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CANADIAN SOVEREIGNTY IN THE ARCTIC

No clear definition of the extent of Canada's territorial jurisdiction over the lands and waters of the Arctic Archipelago has ever been permanently established. During the past several decades various and often conflicting interpretations have been advanced by Canadian officials, but until recent years the generally inaccessible and icebound North has not posed sovereignty problems of sufficient magnitude to warrant international attention and solution. With the passage of time and the development of new technological capabilities, the problems to be resolved have increased in number and grown more complex. The initiation of polar flights in the 1950's, submarine passages under the ice in the 1960's, and currently the voyage of the commercial tanker Manhattan through the Northwest Passage have brought into focus many problems that are peculiar to the Arctic.

Jurisdiction over the land areas in the North has been exerted by Canada without challenge for several decades, even though never formally recognized in International Courts of Law. As early as 1897 the Arctic Archipelago was included as part of the new District of Franklin. In 1904 a map showed Canada as extending all the way to the North Pole via sector lines along the 60th and 141st meridians -- a theory Canada has intermittently cited and continued to map. By the 1920's territorial outposts were established and regulatory practices were in force throughout the North. Since 1930, when Norway relinquished any rights to the Sverdrup Islands, no foreign claims have been made, and for many years foreign (including U.S.) compliance with Canadian requirements in the Arctic has stood as evidence of general acceptance of her jurisdiction, at least over the land.

Sovereignty over water and ice areas, however, has yet to be resolved. The extreme climatic characteristics of the Arctic Archipelago present unique problems and pose many questions that do not pertain to the rest of the world, but in the past practically no attention has been given in international law to areas of perennial or perpetual ice. The Northwest Passage is usually blocked 8 to 10 months annually and occasionally for the entire year. Only in recent years have reinforced ships (Canadian or U.S.) succeeded in negotiating it during the summer, and it has yet to be proven feasible as an international shipping route for even a short period each year; the Manhattan was turned back by massive pressure ridges of compacted ice in M'Clure Strait even with the assistance of icebreakers, necessitating the use of the narrow Prince of Wales Strait.

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Canada's Territorial Sea and Fishing Zones Act of 1964 continued her traditional 3-mile rule for territorial seas, the baselines for which are determined by the straight baseline method rather than the coastline method. To date, application of this provision has actually occurred only in western coastal waters and in eastern coastal waters south of 60°N. According to the American interpretation, the methods used exceeded the limits laid down by the Geneva Conventions of 1958, and therefore the United States does not concur with these Canadian claims. Additional baselines, northward along the coast to about 70°N, were included in the original Canadian proposals to protect historically important fishing zones there. However, the baseline delineation across several major coastal indentations caused such strenuous objections by the United States that these proposals were never put into effect.

Recent agitation among Canadian pressure groups, aroused by threats of pollution and potential imbalances in the ecology of the Arctic, may precipitate more inclusive claims by Canada in the North than have formerly been proposed. Two courses of action with broad ramifications are currently under consideration in Ottawa: 1) to treat the entire Archipelago as a whole; and 2) to establish a 100-mile Pollution Zone around the Archipelago.

The application, around the entire Archipelago, of straight baselines would place Canada's territorial ~~waters~~ <sup>area</sup> around that perimeter, leaving all of the channels through the islands as internal waters over which Canada would, under international law, have complete control. Despite her assurances of the right of innocent passage through these waters, as well as the declaration of this right under the Geneva Convention, it is almost certain that Canada would impose whatever restrictions she deemed in her own interest. The international implications of so large an area becoming internal waters, especially within an archipelago, are too complex to permit the United States to support the proposal. The possible alternative of delineating territorial waters around each island in the Archipelago would place much less stringent restrictions on foreign vessels, leave portions of the Northwest Passage as part of the high seas, and prohibit Canada from controlling water areas far beyond normal jurisdictional authority.

The establishment of the 100-mile Pollution Zone would give Canada unprecedented control over shipping and other activities within 100 miles of the nearest Canadian shore (limited by the 141st meridian on the west and the median line between Greenland and Canada on the east).

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Its purpose would be to protect the entire Archipelago from the threat of surface pollution. Preventive regulations, prohibitions, penalties, requirements for financial responsibility and liability, and enforcement procedures would be legislated, and shipping safety control zones would be designated to check safety standards of entering ships. The territorial sea would be extended to a width of 12 miles. Canada justifies such extreme measures on the bases of degree of risk involved in navigating Arctic waters, the threat to Canadian interests, the right of self defense, and the need for effective action soon rather than waiting for international law to cope with anti-pollution jurisdiction after much damage is done. The United States is in agreement with the Canadians as to the need for protection of the Arctic against pollution and other destructive practices and would support the establishment of an international body to administer measures of control. It would be difficult, however, for the United States to sanction any one nation's having the power inherent in the Canadian proposal regarding pollution control.

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