of all States and cannot be subject to the sovereignty of any single State. The ice-covered areas of the Arctic Ocean must be treated as high seas, and the airspace over such areas as free to the

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<sup>49</sup> V. L. Lakhtine, *op. cit.*, pp. 714-715.

<sup>50</sup> T. A. Taracouzio, *Soviets in the Arctic*, pp. 364-365.

<sup>51</sup> Elmer Plischke, "Trans-Polar Aviation and Jurisdiction over Arctic Airspace," *The American Political Science Review*, pp. 1012-1013.

use of all.”<sup>52</sup> Taken together, these three statements emphasize a point of view directly opposed to the Russian.

If sovereignty over entire sectors of arctic airspace became a fact, there is little doubt that sector states collectively could control or even throttle future transpolar air commerce, and individually could seriously impede it. This thought has given great and understandable concern to those who have a special interest in such air traffic. Yet, from a practical point of view, the effect of recognizing sovereignty throughout an entire sector might not be as great as at first appears. This is because, in ordinary transpolar commercial flying, a foreign plane which crossed a state's arctic sector would normally also pass over the land territory of the state itself, and the right to cross the sector would be of little value if permission to pass over the land territory were denied. To illustrate: suppose that the sector principle were declared illegal, and all sector claims in the Soviet sense were dropped, sovereignty remaining only over continental land, islands, territorial waters, and the airspace above them. Suppose that intercontinental air routes had been established across the Arctic Ocean, and that Russia then decided to prevent foreign planes from flying over any part of her land territory - a right that would undoubtedly still be hers. This would immediately stop foreign planes from beginning or ending their flights in Russia, or crossing over any part of Soviet soil. Planes from (say) the United States or Canada would no longer be able to fly to Russia, or cross Russian territory to reach Japan, China, or India. Similarly planes from Great Britain or France would not be able to take the shortest route to Japan or eastern China. There would be little purpose in flying through polar skies to the edge of Russian territorial waters if the right did not exist to go farther, and the practical effect would be almost as serious as if Russia had been able to stop foreign planes from even entering her sector. The same argument would apply, in large measure, in the case of the Canadian, Alaskan, and Greenland sectors. To put the matter briefly, if sovereignty throughout arctic sectors were denied, but control over airspace above polar land territories maintained and rigidly applied, there would remain hardly a single transpolar air route that would have commercial value, either now or in the conceivable future; and the addition of control throughout sector airspace would have little further ill effect.

This statement is not to be construed as an argument in favor of sovereignty throughout sector airspace, but rather as an attempt to show that its practical consequences probably would be less than might be thought. Admittedly, however, the problem must be settled upon legal rather than practical grounds. That being the case, the status of polar airspace can be defined by saying that according to generally recognized principles of international law it corresponds to the status of the surface regions directly below. It is in connection with these surface regions that unsettled problems still exist, which as a consequence cause doubts about

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<sup>52</sup> John C. Cooper, *Encyclopedia Arctica Article*, pp. 36-37.

jurisdiction over polar airspace.

These unsettled questions, which have been discussed previously, may be stated briefly as follows:

1. To what extent is the sector principle legal and applicable in the polar regions?
2. Can a standard breadth be determined for the marginal sea, in the polar regions as elsewhere, and if so, what should this breadth be?
3. Should any distinction be made between polar waters and ice, for the purpose of jurisdiction, and if so, what?
4. What is the legal status of both polar waters and ice beyond narrowly defined territorial limits? Should the littoral state have limited rights of jurisdiction in such regions, and if so, what legal rights should it have, and over how large an area?
5. What is the status of disputed land territory in Antarctica? (This question is applied only to the Antarctic because it is no longer a significant problem in the Arctic.)

If the above problems could be resolved satisfactorily, and the status of all polar surface regions thus clarified, a major step would have been taken towards removing uncertainties about legal rights in polar airspace. As long as these problems are unresolved, then jurisdiction over polar airspace must remain correspondingly in doubt. Some suggestions towards a solution are made in the concluding chapter of this work, but it is obvious that what is needed is an international settlement. Any suggestions from a private source have no particular usefulness except insofar as they may help in the attainment of such a settlement - the only type of solution which will, in the last analysis, prove either effective or satisfactory.

PART V  
CONCLUSION

## CHAPTER 20

### SUMMARY AND CONCLUDING REMARKS

The polar regions have been receiving a great deal of attention in recent years, and public interest in them is at a new height. In the Antarctic this interest is caused mainly by the territorial disputes which are proceeding there and by the possibility that the southern continent may prove to be a source of valuable mineral deposits. The regions around the North Pole, on the other hand, consist mainly of floating ice and water, and what land there is has apparently been effectively claimed. Interest in north polar regions is now occasioned mainly by the changing concept of this area's geopolitical role, as it is now understood to be centrally located among the world's largest and most powerful nations, and the two most powerful of all, Russia and the United States, face each other uneasily across its circumference. In addition this region lies athwart the shorter transpolar air routes of the future, and it appears certain that it will become an aerial crossroads, both for commercial traffic in peacetime and for attack and defense in the event of a major war. The desire to use these shorter air routes for commercial purposes may give rise to delicate jurisdictional problems which will have to be settled before a stable condition can prevail.

The Canadian Arctic occupies an especially significant position, because it lies directly between the land masses of Eurasia and North America, and, more specifically, between Russia and the United States. Its role in a future conflict between these two great Powers, while perhaps over-emphasized in some quarters, has been under consideration since the beginning of the "cold war." Commercial and other enterprise has been proceeding in the Canadian Northland at a greatly quickened rate since the early days of World War II, and it seems likely that it will eventually play a more important part in the world's economy. The continental part has natural resources of considerable value, and prospects for their augmentation are very hopeful. As far as the islands of the archipelago are concerned, their present value is mainly strategic, and it appears that any increase in their present small intrinsic worth will depend upon the possibility that important mineral discoveries may be made. Throughout the Canadian Arctic it is probable that, in spite of the universal dread the cold of such regions has inspired, its rigorous climate will not in itself be a prohibitive barrier to settlement or exploitation wherever these become economically feasible.

The Canadian Arctic has a thin scattering of population, of Eskimos and whites in the archipelago, and of Eskimos, whites, and Indians on the mainland. The total population of both the Northwest Territories and the Yukon is about 25,000, of which only a small fraction inhabits the archipelago. It is quite widely distributed

among the islands, however, and most of the larger ones are occupied, although some of the more remote ones are still uninhabited. The population is increasing, but at a slow rate.

Exploration in the Canadian Arctic may have begun with the Norsemen about 1000 A.D., and has continued to the present time. The Norsemen's travels are of unknown extent, but they certainly colonized both Iceland and Greenland, and may have wandered over parts of the archipelago and the northeastern American mainland. Their Greenland colonies disappeared before the middle of the sixteenth century, however, and only faint and doubtful traces remain of their activities elsewhere. Consequently when the second wave of European exploration began with Frobisher's voyage in 1576, he and his successors regarded themselves as discoverers of untouched territory.

Between the first of Frobisher's voyages in 1576 and the loss of Franklin's last expedition in 1848 there was a considerable amount of exploration in the North American Arctic, and the more accessible of the islands, as well as parts of the northern mainland, were explored and mapped. During these years exploration was almost entirely British, and a number of territorial claims, usually of an indefinite character, were made on behalf of Great Britain. There is no doubt that, as a result of these activities, Great Britain came to regard herself as sovereign throughout this vast region, or at least in the known parts of it; but to what extent this assumption was justified has never actually been determined. In the course of the intensive search for Franklin and his men about forty expeditions were sent out, and although none of the missing men were ever found alive the expeditions were successful in another respect, as geographical knowledge of the region was greatly extended. The Franklin search parties were also predominantly British, although there were volunteers from other nations, principally the United States.

After the middle of the nineteenth century exploration became more diverse in character. Although most of the expeditions continued to be British (and Canadian since about the beginning of the present century), explorers from other nations have played an important role, and Americans, Norwegians, and Danes in particular have done notable work in the archipelago. Nevertheless, all important discoveries in the archipelago have been British or Canadian, with the single exception of the Norwegian discovery of the Sverdrup Islands; unless one counts also the American and Norwegian explorations in parts of Ellesmere. A number of foreign territorial claims were made, mainly in Baffin, Ellesmere, and the Sverdrup Islands, but little was done to follow them up. Today exploration still goes on, but it is now primarily scientific rather than geographical in character, being aided by the airplane, radio, and other labor-saving equipment. As far as is known no new, large islands remain to be discovered.

For two hundred years, from the granting of its charter in 1670 until the surrender of its territorial rights in 1869, the Hudson's Bay Company was in possession of Rupert's Land. The Company came to take the view that its holdings

comprised all those lands which were drained into Hudson Bay and Hudson Strait, although this concept was challenged in turn by New France, by the Northwest Company, and by the Canadian Government. In the nineteenth century the Hudson's Bay Company swallowed its rival companies, principally the Northwest Company, and extended its activities westwards to the Pacific Coast and northwards to include the Mackenzie River Valley. It had little to do with the archipelago during these two hundred years, and even in Rupert's Land its administrative activities were no more than was necessary to keep the fur trade going. In 1869, after much agitation, it surrendered its territorial rights to the Canadian Government. Since that time the Hudson's Bay Company has remained in the Arctic as a fur trading concern, and has established trading posts in the southern part of the archipelago.

In 1880 the British Government also handed over to Canada its territorial rights in the North American Arctic, without defining them, however, the assumption apparently being that she possessed the archipelago as it was then known. Both the transfer of 1869-1870 and that of 1880 were accomplished in a rather uncertain and confusing manner, although there is now little reason to doubt that the procedure in each case was legal. What remained doubtful in each case was the extent of the territories transferred, and also the quality of the title which both the Hudson's Bay Company and the British Government had had over the lands which they attempted to pass on to Canada. These questions are of only academic interest now in view of later events.

Canada took little note of the more northerly parts of her new territories, and particularly of the archipelago, until 1895. In that year the Canadian Government organized them into provisional districts. Various changes have occurred since 1895, with the more southerly parts of these territories being gradually included in the neighboring provinces. As presently constituted the non-provincial part of Canada comprises the Yukon Territory and the Northwest Territories, the latter including the three Districts of Mackenzie, Keewatin, and Franklin. Franklin District contains the islands of the archipelago, except those in Hudson Bay, and also Boothia and Melville Peninsulas of the mainland.

Since 1895 the Canadian Government has made determined and increasing efforts to bring the entire archipelago under its control, and to facilitate the opening up of the Northland. Beginning in 1903 expeditions were sent under Captains Low and Bernier to annex the islands individually and collectively, and also to police fishing, whaling, and other activities in the region. These expeditions, interrupted by the First World War, were resumed on a yearly basis in 1922, and have been undertaken regularly since that time. They have combined the activities of administration, exploration, scientific research, and supply. These fields of work have been extended by the Dominion Government throughout the rest of the Canadian Northland. Numerous ordinances, orders in council, and statutes have been passed which apply specifically to the Arctic, and hunting, trapping, fishing,

whaling, scientific research, exploration, and travel are under control. The natives are being adapted to the laws of the white man, and efforts are being made to improve their general welfare. In this and other related work the aid of missionaries and of Hudson's Bay Company officials has often been sought and gladly given. In addition the Royal Canadian Mounted Police exercise general supervisory control throughout the Arctic.

Since 1895 the Canadian Government has thus had its claim to the archipelago before the world, and in view of the circumstances the validity of this claim can hardly be denied. It is based primarily upon the long background of predominantly British and Canadian exploration, the transfers of 1869-70 and 1880, the formal annexations by the Canadian Government, the occupation which has taken place, and the administrative and governmental work which has just been summarized. It is supported by prevailing rules of international law governing the acquisition of territory, and also by the more liberal interpretations of existing rules which have found favor in recent years. It is also supported by the analogies which can be made with other similar territories, notably Spitsbergen, Greenland, and the Aleutians, the ownership of which is not placed in question. Finally, it is supported by the fact that all foreign claims have either been withdrawn or have been allowed to lapse. Thus Canada's title to the archipelago, which has occasionally been challenged in the past, should be considered valid.

In both polar regions territorial claims have been based, in some degree at least, upon the so-called sector principle. Canada in common with a number of other nations has asserted a sector claim, which appears to be official in every sense except that it has not been embodied in an act of the Canadian Parliament. Arctic sector claims, including the Canadian, appear to be secure insofar as they are applied to land, but their validity does not appear to depend entirely or even primarily upon the sector principle itself. In the Antarctic sector claims are of much more doubtful value, as they are not fortified by any real occupation or other suitable devices, and territorial disputes are still in progress. The sector principle has never been formally accepted in international law, but this might not be a barrier to its applicability to antarctic land areas if agreement were reached among interested nations.

In recent years there has been considerable speculation as to whether the sector principle can be applied in the polar regions to areas of water and floating ice beyond territorial limits, and to the airspace above such regions. There has also been speculation as to whether such regions can be subjected to some other form of sovereignty not dependent on the sector principle. Except in Russian quarters, the weight of majority opinion seems to have been opposed to these ideas, but they have not yet been finally settled in international law. There are, however, a number of significant existing rules dealing with sovereignty over water and airspace. The most important ones are that the high seas of the world are free to all, while internal and territorial waters fall under the jurisdiction of littoral states, and the status of airspace is essentially the same as the status of the regions below. However, no

agreement has ever been reached as to a standard breadth for the marginal sea, and no special rules have ever been made specifically for the polar regions. In addition, as stated, no decision has ever been reached as to whether floating ice can be made subject to sovereignty, and the legality of the sector principle has never been finally evaluated or decided. In these circumstances, it is evident that there are still outstanding problems involving territorial jurisdiction in the polar regions, which urgently require a solution.

As far as the sector principle is concerned, it would appear to be the simplest and most suitable method for settling territorial problems as applied to polar lands, although admittedly not yet formally accepted in international law. North polar lands should be left under their present ownership. In the unlikely event that new islands of importance are discovered in the future, it would undoubtedly be most satisfactory simply to let them accrue to the state within whose sector they lie. It seems probable that a partition of antarctic lands will also have to be recognized sooner or later, and again the sector idea appears to be simplest and best. The suggestions that have been made for an international rule or a *res communis* status for Antarctica do not seem to be either workable or practical. The United Nations has refused a trusteeship, and there is little in our experience with international rule to indicate that it would be an improvement upon national rule by separate states, or that it would in any case be more than a temporary device. The *res communis* concept appears reasonable at first sight, but it is suitable only as long as no nation wants the land in question. This stage has already been passed in Antarctica, and if anything of value should be found there a scramble for jurisdiction would probably result which would make a mockery of any pre-ordained status of *res communis*. It would be much better, if possible, to have the territorial problem settled in advance, and the sector idea might provide the best answer. Admittedly, the territorial disputes in progress now would have to be ironed out, but such disputes would doubtless occur in any attempted settlement, and more progress has been made towards a settlement on a basis of sectors than towards any other solution. One suggestion would be to leave Norwegian, French, New Zealand, and Australian sectors as they are at present, and give to the United States the one remaining unclaimed sector, which has already been unofficially staked out for the United States by American explorers. If Britain, Chile, or Argentina could prove a superior title to the territories in dispute between these three countries, it would receive them, otherwise the territories could be shared. Thus the sector principle would be used as a practical rather than a legal device, as a means of delimiting land territory in both the Arctic and the Antarctic.

The sector idea should be ruled out as inapplicable to water and ice beyond territorial limits, and to the airspace above them, in both polar regions. The extensive claims of Russian writers would thus be judged invalid. In place of such sweeping claims, polar states could be granted limited privileges of jurisdiction over regions of water and ice beyond territorial limits, within a specified distance from

their land territory. This distance should be defined by international agreement, if possible, and so also should the extent of jurisdiction within the specified limits. Presumably this jurisdiction would include such matters as fishing, customs, and security. It must again be admitted that such an arrangement might be difficult to negotiate. It should not be impossible, however, especially since claims to areas of limited jurisdiction are in harmony with prevailing trends in state practice.

The remainder of the polar seas, including the large area around the North Pole, would remain unassigned. To prevent attempts to gain control over these regions, it would be well to rule that, although they are open to such activities as scientific research, they are not open to the acquisition of sovereignty. If such attempts took place, in the absence of such a rule or perhaps even in spite of it, they would probably have to be dealt with on the diplomatic or political plane rather than the legal. Certainly no nation could look calmly upon suspicious foreign activities just beyond its territorial limits or zone of limited jurisdiction, and such activities could only be regarded as a direct challenge.

In reference to the problem of the marginal sea, one can say little except that it would be most desirable to have a standard breadth agreed upon, which would apply not only to polar but to all regions. A rigid insistence upon a narrow three-mile limit should not be allowed to prevent an agreement being reached, because the cannon shot and three-mile ideas came into vogue many years ago, when conditions were greatly different from those prevailing now. As has been pointed out, there are good reasons for maintaining that the three-mile limit no longer satisfies all the legitimate needs of a modern state.

It is difficult to draw any conclusions as to whether any legal distinctions should be made in the treatment of floating ice fields and water. The recommendations given above could be applied without making any real distinctions between the two. Yet the fact remains that for practical purposes ice and water are by no means the same. Perhaps, however, the problem has been solved indirectly. If one cannot say exactly what distinctions in law should result from the obvious difference between ice and water, one may perhaps say that the consequences of this difference are satisfactorily dealt with by the above proposals. These consequences are chiefly that establishments can be built and activities undertaken upon solid ice that are not easily possible on water. It may be that they are given due consideration by granting littoral states limited rights of jurisdiction over the regions close to shore, and making it illegal for any state to attempt to gain sovereignty over any remaining part of the polar sea.

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**Gordon W. Smith** (1918-2000) was a historian who taught in Canada, the West Indies, and Africa, and dedicated his career to the study of Canadian Arctic sovereignty.

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ISBN 978-0-9684896-2-8



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