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THE DISPUTE ON ARCTIC SOVEREIGNTY: A CANADIAN APPRAISAL

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A dispute over territorial sovereignty in the Arctic between the United States and Canada in the seventies is a rather bizarre, and hopefully ephemeral, departure from a longstanding course of good relations. Inhabited by peoples with broadly similar values and liberal democratic traditions, there has been a mutual disposition to tolerate occasional differences (including recent sharp differences over economic policy) and to resolve disagreements through negotiation, conciliation, and arbitration.[1] The recent debate over the precise extent of Canadian Arctic sovereignty, which erupted with the discovery of vast oil reserves on Alaska's North Slope in 1968[2] and somewhat less valuable discoveries in the Canadian Arctic, does not fit into the characteristic pattern of amicable relations between the two countries.

This dispute encompasses two major areas. The first concerns Canada's purported exercise of sovereign control over the broad mid-archipelagic Arctic Ocean corridor traversed by the Humble Oil Company's *S. S. Manhattan* on its 1969 Arctic voyage. The second concerns the international legal validity of the recent Arctic Waters Pollution Prevention Act[3] asserting a qualified jurisdiction to regulate the design and movements of oil tankers flying *any* flag within a hundred-mile maritime belt of the periphery of the Archipelago, an area considerably beyond the permissible maximum breadth of the territorial sea and contiguous zone according to international agreement.[4]

Since the legal status of the Arctic islands is somewhat less controversial than extensive Canadian control over Arctic waters, and there has been no

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1. One of the most significant arbitral decisions in the present century found Canada liable to the United States for permitting the escape of noxious sulfur dioxide fumes emitted by a lead and zinc smelter at Trail, British Columbia, which injured crops in the neighboring state of Washington. In this pathbreaking case on atmospheric pollution, which enunciated the principle that a state is under a duty to prevent its territory from being a source of economic injury to its neighbor, Canada was held liable in the amount of $350,000 for allowing the escape of the fumes over the international boundary, see the Trail Smelter Arbitration Case (1941), UNITED NATIONS REPORTS OF INTERNATIOAL ARBITRAL AWARDS, III, 1905.

2. Conservative estimates of the oil yield of the Prudhoe Bay area on Alaska's North Slope range from 5-10 billion barrels, as against a yield of some 5 billion barrels for the richest oil fields formerly discovered on the Continent, in 1930, in East Texas. NEWSWEEK, Sept. 22, 1969, at 80.

3. CAN. REV. STAT. c. 2 (1st Supp. 1970).

4. Article 24(2) of the *Convention on the Territorial Sea and Contiguous Zone*, Geneva, April 28, 1958, provides that "[t]he contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured." *See* 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.

conspicuous challenge to Canadian sovereignty over the islands, it would be desirable, initially, to inquire briefly into the foundation of Canada's international title to these archepelagic islands and then to explore the more contentious issue of the legal incidents flowing from possible ownership of the permanent ice north of the Canadian mainland. The location and extent of land territory (and, arguably, permanent ice) serves to delimit appurtenant territorial waters and contiguous zones. A necessary preliminary question, therefore, concerns the exact physical dimensions of the territory that Canada "possesses" in the Arctic. Once an answer has been suggested to this logically prior issue, the areas of maritime jurisdiction over Arctic waters and the development of a concept of Arctic regional law will be discussed.

HISTORICAL ISSUES IN THE ARCTIC

The American Presence in the Arctic

Although Admiral Robert Peary purportedly annexed the North Pole along with the "entire [Arctic] region" for the United States in 1909, there has never been any American occupation of it in the sense of an executed intention of displaying sovereignty over it. The United States State Department has, in fact, declined to endorse Peary's annexation, holding that "ice" is not subject to national appropriation.[5] Indeed, there had already been extensive explorations in the adjacent Arctic Archipelago by Americans and nationals of other countries. Between 1853 and 1873, for example, three American polar expeditions discovered and explored much of the region of Ellesmere Island (the northernmost island of the Archipelago) north of Smith Sound.[6] Notable United States Arctic expeditions in the present century were headed by Commander D. B. MacMillan, U.S.N., who explored the Greenland Coast and Ellesmere and Axel Heiberg Islands (in the Sverdrup Group) and by Dr. Frederick A. Cook whose claim to have conquered the Pole in April 1908, exactly a year before Peary, was received with much skepticism and never officially confirmed.

Even before Peary's claim, in the latter quarter of the nineteenth century and during the Klondike Gold Rush, there was some Canadian concern that

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5. *See* 1 G. HACKWORTH, INTERNATIONAL LAW 450 (1940).

6. When Canada, in the late 19th century, sought a more definitive grant of the islands in the Arctic Archipelago from the British Government, the above mentioned discoveries and explorations by American citizens between 1853 and 1873 were among the reasons cited for the British reluctance to make such a grant: "In view of these discoveries by American citizens, it is a matter for consideration whether the proposed boundaries should include the words 'Kennedy Channel and all the islands adjacent thereto.' But as embracing, as would appear undoubted, British discoveries, the Eastern boundary might be defined as extending to Smith Sound as far north only as the 78½ parallel of latitude. This, however, subject to the rights of this country established by the discovery of more northern lands made in the late Arctic expedition." *See* Letter from the British Admiralty to the Undersecretary of State of Colonies, Jan. 28, 1879, on file in *Arctic Islands Documents, 1873-1880,* Dep't of the Interior, Public Archives of Canada, Ottawa.

the United States might assert territorial claims in the Arctic because of the large influx of American prospectors, the indefiniteness of international boundaries,[7] and the use of American currency as legal tender throughout much of the area. Officials in Ottawa feared that without effective Canadian countermeasures the whole area might acquire a predominantly American character resulting in annexation by the United States. As early as 1896, arrangements were made by the Canadian Government to send substantial amounts of Canadian currency to the Yukon, partly because it served as a more satisfactory medium of exchange than gold dust, but more importantly to emphasize Canadian sovereignty in a remote, sparsely-populated undergoverned area adjacent to American territory.[8] Largely for the same reason, the Royal Canadian Mounted Police detachments in the area were augmented from a strength of ninety-six at the end of 1897 to 288 officers and men a year later, with a 203-man contingent comprising the Yukon Field Force following in 1898.[9] In a very few years, however, the Yukon Gold Rush was over and fears of American annexation subsided.

A further and more recent instance of American presence in the Arctic, which some Canadians feared might lead to an erosion of Canadian sovereignty, arose from a cooperative venture in continental defense. One of the last acts of the Truman administration in 1952 was to authorize the construction of the "Distant Early Warning" (DEW) radar system in the high Arctic. Following the initial successful testing of an atomic bomb by the Soviet Union in 1949, there was apprehension of a manned-bomber attack over the Arctic and the warning system, which consisted eventually of about fifty radar stations stretched out from Alaska to Baffin Island, a distance of about 3,000 miles, was designed to give the joint defense forces adequate forewarning to repel the attack. Construction of the DEW-line progressed rather slowly in the first two years of the Eisenhower administration but thereafter much effort was expended to complete the system by mid-1957.[10] The exclusive jurisdiction of the United States military over many of these DEW-line installations was a source of Canadian anxieties over sovereignty in the late fifties. As Rea says: "Although these measures were themselves initiated out of fear of a Russian attack on North America, they led to some concern in Canada when, on a number of occasions, it appeared that jurisdiction had passed to United States authorities over personnel and facilities located on Canadian territory."[11] Concern of a more trivial nature was

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7. The indefiniteness of the boundary between the Alaskan panhandle and British Columbia, for example, resulted in the creation of an international commission in 1903 to define the proper boundary, *see* J. MUNRO, THE ALASKA BOUNDARY DISPUTE (1970).

8. K. REA, THE POLITICAL ECONOMY OF THE CANADIAN NORTH 53 (1968).

9. M. ZASLOW, THE OPENING OF THE CANADIAN NORTH 109 (1971).

10. K. REA, *supra* note 8, at 308-12; Murphy, *The Polar Watch*, 56 FORTUNE 246 (1957).

11. *Cf.* K. REA, *supra* note 8, at 53; Allen, *Will the Dewline Cost Canada Its Northland?*, MACLEAN'S MAGAZINE, May 26, 1956, at 16.

manifested in the Canadian House of Commons when an American periodical referred to Ellesmere Island as lying "north of Canada."[12]

Norwegian Explorations in the High Arctic

One of the most hazardous threats to Canadian sovereignty in the high Arctic arose in 1900 when Norwegian Captain Otto Sverdrup claimed the Sverdrup Islands, which he had discovered and explored, on behalf of his Sovereign, Oscar II of Sweden. The Swedish foreign ministry, however, showed little interest in claiming the Sverdrups and, despite the explorer's later entreaties, Norway, which separated from Sweden in 1905, adopted a similar noncommital attitude. The intrepid Norwegian explorer, an associate of Nansen's on the celebrated Greenland expedition of 1888, made his discoveries while attempting to reach the North Pole by traversing the narrow channel between Greenland and Ellesmere Island. Diverted from his primary objective by impenetrable ice in Kennedy Channel, Sverdrup made valuable topographical observations in northern Greenland, explored the unknown western part of Ellesmere Island, and discovered and explored the group of three large islands just west of Ellesmere Island that today bear his name. The putative Norwegian claim to the Sverdrups was never really pressed, and the matter was finally resolved in Canada's favour in 1930. In that year, the Canadian Government paid the estate of the recently deceased Captain Sverdrup the sum of 67,000 dollars as recompense for his discoveries and extensive explorations in the islands. At the same time, Norway officially acknowledged Canadian sovereignty over the Sverdrups while expressly rejecting as a basis of title the "sector principle."[13] After the explicit Norwegian disavowal of the "sector principle," the London *Times* optimistically reported: "This friendly action on the part of the Norwegian Government removes the one possible ground of dispute concerning Arctic sovereignty in the whole Arctic sector [*sic*] north of the Canadian mainland."[14] In concluding the matter, Canada rather ungraciously refused a request for equal treatment for Norwegian nationals in trapping, fishing, and hunting in the Sverdrup area, citing an order-in-council of 1926 that sought to preserve hunting and fishing rights over the whole Arctic region for the exclusive use of the aboriginal population of the Canadian Arctic.[15] The settlement of this longstanding dispute, nevertheless, removed the one possibly significant blemish to Canadian title to the islands of the Arctic Archipelago. Since then there have been no serious claims to the archipelagic islands by any other nations.

12. K. REA, *supra* note 8, at 53-54.
13. 1 G. HACKWORTH, *supra* note 5, at 465.
14. The Times (London), Feb. 7, 1931, at 11, col. 1.
15. *See Id.*

The Danish Interest in Ellesmere Island

In 1919 a somewhat trifling international incident caused a reconsideration of the whole problem of Arctic sovereignty by government circles in Ottawa. In that year, Danish Greenlanders crossed over the frozen ice to Ellesmere Island to kill musk oxen. When Canada protested to Copenhagen in a diplomatic note of July 31, 1919,[16] the Danish response was that not only Ellesmere but the whole insular formation of Parry Channel was a *terra nullius* or "no-man's-land" not falling under the sovereignty of any nation, as indeed it appeared on many non-British maps.[17] During the controversy the Danish explorer Knud Rasmussen amplified this point of view to his American confrere Viljhalmur Stefansson: "[A]s every one knows the land of the polar Eskimo falls under what is known as 'no-man's-land' and there is therefore no authority in this country except that which I myself am able to exert through the trading station."[18] Had the Danish viewpoint been accepted, it would have been a fairly simple matter for Denmark, using Greenland as a jumping off place, to create an infrastructure of governmental authority in the remote Archipelago, thereby "occupying" all the islands north of the mid-archipelagic corridor (or Parry Channel) that, it might be argued, were as continguous to Greenland as they were to the Canadian mainland.

In much consternation, Canadian officials such as J. B. Harkin, of the Canadian Department of the Interior, and Loring C. Christie, a youthful friend of Felix Frankfurter who later became a leading Canadian diplomat, considered what Canada could do to substantiate her claim to Arctic sovereignty. With reference to Ellesmere, Harkin recommended:[19]

> To securely establish Canada's title, occupation and administration are necessary. Therefore, next spring [1921 ?] an expedition should be sent north to locate two or three permanent police posts on Ellesmere land [*sic*]. This probably should be followed by the transfer of some Canadian Eskimos to the island. Steps should be taken to encourage the Hudson Bay Co. or other traders to extend their operations northward. It is also desirable that detailed exploration should be carried out on this and adjoining islands.

In a memorandum to Canadian Prime Minister Arthur Meighen written about the same time, Christie argued that although the permanent settlement appropriate for more temperate latitudes would not be feasible in the Arctic, some form of seasonal occupation should be attempted to forestall a possible Danish claim.[20] Among the suggested acts that the government could rely

16. *See* Y. BERIAULT, LES PROBLÈMES POLITIQUES DU NORD CANADIEN 104 (1942).

17. *Cf.* T. FAIRLEY, SVERDRUP'S ARCTIC ADVENTURES 278 (ed. 1959).

18. Y. BERIAULT note 16 *supra.*

19. Harkin, Title to Northern Islands (prepared for the Minister of the Interior, undated memorandum on file in Arctic Islands Report on Sovereignty, Public Archives of Canada, Ottawa).

20. Christie, Exploration and Occupation of Northern Arctic Islands, Oct. 28, 1920

on to demonstrate *animus occupandi* were the following: (a) mapping expeditions "to complete the mapping of lands already known and to discover any lands not now known"; (b) the extension of customs, game laws, and police administration to strategically selected points in the islands; (c) classifying the vessel conveying the mapping expedition as a "revenue cutter" to effectuate the objects mentioned in (b); and (d) "[F]or the exploratory work the name of Mr. Viljhalmur Stefansson suggests itself, both because of his connection with the previous expedition, and because of the economical method of Arctic exploration and travel which he has developed."[21]

That the Canadian Government was concerned about consolidating its claim to the more remote Arctic islands near Greenland can be seen from the swiftness with which it implemented some of the above recommendations. Beginning in the early 1920's, a large number of Royal Canadian Mounted Police detachments were established throughout the Arctic Archipelago, including Ellesmere Island.[22] This was followed shortly by Stefansson's expeditions into the Arctic.[23] By such actions, as well as by the gradual extension of Canadian governmental, scientific, military, commercial, educational and hospital facilities in the North, and the failure of the Danes to assert an adverse title after 1920, Canada's claim to Arctic sovereignty was strengthened.

Even in the absence of adverse national claims, incipient or actual, to Arctic territory north of the Canadian mainland, Canada would still have to comply with international law tests, largely as developed in the adjudication or arbitration of territorial disputes, in order to support her claim to remote, unpeopled northern islands. It will be necessary, therefore, to consider the leading cases on acquisition of title to *terrae nullius* in the international forum in order to assess the validity of Canada's Arctic claims according to traditional international law.

The Case Law on Arctic Sovereignty

The King of Italy's arbitration in the *Clipperton Island* case[24] (named for John Clipperton an English pirate) involved a barren, unoccupied coral reef situated about 1,000 miles southwest of Mexico, title to which was in

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(memorandum to the Prime Minister, on file in Arctic Islands Report on Sovereignty, Public Archives of Canada, Ottawa).

21. *Id.*

22. Royal Canadian Mounted Police posts, with the date of their establishment, were: Pond Inlet, Baffin Island, 1921; Craig Harbour, Ellesmere Island, 1922; Dundas Harbour, Devon Island, 1924; Kane Basin, Ellesmere Island, 1924; Bache Peninsula, Ellesmere Island, 1926; Craig Harbour closed 1927 and reopened 1933; Bache Peninsula closed 1933; Dundas Harbour closed 1933 and reopened 1945; Resolute Bay Detachment on Cornwallis Island established at the joint Canadian-United States weather station, 1947. *See* Royal Canadian Mounted Police, Canadian Sovereignty in the Arctic (undated mimeographed article on file in Royal Canadian Mounted Police Public Relations Dep't Ottawa).

23. *Cf.* P. Baird, The Polar World 173 (1964); W. Riddell, Documents on Canadian Foreign Policy, 1917-1939, at 743 (1962).

24. Clipperton Island case (Mexico and France), 26 Am. J. Int'l L. 390 (1932).

dispute between Mexico and France. Mexico contended that, as successor to Spain, she had a right to the island, which was discovered by early Spanish navigators.[25] Although the Mexicans produced charts allegedly showing the island to be under Spanish sovereignty, it was found that they lacked official character and had little evidentiary value.[26] Mexico had, moreover, performed no positive acts manifesting "dominion" over the island until the controversy actually arose. France, on the other hand, had, in November 1858, claimed the island through a symbolic act of annexation performed by a visiting naval officer, and duly publicized to the world in an official decree.[27] Napoleon III thereafter granted a concession to one of his subjects to exploit guano beds on the island, but without any result. At the end of the century some American nationals collected guano on Clipperton without explicit authorization, but when France made inquiries the United States disavowed any interest in claiming the territory. Soon thereafter, the Mexican Navy ejected the intruders and hoisted the Mexican flag over the island. On learning of the adverse claim, France protested and the matter was referred, finally, to Victor Emmanuele III, as arbitrator. He decided that in 1858 the island was *terra nullius* and that its symbolic annexation by France in that year, given the absence of rival claims, yielded a good title.[28]

In the context of the Canadian Arctic, the question is whether similar symbolic acts, by Canada or other nations, would constitute an adequate ground to sovereignty. Although many of the islands of the Arctic Archipelago are larger in size than Clipperton, many of them also are destitute of permanent population and acts of symbolic annexation have been performed in respect to them in the past by explorers from various countries.[29]

The *Palmas* case[30] decided by Judge Huber in 1928 comprises the *locus classicus* of the doctrine of "effective occupation" as it relates to territorial claims over unoccupied territory. This dispute between the United States and the Netherlands originated in 1906 when General Leonard Wood, Governor of the Philippine Province of Moro, visited the island on a tour of inspection. Palmas (or Miangas) was a tiny, isolated island roughly midway between Mindanao, the southernmost island of the Philippine Archipelago, and the nearest part of the Netherlands East Indies. The United States claimed title to Palmas as cessionary of Spain under the Treaty of Paris of 1898, which ended the Spanish-American War and ceded the Philippines, along with other territories, to the United States. The American argument was essen-

25. *Id.* at 393.
26. *Id.*
27. *Id.*
28. *Id.*
29. *E.g.*, by the Canadian Bernier, the American MacMillan and the Norwegian Sverdrup. *See* Smith, *Sovereignty in the North: The Canadian Aspect of an International Problem*, in THE ARCTIC FRONTIER 205-07 (R. Macdonald ed. 1966); P. BAIRD, *supra* note 23, at 170-71.
30. Island of Palmas Case (United States and the Netherlands), April 4, 1928, see 22 AM. J. INT'L L. 867 (1928) for the text of the decision.

tially that the island had been discovered by Spain and that it was a contiguous part of the Philippine Archipelago. Spanish title had, moreover, been recognized in the Treaty of Munster of 1648, to which both Spain and the Netherlands were signatories, and in subsequent treaties.[31] The Dutch, conversely, were able to show that, with some inconsequential interruptions, they had administered the island since 1677 through the Dutch East India Company, contracting with other sovereigns with respect to it, issuing their own local currency that served as legal tender, suppressing prostitution, piracy, and the slave trade within its boundaries, and engaging in a varied range of administrative activities with respect to both its internal and external affairs.

In his decision, Huber resorted to a private law analogy, giving paramount force to what he termed the prescriptive title of the Netherlands over Palmas.[32] The Dutch had manifested a lengthy, continuous, and peaceful (or unopposed) display of governmental authority over the island, while American title, if it were to be found, rested on the more brittle basis of discovery or contiguity, which yielded only an inchoate title never subsequently perfected by official acts demonstrating "effective occupation." There might, indeed, be sporadic gaps in Dutch administration over the course of centuries as long as such gaps did not constitute abandonment. There was no question that in 1898, the date of the Spanish cession to the United States, Palmas was under Dutch sovereignty.[33]

The judgment of the World Court in the *Eastern Greenland* case[34] followed the award in the *Palmas* arbitration[35] by some five years and relaxed Huber's more rigorous requirements to establish sovereignty in regions where inhospitable Arctic climates made human habitation and ordinary pursuits difficult. What was appropriate in the Tropics, in other words, might not be appropriate at the Poles. The problem may be stated briefly: How could one show "effective occupation" or *animus dominendi* in areas where all normal pursuits were precluded by glacial terrain and sub-zero temperatures?

The *Eastern Greenland* dispute arose when, on June 28, 1931, five Arctic skippers from Norway hoisted their national ensign over the northeastern coast of Greenland. By this symbolic act they purported to take possession, in the name of Haakon VII of Norway, of a 350-mile long expanse of coast from Carlsberg Fjord in the south to Bessel Fjord in the north, an area visited continually by Norwegian skippers and in which they had built a large number of huts for shelter on their fishing expeditions. It was impracticable to delimit the exact dimensions of the Norwegian claim, since the whole interior of the island was overlaid by a massive mile-thick glacier and the only area of any practical usefulness was the irregularly indented coast that provided safe harbors for wayfaring fishermen.

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31. *Id.* at 879.
32. *Id.* at 908-09.
33. Island of Palmas Case, April 4, 1928, see 22 AM. J. INT'L L. 861, 908-10 (1928).
34. Eastern Greenland Case [1933] P.C.I.J., ser. A/B, No. 53, at 22.
35. Island of Palmas Case, April 4, 1928, see 22 AM. J. INT'L L. 867, 912 (1928).

The Danes, who were first advised of the unofficial claim by Oslo newspapers, were surprised by the Norse annexation, whereas opinion in Norway on the gesture was sharply divided. Both governments had agreed by the Oslo Convention of 1924[36] to extend rights to fishermen and hunters of either country along the eastern coast of the island. On July 10, 1931, however, a definitive claim was made by Norway to the northeastern area, with Denmark immediately announcing her intention to submit the matter to the World Court at the Hague. Norway contended that the disputed area had hitherto been a *terra nullius* subject to appropriation by whomever exercised effective control over it, and that Danish activities were confined to the southwest coast and a few scattered settlements.[37] The Norwegians, rather opportunely, invested two of their nationals traveling to the area with police powers and, probably as a countermeasure, the Danes commissioned one of their leading explorers, Lauge Koch, to survey the coast and installed him with a similar capacity. In an *opera bouffe* aftermath, the Icelandic Parliament on August 20 voted 26-0 to empower their cabinet to "take care of Iceland's rights in Greenland" in pending arrangements between Denmark and Norway at the Hague.[38]

On July 28, 1932, the World Court began hearing the dispute. Appointed as judges *ad hoc*[39] were the Norwegian Minister in London and the Danish Minister in Berlin. Unfortunately, the appointment of diplomatic envoys as judges by either state may not have been conducive to the promotion of an impartial adjudication into the merits of the case. In its decision the court found it inappropriate to apply modern terminology such as "territorial sovereignty" to the context of Greenland in medieval times.[40] Assuredly, in the tenth century intrepid Norsemen such as Eric the Red had founded Nordic

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36. Oslo Convention No. 684, 27 L.N.T.S. at 203 (1924).

37. This issue was referred to in an exchange of letters in The Times (London), which closely reflected the views of the disputant countries. For Norway, H. K. Lehmkuhl asserted that according to the 1924 Olso Convention the question of sovereignty over the area was to be left in abeyance for 20 years during which time hunters and fishermen from each country were to enjoy free access to the area. However, if the matter had been shelved in theory it obtruded itself in practice and Norway had now sought to resolve it permanently by making a definitive claim. *See* The Times (London) Aug. 5, 1931, at 6, col. 3. For the Danes, P. T. Federspiel retorted that the question of sovereignty nowhere arose in the 1924 Convention but in a simultaneous exchange of notes appended to the Convention as a protocol it was stated that the Convention would prejudice neither party on questions not dealt with in the text. Federspiel added that repeated efforts by Norway to reopen the sovereignty issue had been repulsed by the Danes who contended there was nothing to discuss, since Danish sovereignty over Greenland had been recognized by the United States in 1916, by France, Great Britain, Italy, and Japan in 1920, and by a number of other states in subsequent years. *See* The Times (London) Aug. 7, 1931, at 6, col. 4.

38. The Times (London) Aug. 21, 1931, at 12, col. 6.

39. As is often the case with judges *ad hoc* (judges appointed to the World Court by disputants to adjudicate a particular case when there is nobody on the bench of their nationality) the Norwegian judge found for Norway and the Dane decided for Denmark. *See* Eastern Greenland Case [1933] P.C.I.J. ser. A/B, No. 53, at 75.

40. *Id.* at 46.

colonies on the northeast coast, but it was most unlikely that the early Norse settlers distinguished clearly between territory subject and not subject to their control; there was, simply, no refined or precise concept of territorial sovereignty as it later developed. The fact, however, that in the thirteenth century fines were payable to the King of Norway for murders committed in Greenland "as far north as the Pole Star" (not merely within the precincts of the two existing Norse settlements of Eystribygd and Vestribygd) disclosed the Norwegian King's intention to govern the entire area.[41] Indeed in the thirteenth and fourteenth centuries, Norway's rights in Greenland did amount to sovereignty. Thereafter, either through the rigours of the climate and economic circumstances or war with the Eskimos, the exact facts are unknown, the Norse settlements perished. After a considerable interval, expeditions were sent out again, especially in the early eighteenth century, and settlement was resumed.

The court found that prior to 1814, the King of Denmark and Norway (the Crowns were united since 1397) exercised rights over Greenland as King of Norway, but by the Treaty of Kiel of 1814, which united Norway and Sweden, the Danish King asserted sovereignty over Greenland.[42] The Norwegians, consequently, had to argue either that their own title prior to 1814 was defective or that the term "Greenland" did not comprise the settlements on the East Coast; they argued strongly, in fact, in favor of the latter contention. The Norwegian contention was that, since the Eastern Coastal region was unknown in the seventeenth and eighteenth centuries, the term as used in various ordinances and decrees should be construed as not extending to that region.[43] The tribunal disagreed, since an examination of charts of the period showed that cartographers and mariners were aware of the general configuration, if not specific details, of the coast, and that whalers had visited the region and given names to prominent land features.[44] The term "Greenland" was commonly used with reference to both coasts, in fact, and referred not merely to a few isolated Danish settlements but to the whole island.[45]

Especially persuasive to the court was the consideration that:[46]

> [B]earing in mind the absence of any claim to sovereignty by another Power, and the Arctic and inaccessible character of the uncolonized parts of the country, the King of Denmark and Norway . . . displayed authority to an extent sufficient to give his country a valid claim to sovereignty, and that his rights were not limited to the colonized area.

Sovereign authority was shown partly by early laws purporting to extend to the whole of Greenland. "Legislation is one of the most obvious forms of the

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41. *Id.* at 27.
42. *Id.* at 30.
43. *Id.* at 51.
44. *Id.* at 50.
45. *Cf.* the "literal" mode of interpretation of statutes much invoked by common lawyers.
46. Eastern Greenland Case, [1933] P.C.I.J. ser. A/B, No. 53, at 57.

exercise of sovereign power, and it is clear that the operation of these enactments was not restricted to the limits of the colonies."[47] Also important was apparent Norwegian acquiescence in the Danish title as manifested by the Ihlen declaration of July 1919, by which the Norwegian foreign minister advised the Danish envoy at Kristiana that Norway would not dispute Danish sovereignty over Greenland.[48] This declaration against self-interest on the part of a responsible government official was particularly damaging to the Norwegian cause. The Norwegians argued that the declaration was made without necessary royal authority, but the court was unimpressed.

Following the 12-2[49] opinion of the court in favor of Danish sovereignty, the King of Denmark sent his brother the King of Norway a telegram stating that he understood the disappointment of the Norwegian people, but that he entertained the hope of continued good relations between the two Nordic peoples, and prayers were offered by Danish and Norwegian bishops for the dissipation of any bitterness arising from the dispute.[50]

In yet another case concerning the ownership of barren, unpopulated, undemarcated territory, the Privy Council applied the "hinterland" test and found, on the basis of an examination of a number of Royal Grants and other instruments, that ownership of the "Coast" of the Labrador, in the absence of anything more definitive, carried with it title to the watershed or the drainage basins of land drained by the river systems "falling into the sea at that place."[51] As a result of this case, Newfoundland secured many thousands of square miles of territory formerly regarded as belonging to Quebec. The decision inspired much ire in official circles in the latter province, particularly since at the date of the decision Newfoundland was not a part of Canada.[52] It is noteworthy that title to much of the Canadian Arctic, especially as it derives from the Hudson Bay Company's patent to Rupert's Land, also appears to hinge on this "hinterland" or "drainage basin" principle, which was commonly employed in the colonial era to define political boundaries of the interiors of coastlines in remote, inaccessible regions.[53]

The foregoing cases all concern title to land territory of a description that could apply in the Arctic. Although there has been less international litigation on the ownership of the adjacent seabed, the recent *North Sea Continental Shelf* cases[54] suggest how future disputes on underwater terrain might

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47. *Id.* at 49.

48. *Id.* at 57-58.

49. Actually, Judge Anzilotti who disagreed with the reasoning of the majority opinion concurred in the result so that the only real dissident was the Norwegian *ad hoc* judge.

50. The Times (London) April 6, 1933, at 13, col. 4.

51. *Re* the Labrador Boundary, 43 T.L.R. 289, 294 (1927).

52. See the criticism of the decision from a geographical point of view in HENRI DOIRON, LA FRONTIERE QUEBEC-TERRENEUVE (1963).

53. For a discussion of the colonial origin of the hinterland doctrine, see M. LINDLEY, THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY IN INTERNATIONAL LAW 234-35 (1926).

54. North Sea Continental Shelf Case, 63 AM. J. INT'L L. 591 (1969).

be resolved. The law in this area is of recent origin, dating from President Truman's celebrated proclamation of 1945 claiming rights in the continental shelf appurtenant to the United States.[55] Since that time there have been many similar claims and an international convention[56] on the subject has come into operation.[57]

The *North Sea* dispute[58] arose when the Netherlands and Denmark sought to have the equidistance principle[59] applied to delimit their respective shares of the North Sea continental shelf vis-a-vis West Germany. If this were done, because of their convex, bulging coasts and the concave or recessing German coastline wedged between them, their shares of the shelf would be considerably enhanced at German expense. The Germans who, unlike the Danes or the Dutch, had signed but not yet ratified the convention,[60] argued that the equidistance principle, although referred to in the convention, was not a customary rule of international law and was therefore not binding upon parties not ratifying the convention.[61] They suggested that a more equitable solution would be to extend the respective underwater boundaries out into the shallow waters of the North Sea to the median line demarcating the shelf boundaries of the three disputants and the United Kingdom, thus allocating a somewhat larger pie-shaped wedge to Germany.

The court held that the equidistance principle was merely one of several possible modes of demarcating underwater boundaries and lacked the character of international customary law.[62] Instead of the mathematical concept of equidistance, it employed the geographical concept of the natural underwater extension or "prolongation" of the claimant state's land territory.[63] Since the decision might, by analogy,[64] be applied to the intricate contours of various Arctic continental shelves, it would be useful to quote the relevant part of the judgment:[65]

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55. Presidential Proclamation No. 2667, 10 Fed. Reg. 12,303 (1945).

56. *See* Convention on the Continental Shelf, April 28, 1958, [1958] 15 U.S.T. 471, T.I.A.S. No. 5578, 450 U.N.T.S. 311.

57. The Convention came into effect on June 10, 1964, when the 22 ratifications or accessions required for that purpose by article II had been received. See North Sea Continental Shelf Case, 63 AM. J. INT'L L. at 605 (1969).

58. North Sea Continental Shelf Case, 63 AM. J. INT'L L. 591 (1969).

59. An "equidistance" boundary line was defined as a line, "which leaves to each of the parties concerned all those portions of the continental shelf that are nearer to a point on its own coast than they are to any point on the coast of the other party." *Id.* at 597.

60. Convention on the Continental Shelf, *supra* note 56.

61. North Sea Continental Shelf Case, 63 AM. J. INT'L L. at 601 (1969).

62. *Id.* at 631.

63. *Id.*

64. Strictly speaking a decision by the International Court of Justice is not a precedent although it may be a highly persuasive authority in a subsequent dispute. *See* art. 59 of the Statute of the Court: "The decision of the Court has no binding force except between the parties and in respect of that particular case."

65. North Sea Continental Shelf Case, 63 AM. J. INT'L L. at 610-11 (1969).

> What confers the *ipso jure* title which international law attributes to the Coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal state already has dominion,—in the sense, that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea. From this it would follow that whenever a given submarine area does not constitute a natural—or the most natural—extension of the land territory of the coastal state, even though that territory may be closer to it than it is to the territory of any other state, it cannot be so regarded in the face of a competing claim by a state of whose land territory the submarine area concerned is to be regarded as a natural extension, even if it is less close to it.

Accordingly, the court advised the parties to negotiate a solution not on the basis of "equidistance" but taking into account the principle of "natural prolongation" and to divide the territory either in agreed proportions or equally in cases of overlap. In applying this test, such factors as the general configuration of the coasts, physical and geological structures, natural resources, and "a reasonable degree of proportionality" (in relation to the length of the coast measured in the general direction of the coastline) should also be considered.[66]

THE SECTOR PRINCIPLE

Because of the rigors of the climate, the lack of a settled population and the desolation of the frozen surface, the methods of apportioning sovereignty over territory, that are suited to other latitudes, have not proved satisfactory in establishing Polar boundaries. The Arctic is comprised largely of vast expanses of permanent or pack ice, while the Antarctic Continent, a region allowing scant evaporation, is buried under annual accretions of snow consolidating into successive icy layers. There are, at either Pole, few of the topographical features often used in temperate zones for frontiers, and resort must be made to a more geometrical method of claiming territory. Despite the differences in physical forms between the Arctic and the Antarctic, claims have been made to territory by superimposing imaginary spherical triangles over large areas with the lateral boundaries converging at the respective poles. Such a method of claiming territory is far from universally accepted,[67] especially by states physically distant from the Arctic or Antarctic, or by those with narrow littorals from the extremities of which the sector boundaries are measured.

In 1925 when the pace of Arctic exploration was accelerating and apprehension arose in Canada of possible rival claims in the Arctic, the

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66. *Id.* at 631.

67. Some states with Arctic shorelines, such as the United States and Norway, have expressly repudiated the sector principle. For the American position, *see* 2 M. WHITEMAN, INTERNATIONAL LAW 1268 (1963), and for the Norwegian stance *see* 1 G. HACKWORTH, *supra* note 5, at 465.

Canadian Minister of the Interior tabled a map in the House of Commons laying claim to all land "discovered or yet to be discovered" between the meridians of 60 degrees and 141 degrees west longitude.[68] In the following year the U.S.S.R. inscribed sector boundaries in the Arctic situated between the meridian of east longitude 32° 4′ 35″ and the meridian of west longitude 168° 49′ 30″, again intersecting at the North Pole.[69] Within the space of a year Canada and the U.S.S.R. became, and have remained, the only states with Arctic shorelines to enunciate sector claims, and the absence of such claims by other states with Arctic coasts or possessions has tended to diminish whatever credibility such claims may possess.

There is a certain vagueness, moreover, in the content of the Soviet and Canadian sector claims, which reflects adversely on their general acceptability as grounds of title. Does the sector principle, in either its Soviet or Canadian expression, purport to appropriate permanent or pack ice within sector boundaries? Does it bear any relevance to the seabed or continental shelf? Could Canada, under the *North Sea* case,[70] claim a portion of the submarine shelf in the Soviet sector because such portion was a natural prolongation of its *land* territory, and that the sector principle, which referred only to islands or to ice, did not apply? Are there any maritime rights incidental to sector claims, or are they merely a means of appropriating stable territory of an insular, glacial, or submarine character? Would it be permissible, for instance, for a state lodging a sector claim to purport to regulate the movement of foreign vessels, public or private, entering its sector? On the basis of reciprocity, should those states making sector claims recognize sector rights of other Arctic states, such as the United States or Norway, who do not formally make or recognize such claims? That these questions are not purely abstract academic issues is disclosed by some of the discussion on the sector principle.

In expounding the Soviet Arctic sector claim in 1930, the Russian jurist Lakhtine argued that in view of the impossibility of perfecting a claim to Arctic sovereignty on the traditional basis of discovery, occupation, and notification ("effective occupation") there should be substituted for this "triple formula" "the doctrine of the region of attraction."[71] Stated simply, the doctrine signifies that "lands and islands being still undiscovered are already presumed to belong to the national territory of the adjacent Polar state in the sector of the region of attraction in which they are to be found."[72] Lakhtine also argued that "floating ice" was assimilable to open polar seas and not subject to national appropriation, but that "immovable ice" within sector boundries "should enjoy a legal status equivalent to polar territory."[73]

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68. PARL. DEB., H. C. 4084 (1925) (Canada) [hereinafter cited as DEB. H.C.].

69. Decree of the Central Presidium of the Central Executive Comm., U.S.S.R., April 15, 1926, *cited in* 2 M. WHITEMAN, INTERNATIONAL LAW 1268 (1963).

70. *See* text accompanying notes 54-56 *supra.*

71. Lakhine, *Rights over the Arctic,* 24 AM. J. INT'L L. 711 (1930).

72. *Id.*

73. *Id.* at 712.

The statements of different Canadian Prime Ministers and cabinet ministers in relation to the country's Arctic claims have not always been consistent. In making the Canadian sector claim in 1925, Interior Minister Stewart made no reference to "ice" and presumably the Canadian claim, at least as he framed it, would not embrace it.[74] Jean Lesage and Alvin Hamilton, as successive incumbents of the portfolio having jurisdiction over the Arctic, were not in full agreement about the applicability of the Canadian sector claim to the ice. In 1956 Lesage said in Parliament, "We have never subscribed to the sector theory in relation to the ice,"[75] but only two years later Hamilton left the issue more or less open. He stated: "[I]he Arctic Ocean north of the archipelago is not open water nor has it the stable qualities of land. Consequently the ordinary rules of international law may or may not have application."[76] The late Prime Minister Lester B. Pearson, while he was Canadian Ambassador to the United States in 1946, asserted that Canadian sovereignty extended to "the islands and the frozen sea north of the mainland between the meridians of its east and west boundaries [extending] to the North Pole."[77] And some twenty-three years later, in 1969, just after his retirement as Prime Minister, he contended that the sector principle would embrace title to "permanent ice," but not to "pack ice," which lacked the stable and durable characteristics of the former.[78] Prime Minister St. Laurent, *ex abundantia cautela,* appeared to place Canadian title to Arctic territory both on the basis of effective occupation and the sector principle. In 1953, in the House, he said: "We must leave no doubt about our active *occupation* and exercise of our sovereignty in these lands right up to the Pole."[79] In more recent times, former Prime Minister John Diefenbaker has suggested that the principle could apply to "waterways" as well as islands, thereby enabling Canada, possibly, to control the use of channels by vessels plying through the Archipelago.[80] Prime Minister Trudeau, however, has disagreed, applying the principle to "the seabed and shelf,"[81] which certainly were not embraced in the 1925 claim, and apparently had not before been mentioned as falling within the purview of the sector principle.

Originally framed by Canada and the U.S.S.R. to forestall unacceptable rival claims to territory in their respective sectors, the sector principle has never had wide currency nor rigorously specific content, as revealed in the often confused glosses on it in the Canadian Parliament. There is, moreover, considerable doubt as to whether the principle is of much real assistance either to Canada or the U.S.S.R. in supporting their respective Arctic claims.

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74. PARL. DEB., H.C. 4069, 4083-86 (1925); H.C. DEB. 6955 (1956).
75. DEB. H.C. 1559 (1957-1958).
76. *Id.*
77. Pearson, *Canada Looks Down North,* 24 FOREIGN AFFAIRS 638 (1945-1946).
78. Televised interview with Lester B. Pearson, former Prime Minister of Canada, Nov. 9, 1969.
79. DEB. H.C. 700 (1953-1954).
80. DEB. H.C. 6396 (1969).
81. DEB. H. C. 6396 (1969).

Except with possible reference to permanent ice there is no serious dispute to title by others, and it is highly unlikely, in the light of extensive explorations, whether there remain any "undiscovered islands" to which the principle would apply. Better grounds of title than the sector principle seem available. Technological advances have made a form of occupation or control possible. Given the nature of the region, the establishment of a wide spectrum of governmental, police, military, meteorological, scientific, and commercial enterprises in the Arctic, coupled with the acquiescence of the international community to claims to particular islands or island groups, tend to manifest such occupation or control.

A problem that makes it difficult to apply the sector principle in the Antarctic consists in the lack of an adjacent land mass under the sovereignty of several of the claimant states, such as France or Norway,[82] precluding the extension of meridians of longitude southwards to the Pole from contiguous national territory. In such cases an area of lodgment along the coast, usually a tract explored by the claimant state, serves as a substitute for such national territory. An example is the slender wedge of French Antarctic territory known as Adelie Land, which was discovered by Jules Dumont d'Urville in 1840 and named for his wife Adele. D'Urville made only a sighting of the bleak, desolate territory—which has average wind velocities of about fifty miles per hour—and no definitive French claim to *Terre Adelie* was made until 1924.[83] It was only in 1951 that the French territory became the site of the first human settlement in all Antarctica.

Because of the absence of contiguous national territory, or alternatively, of a natural tableland extension, which might confer a degree of geographical legitimacy on sector claims,[84] controversies have sometimes erupted between claimants with mutually conflicting, or overlapping, sector claims in the Antarctic. For example, the sector claims of Argentina, Chile, and Great Britain in the Antarctic conflict. Great Britain supports her claim by projecting meridians of longitude southwards from the Falklands.[85] Yet the Falklands are also claimed by the Argentines who know them as the *Malvinas* and who were ejected from them by the British early in the nineteenth century.

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82. Norway, it should be noted, has expressly rejected the sector principle as it applies in the Arctic. *See* note 67 *supra.*

83. Svarlien, *The Sector Principle in Law and Practice,* 10 POLAR RECORD 252 (1960) [hereinafter cited as Svarlien].

84. Svarlien argues that the initial Russian sector claim was actually made in 1916 when the Russian ambassador to the United States advised the State Department of the annexation of several Arctic Islands in "the northern continuation of the Siberian continental shelf." It would seem, however, that such a title would rest on "continuity" or the geographical extension of the continental tableland, whereas the sector principle, more properly, would reflect "contiguity" or the nearness of the claimant state to the Arctic, whether or not its tableland in fact ever reached the Pole, which is the culminating point of all sector claims. *Id.* at 254.

85. Waldock, *Disputed Sovereignty in the Falkland Islands Dependencies,* 25 BRIT. Y.B. INT'L L. 311, 328 (1948).

Since Argentina challenges the legitimacy of Britain's title to the Falklands, it also disputes the sector claim based upon it.[86]

The position of the United States has consistently been that it would neither claim territory for itself nor recognize any other territorial claims in Antarctica.[87] American explorers like Admiral Richard E. Byrd and Lincoln Ellsworth, however, have led expeditions to the Continent that have sometimes created anxieties among other states that the United States would lodge her own competing claims to Antarctic territory. Prompted by such a fear on the occasion of Byrd's 1946 expedition, the Argentines established a new meteorological observatory near the route of the expedition through the Argentine sector. They feared that an American claim, along with the existing British and Chilean claims, in addition to their own, would have made matters incredibly complex. The American State Department, however, later advised the British Ambassador in Washington that the hoisting of Old Glory by one of Byrd's subordinates at Marguerite Bay did not constitute a claim to American sovereignty in the British sector, since the United States neither made nor acknowledged such claims in the Antarctic.[88]

In view of Admiral Byrd's extensive explorations on this occasion, involving the discovery and mapping of 310,000 square miles of Antarctic territory previously unseen, and a further 535,000 square miles of which probably fifteen per cent had not been visited before,[89] one wonders if he might not have been seeking to preclude an inchoate title from being established in favor of other states on the basis of discovery.[90] Was he not, it might be asked, furthering American policy by engaging in a kind of preemptive discovery to prevent the undesirable proliferation of Antarctic sector claims by others, thereby possibly laying the basis for some kind of Antarctic condominium?[91]

Although the Antarctic claims advanced by the respective sector claimants have not been eliminated, the signatories of the Antarctic Treaty of 1959,[92] of which the United States was the principal sponsor, have agreed, pending the duration of the treaty, to suspend further territorial claims or disputes, and to cooperate so that "Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of

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86. *See* 41 AM. J. INT'L L. 117 (1947) and Supplement at 11, for details of the Argentine claim. *See also* Waldock, *Disputed Sovereignty in the Falkland Islands Dependencies,* 25 BRIT. Y.B. INT'L L. 311 (1948).

87. *See* the statement to that effect made on Dec. 27, 1946, by Dean Acheson while he was Acting Secretary of State. The Times (London) Dec. 28, 1946, at 4, col. 3.

88. The Times (London), March 22, 1947, at 4, col. 5.

89. *Id.* March 10, 1947, at 3, col. 5.

90. *See* text accompanying notes 23-35 *supra.*

91. *Cf.* the ANTARCTIC TREATY, 1959, by which the signatories agreed not to press territorial claims for a thirty-year period and established a kind of cooperative regime over the whole Continent. *See* Hayton, *The Antarctic Settlement of 1959,* 54 AM. J. INT'L L. 349 (1960).

92. [1959] 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71.

international discord."[93] The new cooperative approach emphasizes the mutuality of interest among the signatories in fostering scientific research and exploration in the various sectors of the Continent, with each party enjoying full rights and undertaking not to test weapons or establish military bases anywhere in the area.[94]

A Claim to Arctic Ice?

Quite apart from the sector principle there remains the question of whether, as Prime Minister Pearson had on occasion suggested, Canada or other Arctic states could assert title to permanent ice adjacent to their national boundaries. The vexed issue of national title to *glacies firma* has been the subject of protracted and inconclusive dispute among international jurists. As eminent an authority as Sir Hersch Lauterpacht has argued emphatically that sovereignty over polar ice is not acceptable:[95]

> When in 1909, Admiral Peary reached the North Pole and hoisted the flag of the United States, the question was discussed whether the North Pole could be the object of occupation. The question must, it is believed, be answered in the negative since there is no land at the North Pole.

With the increasing disposition of states to claim submarine rights in the continental shelf, extensive contiguous maritime belts, and territorial seas, one might question whether Lauterpacht's explicit limitation of international ownership to *land* is as persuasive as it once was. Is title through occupation confined to *land,* or, indeed, is it necessary at all to occupy ice in order to put forward a valid claim to it?

The American, Scott,[96] and the Canadian, Clute,[97] are in firm agreement with Lauterpacht that ice is not subject to national appropriation. Balch assumes an intermediate position, contending that North polar ice is not subject to ownership, since it is in continual motion, but he does not discount the possibility of immobile ice being effectively occupied.[98] Other jurists have argued that claims to sovereignty over some forms of ice are permissible.[99] That the solution to this dilemma is not to be found in the simple dichotomy between "land" and "sea" (or "frozen sea") put forward, for instance, by Lauterpacht[100] or Colombos[101] may be inferred from the following description of Antarctica:[102]

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93. *Preamble,* Antarctic Treaty of 1959, note 92 *supra.*
94. *Id.*
95. L. Oppenheim, International Law 1, 556 (8th ed. 1955).
96. 3 Am. J. Int'l L. 938 (1909).
97. 5 Can. B. Rev. 21 (1927).
98. 4 Am. J. Int'l L. 265-66 (1910).
99. *See* 2 M. Whiteman, International Law 1266 (1963).
100. *See* L. Oppenheim, *supra* note 95, at 508 n.6.
101. C. Colombos, International Law of the Sea 129 (6th ed. 1967).
102. *See* Hayton, *supra* note 91, at 360.

> A more or less land-locked ice cap in firm union with the bedrock beneath is, because of its origin, probably made up chiefly of frozen fresh water, or compressed and transformed snow, not frozen salt water. For all practical purposes it is perpetually solid as the land it "sits on." What industries or actions of the high seas can be exercised on or in such a medium. Whether certain portions of Antarctica are shown to be only islands bound together by solid ice or land depressed by the great weight of ice, it would seem proper to modify the concept of territory to accommodate such "glacies firma."

Especially if one accepts the hypothesis mentioned by Hayton that Antarctica is actually a number of island entities exhibiting merely a superficial unity because of the dense overlying ice cap,[103] the feasibility of acquiring property rights in such ice would be enhanced. What would be the difference, in such circumstances, between appropriating *glacies firma* over frozen seabed (which is what the Arctic sector claimants have really done) or *glacies firma* over land? In chemical composition and in almost every conceivable characteristic and use, there would be no distinction in the overlying ice except with respect to what was situated beneath. One might ask, as well, what the difference would be between interstitial ice linking together the various hypothetical islands of Antarctica and ice overhanging the sea (ice shelves) along the fringes of the Antarctic Continent? The possibilities of exploiting the surface of the ice over the sea would be virtually identical with the possibilities of exploiting ice in the interior over land. Indeed, if exploitability and habitability or durability and permanence are among the prerequisites for appropriating a global surface, one would find it difficult to make a valid distinction between such ice and land. The permanent ice at the North Pole exhibits essentially the same properties.

At both poles, the geological effects of compression over many centuries coupled with a negligible rate of evaporation have produced a solid mass of material that, for many purposes, can be assimilated to land and on which permanent structures can be built with an expectation of stability over protracted periods. Even the ice shelves at both poles are not actually products of the sea, but accretions of atmospheric and terrestrial forces. For instance, the Ross Ice Shelf at Little America is said to consist of 1,200 years accumulated snow pressed by its own weight into plastic ever-spreading ice.[104] Baird speculates that the very thick and almost stationary Ellesmere Island ice shelf in the Arctic Archipelago, from which most Atlantic ice islands originate, must have formed *in situ* over the space of several thousand years.[105]

An appreciation of the origin of ice shelves might, consequently, prompt a reconsideration of some of the theories put forward by maritime lawyers

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103. For a discussion, to similar effect, of the Greenland ice sheet, see J. SATER, THE ARCTIC BASIN 10-11 (1969).

104. *See* BAIRD, *supra* note 23, at 282.

105. *Id.* at 69.

concerning the appropriate limits of the territorial sea in polar areas. Colombos, for example, argues:[106]

> The question has often been raised as to whether, in case the sea is frozen, the sovereignty of the riparian state extends to the limits of the ice forming a continuous pack from the shore, without taking into consideration the normal limits of the territorial sea. To admit the affirmative absolutely is to give to states, especially in the polar regions, an excessive maritime belt as ice pack may assume immense proportions.

Without attempting to refute conclusively what Colombos says, one might ask whether his conclusion would be the same if he considered that the ice shelves at the edges of polar ice caps were not, in fact, "frozen seas," but accumulated snow, subject to very little seasonal evaporation and hardening into layers through pressure over great periods of time. It also could make a difference in his conclusion if a state were delimiting its offshore boundaries from a relatively durable, stable accretion of tremendous density and compactness, formed wholly on land and only subsequently moving out to sea. If one took an ice shelf of such composition extending, as is not uncommon, twenty miles out to sea, the leading edge of which advanced very slowly, forming icebergs, with any seaward loss being made up by the movement of other ice from the interior, the whole ice formation would have a relatively stable and unitary aspect. One would be dealing here with an ice shelf hundreds of feet thick, of great density, and often many miles in linear dimension from the nearest land surface. When all these geographical facts are considered, it is suggested that one could make a persuasive argument that the territorial sea and contiguous zones appurtenant to an Arctic coast should be delimited from prominent ice shelves. If Colombos' argument were adopted, there would often be great practical and navigational difficulties in delimiting them from a seacoast buried under huge icecaps. Indeed, where the length of the icecap was greater than that of territorial waters, there would be no territorial waters discernible.

The Legal Status of Arctic Waters

The recent dispute between the United States and Canada concerned, principally, the problem of pollution in Arctic waters. The most important subsidiary issue concerned the legal character of the waters of the broad corridor wending through the islands. If this broad corridor was an arm of the high seas linking two of the world's major oceans, vessels of all nations, fitted with modern ice-breaking equipment, might eventually ply through it, or mammoth 175,000 ton submarine tankers could navigate underneath its dense pack ice thereby saving time[107] and money and avoiding burdensome

106. C. Colombos, *supra* note 101, at 129.

107. This route diminishes the water distance between New York and Tokyo by 3,320 miles.

restrictions imposed by the coastal state. Accordingly, it would be crucial for all of the important maritime states to ascertain the exact legal status of the intricate channels between the archipelagic islands.

There has been a constant disposition on the part of nations with large merchant and naval fleets to assert the principle of "freedom of the seas," when faced with possible encroachments, in the interest of untrammeled maritime communications. The great sea powers—Great Britain, the United States, the Soviet Union, France, and Japan—have consistently argued against a plethora of administrative regulations by littoral states that could, for instance, close off important straits or make navigation through coastal waters unduly burdensome. Such nations have, consequently, tended to oppose unilateral extensions of territorial waters stretching out for one or two hundred miles from the coasts of Latin American states[108] and such recent initiatives as the creation by Canada of a 100-mile buffer zone for the purpose of preventing oil pollution in the Arctic in which tanker movements, especially, are restricted.

This controversial Canadian legislation was enacted in 1970 and consisted of two statutes. The first extended Canadian territorial waters from three to twelve miles in breadth.[109] Particularly, since such waters radiate even from small, barren islands in mid-channel,[110] parts of the Arctic Ocean corridor were entirely closed off. The other act purports to regulate the structure, equipment, and itineraries of vessels plying within a one-hundred mile radius of the Archipelago,[111] thereby legally constructing a great aquatic arc extending over what had hitherto been regarded by everyone, without question, as the high seas. Although many states had enacted similar or more sweeping laws relating to territorial waters, the unilateral creation of such a large anti-oil-pollution zone in the Arctic was unprecedented. Within a one-hundred mile circumference of the Archipelago the legislation asserts a right to appoint inspectors and impose fines of up to 100,000 dollars per day against owners whose ships dispose of "waste" in the prohibited zone.[112] The severity

108. *Cf., e.g.,* the arrest of certain of the vessels of the California tuna fleet off the coast of Ecuador, arising from the latter's claim to a belt of territorial sea 200 miles in width. The Christian Science Monitor, Feb. 19, 1970, at 2, col. 1.

109. *See* CAN. REV. STAT. ch. 45, §1 (1st Supp. 1970) *amending* the Territorial Sea and Fishing Zones Act, ch. 1, §3, CAN. REV. STAT. ch. T-7 (1970), so that the total breadth of the Canadian territorial sea would be 12 (instead of 3) nautical miles from the nearest baseline, where a baseline system is in operation, or elsewhere 12 miles from the sinuosities of the coast. The 1970 amendment removed all doubt that such relatively narrow archipelagic channels as Prince of Wales Strait and Barrow Strait fell within Canadian territorial waters.

110. *Cf.* The King v. The Schooner John J. Fallon, 16 Can. Exch. 332 (1916), 55 Can. S. Ct. 348 (1917); [1917] D.L.R. 659. This decision by the Supreme Court of Canada upheld a criminal conviction of persons apprehended in the territorial waters of a small, craggy, unoccupied island considerably removed from the mainland; the decision, moreover, would appear to reflect the contemporary position in international law. *See Convention on the Territorial Sea and Contiguous Zone, supra* note 4, art. 10 (2).

111. The Arctic Waters Pollution Prevention Act, CAN. REV. STAT. c. 2 (1st Supp. 1970).

112. Id. §18(1).

of the fine is said to be a necessary deterrent because of the gravity of the ecological risk. It is important to note, however, that the act does not assert sovereign rights within the anti-pollution zone, but merely a limited jurisdiction for the purpose of preventing disastrous oil spillages that could pollute frigid arctic waters for long periods.

The act provides that from time to time specific "safety-control zones" will be designated by executive orders, with access to such zones by vessels being subject to conditions.[113] Among the conditions are rigid specifications with respect to hull structure, the possession of navigational aids, specific qualifications for personnel, and compliance with government directions concerning the time and route of passage.[114] During certain seasons of the year, or when hazardous ice conditions prevail, ships might be forbidden entirely from entering such zones.[115] Another requirement in the legislation is that shipowners show evidence of financial responsibility adequate to cover possible pollution damage before being allowed to proceed through the Arctic.[116] The legislation apparently created absolute liability, but in regulations promulgated in August 1972 several defenses became available to the proprietors of vessels discharging waste.[117] In introducing the legislation Jean Chretien, who is chiefly responsible for Arctic affairs in the federal cabinet, spoke of the motives impelling the government to take unilateral action:[118]

> Maritime law is evolving but more slowly than we would wish in Canada. For centuries emphasis has been placed on the right of shipping to the use of the world's sea lanes without any regard to the effect this might have on adjacent coastal states. While this may have been practical before, now when millions of barrels of oil are afloat in tankers on the high seas on any given day the threat of pollution is real, and the interest of coastal states, as opposed to nations having large commercial fleets, must be recognized. . . . At the World Shipping Conference in Brussels last year [1969] it was obvious that these states continue to expect to have absolute priorities for their particular requirements. It became clear to the government of Canada that unilateral action would have to be taken at this time if Canada was to protect its own urgent interests.

The reaction of the United States Government to the legislation, and especially to the Arctic Waters Pollution Prevention Act, was instant and

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113. DEB. H.C. 5949-50, (1970) for implementing legislation see 1972 *Canada Gazette* SI No. 72-76, Aug. 9, 1972 and SOR No. 72-303, Aug. 2, 1972 and SOR No. 72-292, July 28, 1972.

114. *Id.*

115. *Id.*

116. See Arctic Waters Pollution Prevention Act, CAN. REV. STAT. c. 2, §8 (1st Supp. 1970).

117. In regulations promulgated by the Governor-in-Council under delegated powers on Aug. 2, 1972, defenses allowed to polluting vessels include "natural disasters" and "acts of war," and liability is set at $135 per ton of total tonnage.

118. DEB. H.C. 5939 (1970).

sharp. With its vast oil interests on Alaska's North Slope and plans under way by private American firms to create an entire fleet of supertankers (of which the *Manhattan* was a small-scale prototype), the United States Government was understandably concerned that passage through Arctic waters would be impeded or possibly entirely cut off at certain times of the year. In a press release dated April 15, 1970, the United States State Department contended that there was "no basis" in international law for "proposed unilateral extensions of jurisdiction on the high seas" and deplored the Canadian resolve not to submit the legality of the proposed anti-pollution zone to the International Court of Justice.[119] Noting the Canadian reservation in this regard, the press release added: "[S]uch action only prevents Canada from being forced into the Court. It does not preclude Canada voluntarily joining with us in submitting these disputes to the Court or an appropriate chamber of the Court."[120]

Concerning the virtual enclosure of the Arctic corridor by the claim to a 12-mile territorial sea, the release observed that although Washington was willing to accept such an extension, it would only be acceptable "as part of an international treaty also providing for freedom of passage through and over international straits."[121] The United States Government was apprehensive that the Canadian legislation, if unchallenged, might serve as a precedent for "unilateral infringement of the freedom of the seas" in other parts of the world with the result that "merchant shipping would be severely restricted and naval mobility would be seriously jeopardized."[122]

The State Department also entreated Canada to join in sponsoring an international maritime conference to study the problem of pollution controls in the Arctic and to devise necessary preventative measures on a multilateral basis. In this respect, the statement continued: "We believe the Arctic beyond national jurisdiction should be subject to internationally agreed rules protecting its assets, both living and non-living, and have noted with pleasure the Canadian Prime Minister's public statement that Canada would be prepared to enter into multilateral efforts to develop agreed rules of environmental protection."[123] (And while Prime Minister Trudeau had, indeed, made such utterances, he had envisaged the rules as complementing, and not replacing, the two bills discussed earlier.)

John Stevenson, the State Department's legal counsel, in an address in New York, reiterated the American position on the extension of Canadian territorial waters to twelve miles.[124] The establishment of such maritime belts throughout the world, he contended, should be accomplished in conjunction

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119. For the text of the United States press release, see DEB. H.C. 5923 (1970).
120. *Id.*
121. *Id.*
122. *Id.*
123. The statement issued to the press and set out in *Hansard* was similar to one handed to Canadian Ambassador Marcel Cadieux in Washington by U. Alexis Johnson, the Undersecretary of State for Political Affairs. See N. Y. Times, Aug. 15, 1970, at 54, col. 1.
124. The Globe and Mail (Toronto), April 10, 1970, at 1, col. 9.

with a new international agreement "providing for freedom of transit through and over international straits and carefully defined preferential fishing rights for coastal states on the high seas."[125]

There were also, however, some American dissenters from the official Washington rejection of the Canadian Arctic initiatives. In an editorial, the *New York Times* supported both pieces of legislation, saying of the anti-pollution bill that "special circumstances" offered "a compelling argument for Canada's unilateral action," and that in extending its territorial sea "Canada is only doing what 57 other nations already have done—and what the United States government has recently indicated it is prepared to do." The newspaper praised the Canadian actions as forestalling pollution in a peculiarly sensitive environment and also as serving to protect "a heritage that is precious to all mankind."[126] Both Alaskan senators also approved the legislation, at least in its general features, as representing the "northern point of view."[127] American commentators usually agreed with the intent of the legislation, insofar as it sought to protect the environment, but were less receptive to possible restrictions on the movement of United States naval vessels and merchant ships through Arctic straits.

The Canadian reply to the United States remonstrance repeated the country's intention to proceed unilaterally with the legislation and expressed the resolution not to resort, in any eventuality, to the World Court or to defer to the decision of an international conference of shipowning states for the resolution of what was, in the Canadian government's opinion, a matter falling solely within its domestic jurisdiction.[128] There followed the citation of a number of instances in which unilateral actions by other states (such as President Truman's 1945 proclamation claiming jurisdiction over the adjacent continental shelf) had later, through repetition and reciprocity, crystallized into customary international law and ultimately had been codified in international conventions.[129] What real chance was there in 1945 (according to the innuendo in the Canadian reply), that the unilateral American claim to the continental shelf would have been upheld by an international tribunal? In an obvious reference to the *Connally Amendment*,[130] the Canadian note added: "Canada's readiness to submit to the international judicial

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125. *Id.*

126. N. Y. Times, April 20, 1970, at 38, col. 2.

127. Both Republican Senator Theodore Stevens and Democratic Senator Mike Gravel supported the legislation, at least insofar as it sought to combat pollution. *See, e.g.*, The Globe and Mail (Toronto), April 10, 1970, at 1, col. 9.

128. *See* DEB. H.C. 6029 (1970).

129. *See, e.g.*, Convention on the Continental Shelf, *supra* note 56.

130. 61 Stat. 1218, ¶2, cl. 6 (Aug. 14, 1946), T.I.A.S. No. 1598. Declaration by the President of the United States of America respecting Recognition by the United States of America of the Compulsory jurisdiction of the International Court of Justice: "Provided that this declaration shall not apply to . . . (b) disputes in regard to matters which are essentially within the dominant jurisdiction of the United States of America as determined by the United States of America."

process remains general in scope and is subject only to certain limited and clearly defined exceptions rather than to a general exception which can be defined at will so as to include any particular matter." Finally, the note argued, while it was necessary to act for ecological reasons, international law in its present state was defective in the environmental area and a possible judicial resolution would prejudice Canada's good moral case.[131]

Since the passage of the Canadian legislation in mid-1970 the debate has intensified. "However legitimate Canadian concerns," says international lawyer Louis Henkin, "however true its accusations against shipping states, however urgent the dangers of pollution, the fact is that it is asserting new unilateral rights as a coastal state against the world."[132] If the high seas are, in the words of classical international jurists *res communis omnium,* then regulation should, according to this view, be by the world community rather than by individual states.

Citing the *Trail Smelter Arbitration*[133] as authority for the proposition that the facilitation of marine pollution by states amounts to an international tort, J. A. Beesley of the Canadian External Affairs Department counters: "It would be a distortion of the freedom of the high seas to view it as a license to pollute the marine environment and the shores of other states, and to argue that states are barred from taking preventive protective measures against polluting activities on the high seas."[134] Beesley strikes a chord here sometimes mentioned by defenders of the legislation: ultimately the extension of pollution control over the high seas by coastal states rests on an asserted right of self defense. In the case of ocean pollution, as in the case of enemy attack, there is an external threat posing grave risks to national security. The effects of such a threat, in fact, could cause what some delegates to the United Nations sponsored 1972 Stockholm Conference on the Human Environment termed "ecocide." In the case of pollution as in that of external attack, the threat may be debilitating or lethal before an effective international reply can be organized. With ten million tons of oil spilled into the world's oceans annually, the ineffectiveness of unilateral measures to combat the problem on a global scale has prompted continuing consideration of the menace by international conferences. The Canadians hope to obtain some support at such meetings. Already, in a Geneva meeting preparatory to the 1973 Conference on the Law of the Sea, Australia, Norway, and Spain, as well as Canada, have asserted a right to defend their shores from pollution emanating from the high seas.[135]

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131. For text, see DEB. H.C. 6027-30 (1970).

132. Henlein, *Arctic Anti-Pollution: Does Canada Make—or Break—International Law?,* 65 AM. J. INT'L L. 131, 135 (1971).

133. Note 1 *supra.*

134. Beesley, *Rights and Responsibilities of Arctic Coastal States: The Canadian View,* 3 J. MARITIME L. & COMMERCE 1, 9 (1971).

135. *See* Beesley, *The Law of The Sea Conference: Factors Behind Canada's Stance,* INTERNATIONAL PERSPECTIVE July-Aug. 1972, at 28; Langley & Edgerton, *The United States at Stockholm,* THE NATION, July 10, 1972, at 7.

TOWARDS A CONCEPT OF POLAR LAW

In considering the effective occupation test of sovereignty laid down by Huber in the *Palmas* arbitration[136] or the hinterland test of the *Labrador* case[137] or the "superior title" principle enunciated by the World Court in the *Eastern Greenland* case[138] one almost gets a sense of retrogression. The vocabulary of these legal controversies is replete with the idiom of the colonial era. However, the successors of the native princes with whom the Dutch East India Company dealt for three centuries on the Isle of Palmas are now delegates to the United Nations, framing draft legislation on human rights before the Third Committee. In the post-colonial world there are no unappropriated hinterlands waiting demarcation through the drainage basin test, and the urgent issue in most undeveloped areas is not one of political sovereignty among rival European states, but of the education, economic progress, and ultimately the emancipation of native peoples. In such a revolutionary context, how appropriate are the principles of "symbolic annexation" applied to Clipperton Island,[139] or the norm of "effective occupation" used in other territorial disputes? Similarly, rules developed in one context may not be easily applied to another. For instance, in applying the "natural prolongation" test of the *North Sea* case[140] to the continental shelf of the Canadian Arctic, great difficulties arise as compared with the Siberian Arctic, which has a much more gradual slope and is submerged under shallower seas. Elongated underwater canyons threading through the sea floor of the Canadian Arctic, notably in Melville and Lancaster Sounds, reach a depth of three or four times the 600 feet (or 200 meters) mentioned in the *Continental Shelf Convention*[141] as being an appropriate depth for delimiting national claims to the shelf. If one considers that the whole Archipelago, according to the logic of the *North Sea* case, might be considered as a geological extension of the Canadian mainland, a Canadian claim to the entire shelf of the Archipelago would be enhanced.[142]

Yet granting the difficulty of formulating standards, there would seem to be no compelling reasons why certain claims should not be entertained. Claims to permanent ice in the Arctic or Antarctic should seemingly be recognized, but they would have to be claims of a highly qualified nature. Such

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136. *See* text accompanying notes 30-31 *supra.*
137. *See* text accompanying notes 51-53 *supra.*
138. *See* text accompanying notes 34-48 *supra.*
139. *See* Clipperton Island Case (Mexico and France), 26 AM. J. INT'L L. 390 (1932).
140. *See* 63 AM. J. INT'L L. 591 (1969).
141. *Supra* note 56, art. I.
142. The Continental Shelf Convention, art. I, also permits claims where the superjacent waters "admit of the exploitation of the natural resources of" the area. The question of the maximum permissible extent of the shelf, then, will vary according to whether "exploitability" or "200 meters" is the norm. In view of rapidly developing technology, however, *quaere* whether any portion of continental shelf would be immune from national claims if "exploitability" is the proper standard.

claims should not embrace collateral assertions of title to superjacent airspace or subjacent seabed. For one thing, the more common type of territorial claims, embracing title to airspace, have been limited in the past to land. Their extension to Arctic ice would enclose and subject to national jurisdiction great aerial concourses of the world that it would be in the community interest to preserve unfettered from local regulation. In the water under the ice, however, community interests may be different. The spectre of a giant submarine tanker[143] having an accident with the resultant oil spillage trapped and refrigerated under the ice for decades is enough to give one an ecological trauma. It would seem that in the latter case a state claiming permanent ice should have the right to make reasonable regulations to reduce such a possibility.

The risk of a disastrous spillage of oil in frigid Arctic waters, which are subject to a much slower rate of atmospheric dissipation than waters in the tropics,[144] underscores the need for some supervision of tanker movements in the Arctic. Yet the probability of securing adequate legislation through international conference is low. Surely, states peculiarly susceptible to pollution hazards should be able to frame legislation that promotes not only their own interests, but also preserves essential environmental standards for their hemispheric neighbors.

If such an anti-pollution zone is established, it seems reasonable that Canada should go somewhat further than she has in meeting the objections of the United States and other countries in her assumption of legal control over the Northwest Passage. While it is true that the Passage is not yet an international sea route, there has been considerable navigation through it and in the vicinity of the Archipelago; the 1969 voyage of the *Manhattan* was only the latest of a succession of such voyages.[145] Even if such relatively narrow channels as Barrow Strait and Prince of Wales Strait are now enclosed, because of the importance of the Arctic "corridor" as a future maritime thoroughfare, the Canadian government should, while asking shipping states to observe the norms of the anti-pollution zone, create a right of innocent passage through the entire corridor notwithstanding the fact that part of it may now be classified as internal waters. External Affairs Minister Sharp,

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143. In January 1970, General Dynamics Corporation offered to build six 175,000 ton submarine tankers for oil companies with interests in the Prudhoe Bay area. *See* DEB. H.C. 2719 (1970).

144. *Cf., e.g.,* Schachter & Serwer, *Marine Pollution Problems and Remedies,* 65 AM. J. INT'L L. 84, 89 (1971).

145. Other transits of the Northwest Passage are credited to Robert McClure (1854-1855); Amundsen's *Gjoa* (1903-1906); the Royal Canadian Mounted Police vessel *St. Roch* (1940-1942 and again in 1944); *H.M.C.S. Labrador* (1954); United States Coast Guard vessels *Storis, Bramble,* and *Spar* (1957); United States *Seadragon* (nuclear-powered submarine 1960 and 1962) and the *John A. Macdonald* (1966). Transits in the vicinity of the North Pole, under Arctic ice, were made by United States *Nautilus* (August 1958); United States *Skate* (August 1958 and March 1959); United States *Sargo* (February 1960); United States *Seadragon* and *Skate* (August 1962); and the Soviet nuclear-powered submarine *Leninsky Komsomol* made a transit in the vicinity of the North Pole in January 1963.

indeed, has coupled the pollution problem with the possible establishment of such a regime:[146]

> There is a school of thought, for example, that the status of the waters of the Arctic Archipelago fall somewhere between the regime of internal waters and the regime of the territorial sea. Certainly Canada cannot accept any right of innocent passage if that right is defined as precluding the right of the coastal state to control pollution in such waters.

In the domestic context, Prime Minister Trudeau has frequently deplored an exaggerated nationalism (as typified, for example, by the separatist movement in his native Province of Quebec) and the creation of such a right of innocent passage would reflect, in the international arena, his subordination of local sovereignty to broader community interests.[147] At the same time, such passage should be genuinely innocent in the sense that oil tankers, when invoking it, would be obliged to comply with reasonable regulations made to prevent irreparable harm in the delicate Arctic ecology. Just as the right of warships to innocent passage may be subject to some limitations, so should the right of huge oil tankers that may jeopardize the security of the coastal state, albeit in a wider context.

A consideration of the Arctic and the Antarctic with all their geographical and climatic peculiarities emphasizes the distinctiveness of the polar regions as contrasted with the temperate and tropical zones. Their vastness, emptiness, barrenness, and susceptibility to pollution has rendered special legislation necessary and has led, as in the *Eastern Greenland* case,[148] to the development of special norms for the acquisition of title. In an era of technological revolution, however, when new possibilities of settlement and the extraction of natural resources are opening up, one might inquire into the appropriateness of these norms in polar areas. With occupancy and control becoming more and more possible, there are many ways in which states can cooperate in the Arctic.

It might be suggested, accordingly, on the analogy of the Antarctic settlement of 1959 that without renouncing sovereignty, which would generally be unacceptable,[149] the various Arctic states might cooperate to a greater degree to promote general interests in the North. Because of the slow circular motion of the Arctic icecap the same ice will be above different Arctic states at different times. Rather than permitting claims to permanent ice, would not some form of condominium by all Arctic states to control pollution and to further

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146. DEB. H.C. 6015 (1970).

147. *See, e.g.*, B. THORDARSON, TRUDEAU AND FOREIGN POLICY 62-63 (1972).

148. [1933] P.C.I.J., ser. A/B, No. 53, at 22.

149. The Russians, for example, are most insistent in urging their claims to Arctic sovereignty, laying claim not only to island groups but also to extensive Arctic seas, the latter claim not generally being cognizable in the West. *See* I. LAPENNA, CONCEPTIONS SOVIETIQUES DE DROIT INTERNATIONAL PUBLIC 260 (1954).

scientific and meteorological research be a notable advance? Perhaps, too, in this era of *detente,* just as Antarctica has been demilitarized, the Canadian and Siberian Arctics, and perhaps other Arctic areas, might also be demilitarized.[150] Another possibility would be to use a proportion of the riches of the Arctic seabed and continental shelf to improve the lot of native peoples in northern areas. One might specify further areas of mutual interest where common action is desirable, but the more important matter is, as in the Antarctic, the expansion of international cooperation in a region where the forces of nature make life difficult and pose particularly challenging problems.

150. Such a proposal recalls President Eisenhower's "open skies" proposal, which served a somewhat different purpose, but would have employed the airspace of the Arctic to facilitate reciprocal inspection of Soviet and Western territory.