

Canada - British Sovereignty

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SUBJECT: Canadian Sovereignty in the Arctic Archipelago.

Canada, L.O.S. S.S. 25X1

SUMMARY

By 1880, Great Britain had transferred to Canada all her territorial claims in the Arctic above the mainland of Canada. These were based on discovery by British explorers and partial occupation. Until 1903, when Canada began efforts at effective occupation of the Arctic islands, her claims in several areas were weak on account of Norwegian discoveries and United States discoveries, exploration and occupation. From 1922 onward, Canada attempted to maintain order in the area through the establishment of permanent Royal Canadian Mounted Police stations at several points and RCMP patrols covering most of the islands. However, the northern or Queen Elizabeth group still has almost no inhabitants except the personnel of the five weather stations, who are both United States and Canadian citizens.

Although an official representative of the Canadian Government in 1909 laid claim to all the territory within a Canadian sector up to the North Pole, the Canadian Government did not officially adopt this view until 1925. In 1954, evidently reluctant to risk any controversy with the USSR, Canadian officials ceased referring to a Canadian sector, and early in 1955 stated that Canadian sovereignty went only as far north as the northern tip of Ellesmere.

After World War II, several Canadian officials indicated that Canada would claim jurisdiction of polar ice in the Canadian sector north of the Arctic islands. But in statements in early 1955, the Canadians clearly backed away from this position. Whether Canada intends to claim jurisdiction of the straits more than six miles wide between the Arctic island has not been made plain.

British Title

Canada assumed sovereignty over the Arctic Archipelago by the transfer of British claims in the region to Canada during the last half of the nineteenth century. Therefore, it is necessary first to examine the British claims, all of which

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were based on discovery and partial occupation.

Discovery of the Arctic Islands took place in the Seventeenth Century during the search for the Northwest Passage, and again in the Nineteenth Century during a period of geographical curiosity and the desire to annex new areas. British explorers predominated, discovering and naming all the islands except the Ringnes Islands and Axel Heiberg which were discovered by Norwegian explorers at the end of the 19th Century. For convenience in examining claims, the Archipelago is divided into four groups:

Group I (Melville Peninsula and Baffin Island): First discovered by Frobisher in 1577; British whaling stations were established on Cumberland Sound (1840) and Pond Inlet (1860). The United States had two whaling stations on Cumberland Sound in 1859 but these were sold to Scottish interests in 1894. In the last half of the 19th Century, United States interests extensively mined graphite and mica on Baffin, and several expeditions traveled in the area searching for Sir John Franklin.

Group II (Banks, Victoria, North Somerset, Prince of Wales and King William): Between 1825 and 1854, British Government explorers were active in this group, taking formal possession at various points.

Group III (North Devon and the Parry Islands): In 1819 and 1852-53, British explorers visited these islands and took formal possession.

Group IV (Ellesmere, Axel Heiberg and Ringnes Islands): British explorers took possession of Ellesmere at various points in the north and south of the island during the 19th Century. In 1882, United States explorers took possession of Grinnell Land in central Ellesmere. In 1899-1901, Norwegian explorers discovered and took possession of western Ellesmere, Axel Heiberg, Cornwallis, Findlay, King Christian, Devon, Ellef Ringnes and Amund Ringnes. These claims were abandoned in 1930 when Canada agreed to pay the costs of the Norwegian expedition.

Speaking of discoveries in Groups I - IV, the King Report* concludes: "...the vast preponderance of discovery is British. Next comes the United States, but their explorations...undertaken chiefly in the search for Sir John Franklin, may be said to merely follow in the steps of previous British explorers... The object of their voyages (in Group IV) was rather the discovery of the North Pole than geographical exploration, which was only an incident... Most of the British discoveries were made by commissioned officers. Most of the foreign discoveries were not". This was of course written before several important U. S. explorations on Ellesmere.

* In 1905, W. F. King, Chief Astronomer of Canada, prepared a confidential "Report Upon the Title of Canada to the Islands North of the Mainland of Canada" for the Department of the Interior. So far as is known, this report has never been made public although it has been available to scholars and this officer was permitted to examine it.

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The King Report also gives the results of a study of the national assignment of the Arctic Islands on 157 old maps (99 British, 40 American, 10 French, 8 German). This study evidently referred to maps produced before the Norwegian discoveries of 1899-1901. The study showed that the known islands of the Archipelago were assigned to Great Britain on an overwhelming majority of the maps, with only Ellesmere left somewhat in question. Southern Ellesmere was marked as British on 115 maps, as belonging to other countries on 17. Northern Ellesmere was assigned to Britain on 75 maps, to other countries on 22.

Transfer of British Claims to Canada

"Rupert's Land" and "Northwestern Territory" were united to Canada by an Imperial Order in Council of June 23, 1870, but a precise description of these areas was not given. Rupert's Land was the name of the area granted to the Hudson Bay Company in 1670, and though never exactly bounded, was considered to include all the country draining into Hudson Bay plus most of Baffinland and the smaller islands of the Hudson Straits. The Northwestern Territory was understood to include all land west of Canada and Rupert's Land (i.e. British Columbia, parts of Alberta and Saskatchewan, Yukon and the District of Mackenzie). Canada was uncertain as to whether this Order in Council granted her all the territory on the east to the Arctic Ocean, and whether it included the Arctic islands. Because of this unclarity, Canada asked Great Britain to remove doubts on the northern boundaries, and recommended that the areas transferred be delineated exactly. In particular Canada wanted Britain to add claims to "such portion of the North West coast of Greenland as may belong to Great Britain by right of discovery or otherwise". There followed Imperial Order in Council of July 31, 1880 which transferred to Canada "all British territories and possessions in North America, not already included in the Dominion of Canada, and all islands adjacent to such territories or possessions" (excluding Newfoundland). Since this still failed to give an exact definition of the territories, it did not meet Canada's desires. It seemed evident that Britain did this deliberately to avoid controversy over its own claims and to let ownership be settled otherwise.

A Canadian Order in Council of October 2, 1895 seems to have been the first step taken by Canada to indicate acceptance of the transfer of claims of 1880. This Order set up provisional districts in the new areas, but was defectively worded and was replaced by an Order-in-Council of December 18, 1897 which placed in Franklin District all the islands more than 20 miles from the coast in the area bounded by 141° West and the channel west of Greenland, and on the north by the parallel of 83 1/4°. This order constituted Canada's notification to other countries that she claimed all the Arctic Islands north to 83 1/4° (northern tip of Ellesmere).

Canadian Occupation

The King Report of 1905 ended with the warning that Canada's title to some of the Arctic Islands was "imperfect" (no doubt he had in mind the Norwegian claims in the northwestern corner of the Archipelago and the U. S. claims in central Ellesmere) and with the recommendation that Canada "exercise jurisdiction where any settlements exist".

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Between 1903 and 1910, the Government of Canada sent five expeditions to the territories received from Great Britain in 1880, giving them instructions to maintain peace and order and to establish police posts, customs offices, and post offices at strategic points where required. The first of these expeditions took place in 1903-04 and included a detachment of Northwest Mounted Police. The police were ordered to "impress upon the captains of whaling and trading vessels, and the natives, the fact that after reasonable notice and warning the laws will be enforced as in other parts of Canada". Landings were made at Cape Sabine (Melville Island) and Cape Herschell (Ellesmere Island). The second expedition in 1904-05 established Mounted Police stations in Hudson Bay. In 1906, an expedition took formal possession of Cornwallis, Griffith, Bathurst, Byam Martin, Melville, Prince Patrick and the Parry Islands. The 1908-09 expedition covered a similar area plus Banks and Victoria Islands. The 1910 expedition touched at North Devon and other islands in the Queen Elizabeth group along Melville Sound.

At the instruction of the Canadian Government, the expedition of 1909 enforced the issuance of fishing and whaling licenses in the Archipelago. When a question of Greenland Eskimos hunting on Ellesmere came up in 1920, Denmark told Canada that it regarded Ellesmere as "no man's land". Thereafter Canada renewed its efforts to establish sovereignty on the island to forestall a Danish claim. In 1922, the first of annual expeditions to the Arctic Islands sailed up to the southern tip of Ellesmere. Royal Canadian Mounted Police posts were established at Craig Harbour (southern Ellesmere) and Pond Inlet (Baffin Island). The 1923 expedition included a magistrate and complete court to conduct the trial at Pond Inlet of an Eskimo charged with murdering a white trader. In addition to re-supplying the two stations, a third station was established at Pangnirtung (Baffin). In 1924, another post was established at Dundas Harbour (Devon). No new posts were set up in 1925, but in 1926, Bache Peninsula (Ellesmere) was established and in 1927, Lake Harbor (Baffin) was established.

Beginning in 1923, these posts were used as bases for various surveys and investigations, mostly on Baffin Island. In 1927, an RCMP inspector made a patrol from Bache westward to Axel Heiberg, Sverdrup, King Christian, Cornwall and Graham Islands. In 1929 an RCMP team traveled from ~~Hundas~~ Dundas Harbour west to Winter Harbour on Melville, then northerly to Hecla and Ripper Bay, then north-easterly to Bache. These islands were visited: Devon, Cornwallis, Bathurst, Melville, Lougheed, Edmund Walker, King Christian, Ellef Ringnes, Cornwall, Axel Heiberg and Ellesmere. from
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The patrols of 1927 and 1929 seem to be significant as the first efforts by Canada to "maintain order" in the most remote parts of the northwestern islands of the Archipelago, where Canadian sovereignty was least clearly established.

Today there are a considerable number of settlements in the southern half of the Arctic Archipelago, most of them on Baffin Island. In the northern half, or Queen Elizabeth Islands, there are only the five weather stations and posts at Craig Harbour and Dundas Harbour. While the Eskimo population of the southern half, particularly on Baffin, is fairly numerous (2800 in 1951), the only Eskimos in the Queen Elizabeths are some 100 settled there in 1953 by the Government. There are practically no permanent white residents in the Arctic Archipelago except for missionaries. The total white population in 1951 was under 150.

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The Eskimos have from the first been regarded as Canadian citizens through birth in Canada. If this area were divided into electoral districts, which it is not because the population is too small, the Eskimos would be allowed to vote. The Eskimos carry identity discs issued by the Government; their vital statistics are recorded by the RCMP. Family allowances (monthly payments based on the number and ages of children) are paid to the Eskimos in kind. They are also entitled to Canadian old age security and old age assistance payments and allowances for blind persons, all paid in kind.

The Mounted Police undertake collection of taxes and game license fees, act as postmasters at certain settlements, and RCMP commissioned officers act as justices of the peace.

The commanding officers of the joint weather stations, always Canadians, function as customs officers and immigration officers, except at Resolute where the RCMP exercises these duties.

The Royal Canadian Air Force carries on a number of activities in the Archipelago, including aerial surveys and ice reconnaissance. Under the International Civil Aviation Organization, Canada is responsible for providing aid to aircraft in distress, and these searches are carried out by the RCAF in the Archipelago. The RCAF plays an important part in supplying the joint weather stations; the RCAF and the Royal Canadian Navy now supply all the stations except Alert. In 1954, preliminary charting of the straits of the Arctic seas was begun by the new RCN patrol vessel, the HMCS LABRADOR. The announced purpose of the charting is to prepare for navigation in the area in connection with defense establishments and, eventually, to exploit possible mineral wealth. It is felt that if the Arctic continues to warm up, heavy shipping for increasing periods will be feasible.

Sector Theory

It is not clear just how Canadian adherence to the sector theory arose; in fact, it is still not clear that Canada fully supports the sector theory. Speaking to an officer of the Embassy in 1954, Gordon Robertson, Deputy Minister for Northern Affairs and National Resources and Commissioner of the Northwest Territories, said the original sector claim was made by a cartographer in 1903, who "evened things off" by extending the 60°-141° parallels of longitude up to the North Pole in delineating the Canadian area. Cartographers have since followed this principle. In 1951 a new map of Canada was issued which included the North Pole and the Canadian Sector of 60°-141°. However, at a meeting of the Arctic Circle club in Ottawa on February 2, 1955, Northern Affairs Minister Lesage would not commit himself on the sector principle, observing that the official maps were produced by another department than his.

No mention is made of the sector theory in the aforementioned King Report. The earliest reference to it that has been found is 1907 when a resolution was moved in the Canadian Senate 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".

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The Government spokesman opposed this motion on the grounds that it might not be of any practical advantage to assert jurisdiction quite that far north. "...while negotiations are going on and while the Governments are asserting themselves, it may not be the part of policy to formally proclaim any special limitation...".

In the expedition of 1909, Captain Bernier, acting as official agent of the Government, took possession of the Arctic Archipelago on behalf of Canada, erecting a cairn at Winter Harbor (Melville) that claimed the "whole Arctic Archipelago lying to the north of America from longitude 60° W to 141° W up to latitude 90°", i.e., to the North Pole.

In the Canada Year Book (an official publication) up to and including 1924, the following statement was part of the description of the Canadian boundary:

"...Northern boundaries have yet to be fixed by further exploration, but Cape Columbia in north latitude 83°5' is the most northerly known point of land in the dominion...".

On June 1, 1925, the Minister of the Interior introduced a bill requiring licenses for scientists and explorers in the Northwest Territories. He said this would "assert our ownership over the whole northern archipelago...possibly there may arise a question as to the sovereignty over some land they may discover in the northern portion of Canada, and we claim all that portion...right up to the North Pole". This appears to have been the first official statement acknowledging Bernier's claim of 1909.

Then, in Canada Year Book 1925, the following statement appeared:

"...As regards the far north, Canada includes all the lands in the area bounded on the east by a line passing midway between Greenland and Baffin, Devon and Ellesmere islands to the 60th meridian of longitude, following this longitude to the pole, and on the west by the 141st meridian of longitude, following this longitude to the pole...".

On numerous occasions since 1925, the Government has at least by implication accepted the sector theory. Recent editions of the Canada Year Book, for example, say:

"...Northward Canada extends to the North Pole and includes the Arctic Archipelago between Davis Strait, Baffin Bay and the connecting waters northward to and along the 60th meridian on the east and the 141st meridian on the west."
(Canada Year Book 1954.)

And on December 8, 1953 in introducing a bill to rename the Department of Resources and Development by calling it the Department of Northern Affairs and National Resources, the Prime Minister said "We must leave no doubt about our active occupation and exercise of our sovereignty in these northern lands right up to the Pole."

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However Mr. Lesage's remarks of February 2, 1955 stated Canada's claims in a more modest way. He said then that Canada does not by statute adhere to the sector theory, nor for that matter, to the theory of occupation. But "we might adopt both theories because we would be safe on both". He then said Canada claimed sovereignty to three-mile territorial waters beyond Ellesmere Island, about 500 miles from the North Pole.

Jurisdiction Over Polar Ice

The first reference that can be found to a possible claim by Canada to jurisdiction over permanent polar ice beyond the three-mile limit is found in the King Report. King says:

"The case of the northern straits is different. They are not used for purposes of navigation merely. Although some of them, like Lancaster Sound and Barrow Strait may be said in a certain sense to lead through to the open sea beyond, yet they are blocked by ice during a great part of the year. A navigator, therefore, using them, if such could be the case, with the intention of passing through from sea to sea, must be presumed to have at least a half-formed intention, or expectation, of wintering there. A ship frozen in the ice is as effectually attached to the land as if she were in a harbor.

"All nations maintain the right to prevent vessels from landing except at specified ports. This right in the present case cannot be effectually exercised unless by prohibiting vessels altogether, without special permission, from frequenting these straits, that is, by considering the waters territorial.

"Therefore Canada may reasonably claim that the maintenance of her national rights, as such rights are universally understood, demands that their northern waters be considered territorial."

After World War II, statements by two Canadian officials gave the plain impression that Canada would adopt the extreme position that the polar sea, not only within straits, but within the entire Canadian sector, was Canadian territory. In an article for Foreign Affairs of July 1946, Lester Pearson, then Canadian Ambassador to the United States, wrote:

"A large part of the world's total Arctic area is Canadian. One should know exactly what this part comprises. It includes not only Canada's northern mainland, but the islands and the frozen sea north of the mainland between the meridians of its east and west boundaries, extended to the North Pole."

In a speech on May 14, 1949, H. L. Keenleyside, Deputy Minister of Mines and Resources, said:

"The Arctic and sub-Arctic regions of this country can be defined roughly as consisting of the Yukon Territory, the Northwest Territories

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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." (Lecture entitled "Recent Developments in the Canadian North" given by H. L. Keenleyside, Deputy Minister of Mines and Resources, at McMaster University, May 14, 1949.)

In a conversation with an Embassy officer in 1954, Northwest Territories Commissioner Gordon Robertson said that this point had never been clearly settled by the Government. He felt that various statements, particularly that by the Prime Minister on December 9, 1953 (see above) claimed sovereignty only in all lands contained in the Canadian sector. The polar ice question had been discussed in Cabinet, but no decision had been reached. A minority felt that Canada should claim polar ice while a majority including the Prime Minister felt that Canada should not attempt to do so. The Prime Minister was said to feel such a claim might lead to unnecessary quarrels; e.g., if a Russian-occupied ice island floated into the Canadian sector.

Talking to this officer in January 1955, Minister Lesage said flatly that Canada made no claim to polar ice within its sector. In his statement of February 2, 1955 quoted above, Mr. Lesage similarly indicated that Canada made no claim to the polar ice.

As has now been made public, a Soviet-occupied ice island did, in fact, float into the Canadian sector at one time. It is thought likely that this may be responsible for the apparent change in attitude on the polar ice question since 1949, and it may have been in Mr. Lesage's mind when he carefully limited Canada's jurisdiction to the territorial waters above Ellesmere in his recent remarks.

When newspapermen questioned officials of Northern Affairs about the Russian-occupied ice islands, they were told that Canada had no right to claim frozen seas. It was pointed out to them that Canada had never taken action in the form of notes to foreign powers to claim a Canadian sector.

U. S. Recognition of Canadian Claims

Canadian officials are extremely sensitive of the fact that the United States has never explicitly recognized Canada's claims to the Arctic islands, and that it does not accept the sector principle. However, they have frequently stated that by obtaining consent of the Canadian Government before sending official parties into the islands, the United States tacitly recognizes Canadian sovereignty. Similarly, the fact that private American citizens have purchased hunting and fishing permits as early as 1909 and have secured Scientists and Explorers Permits since these were required in 1925 strengthens the view that the United States has implicitly recognized Canadian claims.

In his article in Foreign Affairs for July 1946, Mr. Pearson pointed out that the 1944 Arctic Manual of the United States War Department described the Canadian Arctic as including all the islands to the north of the mainland of Canada.

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The Arctic Weather Stations ^{were} established in 1947-48 in the Queen Elizabeth Islands as a joint US-Canadian project with Canadian commanders at each station. No formal agreement exists for this project; a draft exchange of notes specified that these stations were in the "Canadian Arctic", however the exchange was never made effective. The formal basis for the weather station project seems to lie in the minutes of the meetings held each year by representatives of the various Canadian departments, and representatives of the U. S. services and the Weather Bureau. It has always been the understanding at these meetings that the stations were on Canadian territory. For example, in the meeting of March 11, 1948, a Canadian delegate said, without contradiction from the U. S. side, that "The selection of sites [for the Prince Patrick and Isachsen stations] would be made jointly by the U. S. and Canadian representatives, but the final decision rested of course with the Canadian officials since the programme was taking place in Canadian territory".

Although the United States at first assumed most of the responsibility for supplying the stations, the Canadians have taken over as much as they could handle, so that now only Alert on northeastern Ellesmere is supplied by the United States. The Canadians have said in the past that they planned to man the stations with Canadian personnel exclusively as soon as they can find the meteorologists needed. In addition, two all-Canadian stations are expected to go into operation shortly.

The United States has not, so far as is known, acknowledged any possible Canadian claim to polar ice by obtaining clearance for vessels proceeding more than three miles from land areas in the Arctic Archipelago. In 1954, the Beaufort sea project, involving two United States Navy ice breakers, was given clearance by the Canadians, but merely to travel in Canadian territorial waters without specifying what these might be. The ice breakers did enter within the three-mile zone and, indeed, landings were made in Melville Sound.

For the Ambassador:


 Jean R. Tartter
 Third Secretary of Embassy

cc: BNA

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