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Canadian Arctic Sovereignty and Security: Historical Perspectives

Edited by P. Whitney Lackenbauer



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Cover: The Mobile Striking Force, an airportable and airborne brigade group designed as a quick reaction force for northern operations, was an inexpensive solution to the question of how Canada could deal with an enemy lodgement in the Arctic. During training exercises, army personnel from southern Canada learned how to survive and operate in the north. In this image, taken during Exercise Bulldog II in 1954, Inuk Ranger TooToo from Churchill, Manitoba relays information to army personnel in a Penguin. DND photo PC-7066.

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Calgary Papers *in Military and Strategic Studies*

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Edited by P. Whitney Lackenbauer

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Claiming the Frozen Seas: The Evolution of Canadian Policy in the Arctic Waters

Adam Lajeunesse

In September 1969, the American supertanker S.S. *Manhattan* set out to test the feasibility of shipping petroleum through the Northwest Passage. Moving into the Canadian Arctic without having requested transit permission from Ottawa, the supertanker and its US Coast Guard escort, the USCG *Northwind*, quickly provoked an international incident.¹ For most Canadians, this was the first indication that their sovereignty over the Arctic waters was in any way insecure. Yet the *Manhattan* incident was a manifestation of a long standing difference of opinion over the status of those waters. The furor it created also marked the end of nearly two decades of Canadian policy which had relied upon quiet discretion and the maintenance of the status quo to preserve and strengthen its sovereignty claim and ultimately win American acquiescence. This study is an attempt to trace the evolution of that policy from the late 1940s until the voyage of the *Manhattan*. Records from the era largely remain classified and any attempt to piece together the precise shifts in official Canadian thought must, by necessity, be incomplete and partially speculative. There is however enough material now in the public domain to sketch the process of government policy evolution up until the late 1960s with confidence.

The vast majority of scholarship on the subject of sovereignty over the Arctic waters tends to begin with the voyage of the *Manhattan*, the point at which the issue truly left the political shadows and stepped into the public's eye. Much of the academic inquiry has also been done from a legal perspective – such as the extensive work of Donat Pharand² – rather than from a political or historical one. However, it was the earlier period, stretching from the Second World War to the *Manhattan*, where the political groundwork for the later sovereignty battles was quietly laid down.

The nature of Canadian policy during this period is not in any real dispute. That the Canadian claims had been inconsistent and hesitant is widely agreed upon by the historians who have shaped the historiography, such as Jack Granatstein, Edgar Dosman, and Elizabeth Elliot-Meisel.³ The origins

of this hesitancy are also largely accepted, namely the fear of an American legal and political challenge to any firmly asserted Canadian claims and the uncertain status of international law. Whitney Lackenbauer would also cite a general desire not to upset the ongoing Canada-United States continental defence projects.⁴

What remains are a set of important questions: How effective was this policy of prevarication? In fact, can it even be considered a policy? Was this inaction the result of a conscious and considered decision on the part of Canadian governments to allow time to strengthen Canadian sovereignty or did it simply represent a lack of policy and an aimless political drift? The most recent and certainly the most direct attempt to address this issue has been the work of Lackenbauer and Peter Kikkert.⁵ The Lackenbauer approach considers this “careful diplomacy” to be a considered and ultimately effective policy which strengthened Canada’s legal and political position in the North.⁶

This position does a good job of placing the actions of External Affairs within the context of the limitations of their times. It distorts the actions and intent of successive Canadian governments, however, by placing them within a policy framework which did not truly exist and, this chapter argues, greatly exaggerates their accomplishments. The ‘wait and see’ approach which successive Canadian governments hoped would strengthen their position in fact accomplished the opposite and the policy of carefully building a precedent of Canadian sovereignty was in fact no policy at all but rather the *ad hoc* reactions of a government with no consistent direction and, it could be argued, an equal measure of political will.

Ironically Canada did, in a sense, possess a reasonable and fairly consistent policy throughout the 1950s and 1960s. The decision to rely on straight baselines as a means of claiming sovereignty over the waters of the Arctic archipelago was reached in 1956 and it was this policy, with only minor alterations, which was ultimately implemented by the Mulroney government in 1985. Yet there remained a fundamental disconnect between this policy and the pronouncements and actions of politicians. The various actions and statements on the subject from the St. Laurent, Pearson and Diefenbaker governments did not serve to build precedent since they were inconsistent and often contradictory. Rather, they demonstrated a complete lack of direction, confusion and uncertainty about what it was in the Arctic Canada claimed and why or how exactly it claimed it. Whatever policy had been developed and still existed at the bureaucratic level failed utterly to manifest at the political level.

The result was that Canadian control and ownership in the region, which the government sought to establish, remained weaker than it would have had a more consistent and direct policy actually been implemented and carried throughout the period. This does not necessarily mean pushing an overt claim to sovereignty and demanding global – and particularly American – acceptance. By the early 1960s at least that had proven impossible to achieve at acceptable political costs. However it is hardly hindsight to suggest that, if the ultimate policy of the government was to establish precedent and gradually accrue sovereignty, then a consistent, specific and even overt policy could have been enunciated and followed with minimal political risk. Ultimately, the foundation which this lack of policy left the government with in 1969 was weak and wide open to challenge.

In 1946, Lester Pearson, then Canada's ambassador to the United States, published an article entitled "Canada Looks down North." In it, he claimed that Canada's sovereignty extended to "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 extending to the North Pole."⁷ While not representing official policy, Pearson's article demonstrated the beginning of a shift in Canadian thinking about the Arctic. It introduced a new element to the question of sovereignty, namely the question of ownership over the vast frozen waters within what was then referred to as the 'Canadian sector.'

What made this a novel event was the fact that, until the post war years, Canadian sovereignty concerns in the North had been focused almost exclusively upon the lands.⁸ Since the transfer of the Arctic from British to Canadian control there had been a number of naval expeditions sent north to consolidate Canada's claim. However the object of all these expeditions had been terrestrial sovereignty.⁹ Beginning in 1946 with the joint Canadian-American weather station program this changed, as missions through the Arctic archipelago, predominantly by American vessels, became a regular occurrence. Like sovereignty concerns over the land, the prospect of American vessels traveling through waters devoid of any significant Canadian presence unsettled the government.

Elliot-Meisel points to 1945 as the time when Canadian concerns began to shift from the lands to the waters however it is difficult to see such a shift so early.¹⁰ Despite this increased interest, attempts to claim the Arctic waters remained few and unofficial. Canadian attention remained focused on the increasingly frequent American requests for military installations across the North. Since the Mackenzie King government still felt unsure of its claims to many of the uninhabited islands of the region it is understandable that

the status of the waters would be of secondary concern. More convincing is Gordon Smith's assessment that concerns for the status of the waters became paramount only in the 1950s.¹¹

In the late 1940s, there was also no vehicle in accepted international law for claiming the Arctic waters, at least beyond the traditional three mile territorial sea. Indeed, the only means of asserting Canadian authority was to lump the waters in with the land using what was called the sector theory. This theory assumed the use of meridians as national borders, running from a state's eastern and western extremes to the pole. All territory bracketed by these lines, discovered or not, supposedly belonged to that country. This is what Pearson had claimed in 1946 and what others had occasionally toyed with as well. For instance, Hugh Keenleyside – then Deputy Minister of Mines and Resources – repeated the claim in 1949, describing Canada's Arctic as 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."¹²

The use of the sector for claiming the waters was a kind of default position, used simply because it provided the easiest justification for extending sovereignty out into what were international waters. There was little real chance of successfully claiming anything based on the sector principal. The United States had consistently rejected it¹³ and it was not, and never would be, recognized as a legitimate principal in international law.¹⁴ The claims made to the waters in the latter half of the 1940s were really little more than political posturing with no real foundation. Indeed, by March 1950 the Interdepartmental Committee on Territorial Waters had officially recommended postponing any decision on the question of sovereignty and by June a study requested by the Department of Justice had determined that it could find no indication that Canada had ever actually laid down a firm ruling on the status of the waters within the archipelago or on the legal status of the Arctic ice.¹⁵

It was only in the early 1950s that policy concerning the waters slowly began to evolve more realistic aims and methods. The catalyst proved to be a shift in international law brought about by the International Court of Justice (I.C.J.) decision in the 1951 *Anglo-Norwegian Fisheries Case*. The Norwegian victory legitimized that country's claim to the archipelagic fringe along its coast as historic internal waters through the use of straight baselines; these baselines being lines drawn from headland to headland along the coast which enclosed the waters to landward as internal and under the full sovereignty of the state. The court upheld Norway's claim based on the nature of the coast,

the fact that these waters had long been regarded and treated as internal by Norway, and the long history of implicit recognition by other states.¹⁶

The case introduced an interesting new precedent into international law by legitimizing the enclosing of indented coastlines and archipelagos in a fashion which had previously been reserved only for historic bays. However, the case's wider applicability was uncertain. While the court did place heavy emphasis on the particular nature of the area's geography, it also stated that its judgement on the 'Norwegian system' was not an exceptional case but rather "the application of general international law to a specific case."¹⁷

This ruling thus produced a precedent by which Canada could conceivably enclose and claim the waters of the Arctic archipelago. The archipelago met the basic requirements of the ruling. It was a group of islands which formed a single unit and an integral part of the coast. The Canadian ratio of water to land was higher than in the Norwegian example, 8.22:1; however in the opinion of legal expert Donat Pharand, that ratio was close enough and enhanced by the presence of permanent ice cover.¹⁸ Canada could also prove an economic interest of long duration in the waters of the archipelago through the activities of the local Inuit population which has hunted on the ice since time immemorial. The history of state control was relatively sparse, however there had never been an overt challenge to Canada's authority and would not be until the voyage of the *Manhattan* in 1969.

Largely due to this development in international law, Canadian policy appears to have shifted away from the use of the sector theory by the early 1950s, at least for the purpose of claiming waters. In 1954, the Department of Mines and Resources published a survey of Canada's territorial boundaries and, despite conspicuously drawing national boundary lines through the Arctic Ocean up to the North Pole, it made clear that these waters were not Canadian. Rather, the sector lines were described as "merely lines of allocation, which are delimited through the high seas or unexplored areas for the purpose of allocating lands without conveying sovereignty over the high seas."¹⁹ The next year the Minister of Resources and Development, Jean Lesage, told a Commons Committee on Estimates that Canada definitely did not base its claim to the Arctic waters on the sector principle and had no formal claim over the Arctic Ocean. When questioned by opposition member Douglas Harkness at that same meeting about what claims Canada did make, Mr. Lesage replied that the entire question was under review and serious study by an inter-departmental committee.²⁰

The Interdepartmental Committee on Territorial Waters had been studying the broader question of maritime jurisdiction since 1949. By 1952 it was

working in conjunction with Professor Dean Curtis, who External Affairs had commissioned to help survey Canadian options in light of the *Fisheries Case* and other changes to international law.²¹ The focus of most of this work was on the Atlantic, yet some departments were already expressing an interest in the potential of drawing baselines around the Arctic archipelago.²²

By 1955 a cabinet committee had also been formed to study the question of the Arctic in more detail. This committee's recommendations to Cabinet were presented on 28 February 1956. They were extremely conservative and appear to differ very little from the advice consistently offered by the Interdepartmental Committee. Namely, it was suggested that the government continue to avoid any action on the issue.²³ Yet despite the cautious recommendations, the final Cabinet decision, taken on 15 March 1956, represented a dramatic policy re-evaluation. Cabinet had essentially settled on claiming as internal (or inland) the waters within the Arctic Archipelago. This Cabinet decision read:

. . . the waters of the archipelago are Canadian inland waters. For present purposes these might be taken as waters within a line starting at Resolution Island, southeast of Baffin Island, and running from headland to headland in a route triangle north to the top of Ellesmere Island and thence southwest to Banks Island and the Arctic coast of Canada.²⁴

While the Committee had cautioned the government with regards to the potential political risks of using baselines, the decision to rely upon them as the new basis of Canadian claims is clearly indicated by the use of the words 'inland waters,' the description of a line 'running from headland to headland' and the fact that by November 1956 the Department of Mines and Technical Surveys had drawn up a series of straight baselines to enclose the waters of the Arctic archipelago.²⁵

On 3 August 1956, in the House of Commons, this policy shift was implied for the first time. In an exchange with Conservative Member of Parliament (MP) Alvin Hamilton over the status of the Arctic Ocean, Mr. Lesage announced that his government had "never subscribed to the sector theory in application to the ice." He continued on to say: "we have never subscribed to a general sector theory. To our mind the sea, be it frozen or in its natural liquid state, is the sea; and our sovereignty exists over the land and over our territorial waters." When Hamilton objected to this stance, Lesage simply replied that he hoped his colleague believed in the freedom of the

seas, which is exactly what the government now considered the Arctic Ocean to be.²⁶

This Cabinet decision marked the beginning of a policy which, while not openly adopted until 1985, informed the actions of External Affairs and, through them, other government departments which requested information on Canadian policy and the Arctic. This policy survived and was used in Liberal and Conservative administrations and was still used by External Affairs as late as 1968.²⁷

It was a solid and, relative to the sector claims at least, a legally defensible position. In his article "A Fit of Absence of Mind," Jack Granatstein sees the statements of Lesage and the Liberals in 1956 as those of a confused government, unsure of its policy.²⁸ On the contrary, Lesage's statements to the House represented the beginnings of the first firm policy over the Arctic waters Canada had ever designed. In his response to Hamilton, Lesage was not disavowing Canadian sovereignty over all the Arctic waters. A closer reading of his statement indicates that he was only disavowing the sector principle and any Canadian claims to the Arctic Ocean. Nowhere does he surrender any ground on Canadian ownership of the waters within the archipelago. Granatstein goes on to say that on 6 April 1957 Prime Minister St. Laurent "offhandedly took back the Arctic waters" in his comments to the House of Commons.²⁹ St. Laurent had told the House: "Oh yes, the Canadian government considers that these are Canadian territorial waters."³⁰ Yet, the Prime Minister was not taking anything back which had been given away. The waters under discussion at the time were those within the archipelago, which the government had every intention of holding onto.

The decision to base Canadian sovereignty claims on straight baselines was a delicate task. Despite the ICJ ruling in the *Fisheries Case* the legal validity of any potential Canadian claims was still a great unknown. The geography and history of the Canadian and Norwegian archipelagos were very different and the fear of an American challenge to a Canadian assertion of sovereignty was ever present. By 1952, the Interdepartmental Committee was advising the Privy Council Office that the I.C.J. decision's applicability elsewhere remained "ambiguous."³¹ The exact allowable length of baselines was not laid out in 1951 or even later at the 1958 Law of the Sea Conference in Geneva.³² Norway's baselines however stretched from only a few hundred yards to a maximum of 44 miles.³³ Canada's would be considerably longer. The preliminary survey done for the Minister of Mines and Technical Surveys in 1956 placed the total baseline length at 2,902 miles, with the largest enclosed strait being M'Clure Strait with a line of 130 miles across.³⁴

The potential status of the Arctic waters as 'historic,' a factor which had played a crucial role in the Norwegian victory, also remained nebulous. There was no solid definition of 'historic waters' given either in 1951 or in the 1958 Convention on the Territorial Sea, though the principal was studied in two important U.N. Secretariat documents prepared at the time of the first Law of the Sea Conference. The first document was a 1957 *Memorandum on Historic Bays* and the second, a 1962 study on the *Juridical Regime of Historic Waters, including Historic Bays*. These studies pointed out the close relation between the concept of historic waters and historic rights in general on the one hand and the concepts of custom, prescription and occupation on the other. It was presumed that any historic rights and titles have been preceded by two elements: a constant practice or exercise of state authority and a toleration or acquiescence on the part of other states, particularly those directly concerned or affected by the practice in question.³⁵ These principals of occupation and acceptance were also the same means given for the consolidation of title for straight baselines, though with a lower burden of proof.³⁶

Canada's history of exercising authority over the waters in question was an area of concern. The Inuit had long used the ice for hunting and transportation; however these activities only reinforced the Canadian claim to the specific areas of Inuit activity, leaving out some of the waters further west and north. Canada could also point to a series of naval expeditions; for instance the expeditions of Captain J.E. Bernier (from 1904-1910), the Eastern Arctic Patrol (begun in 1922) and the work of the CGS *Labrador* (which began operations in 1954). Yet, more important was the active application of Canadian law to these waters. This had been accomplished to some extent by amending the *Fisheries Act* in 1906 and forcing whalers to obtain licenses to operate in Hudson Bay and the waters north of the 55th parallel.³⁷ During his voyages of 1906-7 and 1908-09, Captain Bernier collected licensing fees from Scottish and American whalers, thus implying some foreign acceptance of Canadian authority.³⁸ Despite this, Canada's historic control remained limited to a relatively few examples and still covered only a small portion of the waters in question. As such, the government lacked the confidence that its case was strong enough to bring before an international tribunal.

In addition, and perhaps of even greater concern than the legal validity of the case, was the potential reaction of the United States. Throughout its history the United States has remained a strong proponent of the freedom of the seas. It had never accepted the sector principal as a basis for claiming

sovereignty and its policy on the Arctic waters as a whole was fairly clear. In 1951 a State Department policy note was sent to its embassies and consulates to inform its representatives of official policy:

Nor could the Arctic seas, in our view, be made subject to 'territorial' sovereignty of any state even though they might contain ice areas having some characteristics of land . . . The U.S. position is that the Arctic seas and the air spaces above them, in so far as they are outside of accepted territorial limits, are open to commerce and navigation in the same degree as other open seas.³⁹

Reference to the 'frozen seas' could be interpreted to apply only to the larger seas within various sector claims. This would include sections of the Arctic Ocean as well as the Barents, Laptev, Kara and East Siberian Seas north of Russia, which were then being talked about by the Russians as part of their sector.⁴⁰ However the prospect of an American rejection of any Canadian claim was real and fear of such a rejection contributed a great deal to the Canadian government's decision to refrain from making its new policy public.

Instead, the ultimate objective of the Canadian government seems to have been to gradually consolidate its title to the Arctic waters. By building a precedent of Canadian activity and authority in the region and by ensuring that its control was not questioned by any foreign state, Canadian governments assumed they could create a stronger foundation for a future claim when international law had developed or circumstances became more propitious.

While this tactic had the benefit of preventing any outright rejection and the political difficulties which that would entail, it posed a number of problems as well. While the St. Laurent government may have had a firm idea of what it was it wanted to claim, the government's discretion went beyond simply keeping the policy unofficial. There was no public mention at all that the Canadian government considered the Arctic waters to be internal. In his statement to the House in 1957, St. Laurent continued to refer to them as 'territorial' just as Lesage had done when debating Hamilton in March 1955.⁴¹ This was a somewhat confusing stance since international law did not allow for territorial waters past the three mile limit.⁴² A casual clarification of Canadian claims would have done much in the way of setting a precedent and clarifying a confusing situation. It would also have been unlikely to elicit much of a reaction from the United States, particularly in the late 1950s when

the construction of the D.E.W. line was so high a priority to the American government.

The result of this secrecy was that the Canadian stance remained ambiguous and inconsistent as different interpretations of Canadian sovereignty were not reined in. A month after the policy was laid down, the Privy Council Office circulated a letter to all government departments informing them of Canada's principled decision to "lay claim to sovereignty over the waters of these channels" and instructed them not to take any action or make any public statements which might prejudice a future Canadian claim.⁴³ This was a passive approach; actions which would prejudice the claim were avoided, but statements which might strengthen it were not encouraged. These instructions also did not govern the actions of opposition MPs or, more importantly, the actions of the opposition when it came into power.

By June 1957, the Liberal government had been replaced by John Diefenbaker's Conservatives. While the Conservatives had access to and must have been aware of the Liberal Cabinet decision, they seem to have paid it less attention. That it was an unofficial and secret policy, doing so proved easy. Alvin Hamilton, who had questioned Jean Lesage's anti-sector theory pronouncements in 1956, was made Minister of Northern Affairs and National Resources in August 1957. In June 1958, he brought the sector principle back into play in a speech to the Standing Committee on Mines, Forests, and Waters. There he claimed that "the area to the north of Canada, including the islands and waters between the islands *and areas beyond*, are looked upon as our own and there is no doubt in the mind of this government, nor do I think in the minds of former governments of Canada, that this is national terrain."⁴⁴ While the sector theory is not specifically mentioned, Hamilton's reference to 'areas beyond' heavily implies its influence.

To add to the confusion, Lester Pearson, who had been a member of the former Liberal Cabinet as Secretary of State for External Affairs, publicly advocated revisiting the sector theory in the House of Commons two months later.⁴⁵ Pearson had been a proponent of the sector theory at least since his article in *Foreign Affairs* first claimed the Arctic waters for Canada in 1946. Free from the constraints of upholding his government's unofficial policy, Pearson launched back into the debate intent on again advocating for the sector. Yet, only two months after making his sector pronouncement, Hamilton appeared to have reversed course slightly and stated that Canadian sovereignty was in fact principally based on occupation, noticeably sidestepping the sector theory yet not abandoning it.⁴⁶

The Conservative use of the sector principal was short lived however and Hamilton's original statement seems more likely to have been a nationalistic exaggeration, not uncommon in Commons debates, rather than a conscious policy shift. Instead, the new government had decided to place less emphasis on the sector and more on the idea of exercising effective occupation. How Canada could effectively occupy the vast frozen icecap of the Arctic Ocean was never discussed in any detail. However, gradually the sector theory was marginalized and ultimately, in February 1960, a memorandum was presented to Cabinet by External Affairs recommending it be placed "in reserve," stating that no claims should be made to "the waters and ice of the polar basin."⁴⁷ It was further suggested that a decision be reached in principle to claim the waters of the Northwest Passage. Yet, by the end of the decade, the Conservative position had become truly confusing. In March 1960, when Liberal MP Paul Hellyer asked if the government still subscribed to the sector theory, he received the evasive response of "we subscribe to the Canadian theory of sovereignty."⁴⁸ What exactly that meant remains a mystery.

Despite Diefenbaker's well documented mistrust of External Affairs, there had been no major turnover in that department's bureaucracy during the period and it is likely that the Conservatives were getting most of the same advice as their Liberal predecessors. Indeed the memorandum of February 1960 mentioned above certainly seems to imply this. And in 1962, while official government policy remained unclear, the Legal Division of External Affairs was still using the 1956 decision to advise the military on Canada's position in the Arctic.⁴⁹ It is possible that the Diefenbaker government accepted the logic of the Liberal decision on baselines and simply found it politically difficult to publicly abandon Canada's informal claims. Or perhaps, like the Liberals, they were hesitant to publicly call the waters internal, lest that be taken as a declaration of sovereignty and provoke some form of international backlash. Regardless, the effect was to allow the issue to remain nebulous and to leave ministers without direction, clearly evidenced by the numerous conflicting or inconsistent statements on the subject. Ultimately this produced the image of a government unsure of its sovereignty, unsure of what it claimed and how or why it claimed it.

The decision to avoid a direct claim to the waters of the Archipelago may have avoided a direct confrontation with the United States; however, the building up of a precedent for Canadian sovereignty was almost certainly hindered by the failure to announce a reasonable and consistent government policy. Politically this uncertainty did not boost Canadian credibility while legally it could only have been unhelpful.

In its *Fisheries* ruling, the I.C.J. had cited the fact that Norway was able to prove that it had applied the same system of delimitation consistently and without interruption for some eighty years before 1951. The I.C.J. had ruled that “in the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose.”⁵⁰ The verdict was not unanimous however and the dissenting judges stated that the flaw in the Norwegian case was their lack of precision. In the opinion of Judge Hus Mo, the Norwegians did not adequately define the space which they considered to be under their control, nor – according to Judges McNair and Reid – did they adequately advertise this information.⁵¹

Despite these shortcomings, the uncertainty of the Canadian position stands in stark contrast to the consistency and specificity of the Norwegian claims. If, as Judge Mo stated, “precision is vital to any prescriptive claim to areas of water which might otherwise be high seas,” the ambiguity of the Canadian claim and the failure to state publicly a consistent position must retard the solidification of its sovereignty.

The political effects of this ambiguity were important as well and perhaps best illustrated by a murder on the ice. In July 1970 on Ice Island T-3 an American named Bennie Lindsey was murdered by another American, Mario Jamie Escamilla. This island was adrift at the time at 84° 45.8' N and 106° 24.4' W, coordinates within the Canadian sector. Lindsey was brought back to the United States and convicted of manslaughter on the high seas. Canada failed to demand jurisdiction over the case, as it should have if it truly claimed sovereignty over the waters of its sector. Nor however did it disavow interest in the case. Instead it sent a message to the American government which read: “The Canadian government continues to reserve its position on the question of jurisdiction . . . and if it is considered necessary for the purposes of the legal proceedings in question the Canadian government hereby waives jurisdiction.”⁵² When the defence attorneys persisted in trying to get behind the meaning of the Canadian note they were unable to get any clear answers on what exactly Canada’s official position was. The reaction of the American court to the Canadian note was described in a telegram from the Canadian Embassy to External Affairs:

Judge Lewis said that if you really got behind big fancy words used in note all it really meant was that Cda was saying it reserved right at some time in the future if it ever thought worth

its while to claim as much jurisdiction as it could get away with. This caused great deal of laughter in court room, particularly from State Dept. reps. [sic]⁵³

Despite the uncertainty of the Canadian claim, the traditional American aversion to restrictions of the high seas and the stated American interest in maintaining the Arctic seas as international waters, Canadian policy actually enjoyed admirable success until at least the early 1960s. Technically, the international acceptance which Canada sought for its claims did not need to be explicit recognition. The Norwegian government had successfully been able to argue that it considered the absence of reaction on the part of foreign states as sufficient to confirm the peaceful and continuous character of its claim.⁵⁴ The sufficiency of a mere absence of protest was again confirmed in the U.N.'s 1962 *Juridical Regime of Historic Waters, Including Historic Bays*.⁵⁵

Donat Pharand concluded in 1971 that that this "general toleration" by other states was enough to consolidate a historical claim.⁵⁶ Maurice Bourquin takes a similar position, expanding and stating that only if foreign states actively interfere with the exercise of sovereignty can it be considered an effective protest.⁵⁷ Writing in 1963, Ivan Head, then a Foreign Service Officer with the Department of External Affairs, was content that Canada had managed to meet these criteria. In an article in the *McGill Law School Journal* he wrote: "As the years pass and as occupation becomes more effective, always in the absence of any foreign claim, the title assumes those characteristics of continuity and peaceful lack of disturbance which international law requires to be present in valid territorial claims."⁵⁸

This was the case because, despite theoretical objections to enclosing large bodies of water, American policy towards the Arctic remained pragmatic. There had been no American attempts to have the archipelagic waters recognized as international straits nor was there even any attempt to force Canada to recognize the Arctic Ocean as high seas. American vessels were never sent into the archipelago without Canadian permission and Ottawa had been able to effectively assert its control over maritime traffic in the area. The rationale for the American decision to go along with Canadian demands was simple and obvious. The Northern defence projects, from weather stations and airbases to the massive D.E.W. line project, needed to be supplied. From 1955 to 1957 the construction of the D.E.W. line required 324 voyages into the waters of the archipelago by ships carrying 1.25 million tons of building material and supplies.⁵⁹ The United States government was well aware of Canadian sensitivities regarding Arctic sovereignty and understood that to

have challenged Canada over the issue would not only have caused a breach in Canadian-American relations but it would have hindered or killed defence projects which the United States considered vital to its national security.

The American government thus considered it expedient to offer Canada a level of implicit recognition. As such, the Americans requested permission before sending vessels into the Arctic and even referred to sections of the Northwest Passage as "Canadian territorial waters."⁶⁰ While the paths of American Navy missions did at times lead through Canada's internationally recognized three-mile territorial sea, it is important to note that the State Department made no distinction between that territorial sea and the areas which, in theory, it should have called international waters.

Throughout the 1940s and 1950s, whenever the United States Navy entered the waters of the archipelago, the Canadian government made sure that it was consulted on every aspect of the voyage, from activities and crew to possible routes. If a route was to be changed, Ottawa insisted on being informed. For the construction and supply of the D.E.W. line, the United States sent out two major convoys each year between 1955 and 1958. For each, the US Navy was required to apply for a waiver from the provisions of the *Canada Shipping Act*, implying that the United States government recognized the authority of that act, and thus of the Canadian government. In the House of Commons, Prime Minister St. Laurent stated that he was not sure "whether we can interpret the fact that they did comply with our requirements that they obtain a waiver . . . as an admission that these are territorial waters, but if they were not territorial waters there would be no point in asking for a waiver."⁶¹

Even as late as 1958 the United States continued to request permission to undertake hydrographic surveys in sections of the Northwest Passage and, in their communications with External Affairs, made no effort to dispute Canadian control over those waters or even hint at the possibility that the United States government might consider them to be anything but Canadian.⁶² The issue becomes less clear into the 1960s, both because records become generally less available and because American naval activity shifts to the use of nuclear submarines, whose activities are almost always secret. However from the records available it appears as though the United States generally continued this quiet acknowledgement of Canadian authority at least until 1963.

In 1958 the nuclear attack submarine USS *Nautilus* made the first submerged transit to the North Pole in a voyage hailed as a triumph by President Eisenhower and the American media. The passage demonstrated the potential use of the Arctic as a transit corridor between the Pacific and Atlantic and

even as a potential commercial highway.⁶³ The voyage also marked the beginning of regular American submarine transits through the Arctic waters. The first voyage through the archipelago was undertaken two years later by the USS *Seadragon*. Canada had an observer aboard the *Seadragon* in the person of Commodore O.C.S. Robertson (R.C.N) and had been informed of the passage beforehand. According to Canadian documents, the United States government had requested "Canadian concurrence" in advance of the voyage. External Affairs was pleased to comply as they considered the precedent would greatly strengthen Canada's claim that the waters were internal since there would be no need to request Canadian concurrence to transit the high seas or an international strait. As such, permission was granted in accordance with the Canada- United States agreed clearance procedure for visits by public vessels and a reply was sent on a service to service basis.⁶⁴

Since the government had classed the *Seadragon's* voyage as an operational visit it believed that only notification rather than an official request was required. Captain George Steele, commander of the *Seadragon*, also made it clear in his 1962 book, *Seadragon, Northwest under the Ice*, that the voyage was undertaken with the cooperation of Canada and in the context of joint alliance cooperation.⁶⁵ The 1962 voyage of the USS *Skate* worked in the much the same way. Again, Canada was "formally notified" of the *Skate's* plans and the Canadian Defence Department noted that notification was made in accordance with established procedures for operational visits. It was again explicitly assumed that American concurrence was strengthening Canadian sovereignty.⁶⁶ This view was not without foundation. It thus seems fairly clear that until at least 1962 the American government was still prepared to offer Canada the implicit recognition that it required. While it may not have agreed with Canadian sovereignty claims it did not actively oppose them and that was the crucial point.

It seems clear that throughout this period the United States was as interested in avoiding a political controversy over the subject as was Canada. Yet the pragmatic American stance did not necessarily mean that the United States was disinterested in the ultimate fate of the Arctic waters. Following the voyage of the *Seadragon*, Captain Steele was told to avoid discussing the issue of sovereignty with reporters and if the question of "internal versus territorial waters" was raised he was to simply refer it to the Navy Department. More interestingly, the captain was also told to avoid answering any question about whether or not Canadian clearance had been requested for the passage.⁶⁷ The American government was also concerned with the prospect of appearing to recognize Canadian sovereignty. Indeed, by 1962 an External

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Affairs memo described the Americans as being “fully alive to the sovereignty question” and likely to “balk” at recognizing any Canadian claims outside its three mile territorial limits.⁶⁸

In the late 1950s and early 1960s American interest in the status of the waters had increased along with its potential strategic and economic importance. Apart from the increased attention caused by the arrival of the nuclear submarine there had also been major oil discoveries in the late 1950s, transforming Alaska into a potentially important petroleum reserve. President Dwight Eisenhower’s naval aide, Peter Aurand, described the President’s reaction to the *Nautilus’* passage in particular:

The President emphasised to me the great advantages of a sea route through the Northwest Passage for commercial purposes. When you look at a map of the Arctic, commercial nuclear submarines come into the picture to great advantage by cutting the distance between Tokyo and London by thousands of miles. Moreover if they bring in large oil reserves in the Point Barrow region, in case of war, this route would be the closest supply to Europe by far.⁶⁹

The first years of the 1960s had also seen ever increasing attempts around the world to close off large areas of the high seas. Canada had certainly not been the only state to consider the application of straight baselines. By 1960 Indonesia had drawn baselines around its entire archipelago and the Philippines would do likewise in June 1961. Unlike the Arctic however, these nations lay astride vital sea lanes and their actions provoked vigorous American protests. In 1960 the United States conveyed its displeasure by announcing that the submarine, *USS Triton*, would pass through the waters about to be claimed by the Philippines on its circumnavigation of the globe.⁷⁰

For these reasons, obtaining American compliance appears to have become an increasingly sensitive and awkward affair as the 1960s progressed. During the 1962 return voyage of the *USS Skate*, for instance, External Affairs learned of the transit only after it had already begun. The department felt the need to protest yet worried that this might be misunderstood and create “political embarrassment.” It was also hoped to convince the United States to consult with them in the future before any publicity regarding such transits, though it was admitted that specifying the basis of Canada’s right to be consulted had to be expressly avoided, since doing so might also provoke an undesirable reply.⁷¹

The channel through which American transits were handled also changed in the 1960s. The submarine voyages were arranged on a service to service basis, which appears to have been consistent with standard naval practice. However it was a departure from the norm of Arctic operations. In the 1950s External Affairs had preferred to deal directly with the State Department, given the importance of the issue.⁷² Yet, by the 1960s External was purposefully encouraging service to service communication because of its concern that the State Department might now have an “adverse approach to the question.”⁷³

Some experts have suggested that the 1960s would have been the ideal time for Canada to have claimed complete sovereignty over the archipelago by pointing to the decline of the region’s strategic importance and the relative lull in Arctic activity compared to the previous decade.⁷⁴ Indeed, by 1962 Ivan Head was claiming that the United States had already recognized the waters of the archipelago as territorial and was calling for a claim of historic waters to be made.⁷⁵ Yet, the “golden tranquil years of the 1960s” as Edgar Dosman called them were anything but.⁷⁶ For the legal, economic and strategic reasons elaborated upon, the American government had actually become less disposed to recognizing Canadian control in the Arctic than at any other previous point. In fact the claim that men like L.C. Green, Head, and Dosman called for had actually been attempted in 1963, though this was certainly not made public at the time.

In the early 1960s, Canadian Arctic sovereignty claims were tied up in a much larger review of the country’s position on territorial waters and the law of the sea. Throughout the 1950s there had been a push within Canada for increased control over fishing rights in the Pacific and especially in the Atlantic. For years foreign fishing interests, particularly the Japanese and Soviets, had been increasing their presence off the Canadian coast and endangering fish stocks. As such, unsuccessful attempts had been made to extend an exclusive fishing zone out to 12 miles at the 1958 and 1960 Law of the Sea Conferences at Geneva. After his election in 1963, Lester Pearson promised unilateral action on the issue which received widespread approval from the Canadian public.

Pearson’s objective was to use baselines to enclose a number of important bodies of waters as internal, thereby securing Canadian control and measuring a 12 mile fishing zone farther out to sea. These waters were Hudson Bay and Strait, the St. Lawrence Gulf, and the Bay of Fundy on the Atlantic and Dixon Entrance, Hectate Strait and Queen Charlotte Sound in the Pacific.⁷⁷ In addition the government also took the opportunity to draw baselines

around the entire Arctic archipelago and submitted the entire package to the State Department for comments in late 1963. It was considered unlikely that the American government would welcome the Canadian move, however the hope in Ottawa was that the Americans would be willing to let the new boundaries pass with only a protest. Because the United States was seen as a leader amongst those states opposed to creeping maritime jurisdiction and because it had the most economic and historic interest in the regions in question, it was hoped that if Washington could be kept from taking Canada to the I.C.J. or aggressively challenging the Canadian claims, those claims would be able to survive broader international scrutiny.⁷⁸

The claim to the Arctic appears to have been different than those made to the other maritime areas. Canada was claiming the waters off the Atlantic and Pacific as historic yet it appears to have advanced no such claims to the archipelagic waters. The Arctic baselines seem to have been based solely on the archipelagic theory and Article IV of the 1958 Geneva Convention.⁷⁹ In part this may have been because of the higher standard of historic occupation required by claims of historic waters. Instead, the Canadian delegation focused upon the strategic gains to be had from exclusive Canadian control. It was pointed out to the State Department that Soviet submarines had been sighted in the Arctic and that the region had the potential to become a high-way from the Russian bases on the Kola Peninsula to the Atlantic. It was also pointed out that future developments in missile technology would likely make the Arctic and Hudson Bay ideal havens for missile launching Soviet submarines. Enclosing the waters as Canadian would allow Canadian and American forces to exclude Soviet boats from the region and facilitate the defence of the continent.⁸⁰

To these claims the American representatives later responded that there were other ways to guard against Soviet activities through joint naval cooperation.⁸¹ The State Department also pointed out that the American concern for the freedom of the seas trumped more localized security issues. For a government which recognized the right of Soviet vessels to be three miles off the coast of Florida near the important Cape Kennedy facilities, Soviet activities in the Arctic were of secondary concern.⁸² More important was the broader Western defence effort which would be hindered by the potential limitations placed on American and N.A.T.O. warships by the recognition of various internal waters around the world. Indeed, the United States Department of Defence pointed out to the State Department that even if the broader Canadian claims could be substantiated in law, the risk of the Soviets then enclosing the Kara, Laptev and Okhotsk seas, thus excluding American

submarines, would still necessitate a rejection by the United States.⁸³ While the Americans were willing to recognize baselines drawn in conformity with their more rigid interpretation of the 1958 Geneva convention, they felt that the large areas enclosed by Canada did not meet that criteria.⁸⁴ And, as the United States had vigorously protested similar claims made by the Philippines and Indonesia they could hardly recognize extensive baselines in Canada.⁸⁵

For these same reasons, the Americans rejected in no uncertain terms the broader Canadian claims to the Atlantic and Pacific regions; in fact the only claim they found to be justifiable was that of Hudson Bay (though not Hudson Strait).⁸⁶ How important the Arctic region was to both the United States and Canadian negotiators in the broader scheme remains in question. However it is instructive to note that the Arctic was never raised in the Commons debates on the subject and certainly garnered far less attention from the External Affairs and State Department representatives in their negotiations. This is hardly surprising. Since External Affairs recognized that American acceptance of their entire proposal was unlikely they rationally chose not to highlight their weakest point. Dean Curtis had already advised the government that its legal claims to the Arctic archipelago were not strong.⁸⁷ External Affairs concurred in this assessment and decided to push the Arctic claims only if a general American agreement appeared to be within reach on the broader issue.⁸⁸

The American reaction to the Canadian claims was not what the government would have liked and it quickly became apparent that there would be no easy agreement. Nor did it seem as though the United States would be willing to offer only token resistance to the Canadian plan. As such, the decision not to push the Arctic claims was made by Cabinet on 22 January 1964.⁸⁹ The attempt was thus made to use the Arctic as a kind of bargaining chip to strengthen Canadian claims to the waters it deemed more connected to its vital interests. On 5 February 1964 the Secretary of External Affairs, Paul Martin, opened a meeting with American representatives by telling his American counterparts that, while Canada was not formally abandoning its claims to the Arctic waters, he was officially deferring them.⁹⁰ Unfortunately the concession had little impact on the American representatives whose principled objection to the broader Canadian claims remained. According to the State Department, Martin expressed "disappointment that the Canadian concession on the Arctic Archipelago had not been more impressive to the U.S. He [Martin] described Canada as having made fundamental concessions without having received anything in return."⁹¹

The Canadian government had gone out onto a political limb by claiming the waters off the Pacific and Atlantic coasts and by 1964 the Americans were threatening to take the proposed Canadian legislation to the International Court.⁹² The Pearson government believed that it would not survive if it abandoned its claims to the Bay of Fundy and the Atlantic waters and by February the State Department described Canada as essentially asking the United States to “bail them out.”⁹³

By July 1964 the Canadian government had also deferred its claims to Queen Charlotte Sound and clarified that its Arctic claims had also been deferred “indefinitely.” In return it asked that the United States confine itself to protests and forgo recourse to the I.C.J., accept the closing of Hudson Bay and Strait as internal waters, agree to submit Hectate Strait and Dixon Entrance to arbitration, continue negotiating on Bay of Fundy and accept the closing of the Gulf of St. Lawrence.⁹⁴ The United States government could not accept these terms. Yet despite American objections, domestic pressure ultimately forced the Canadian government to pass the *Canada Fisheries Act* in 1964, giving the government the power to draw baselines as it deemed necessary and ultimately to enclose some of the waters it had claimed.⁹⁵ The issue of sovereignty over the Arctic waters appears to have been dropped for the remainder of the 1960s, overtaken in importance by the ongoing negotiations over the Atlantic and Pacific.

The 1960s were thus not the opportune time for Canada to have been pushing its sovereignty agenda in Washington. Whether there was an opportunity earlier on is more uncertain. The law on the subject was certainly immature and the United States remained resolutely determined to defend the freedom of the seas. Yet, it had proven willing to go a long way in granting Canada the implicit recognition it had sought. At least until 1958 the region remained largely inaccessible and the waters had far less potential, strategic and economic importance. The question is a hypothetical one and the Canadian government cannot be faulted too vigorously for not deviating from a policy which seemed to be working. Without having to make a direct claim the Americans appeared to be gradually accepting Canadian sovereignty in the same manner they had over the Arctic lands during the 1940s and early 1950s.

Yet, to call this inaction an effective policy, or even a policy at all, would be a stretch. There was no concerted bipartisan effort by Canadian governments over this period to push any specific conception of Canadian sovereignty and no consistent attempt at the highest levels to build the kind of precedent which Norway had relied upon in 1951. Such an effort could have

entailed no more than consistent government statements, governed by a clear policy like that outlined in 1956.

It seems very unlikely that such simple statements to the Commons or the media would have pushed the United States into a legal challenge. Their policy of practical accommodation throughout the 1950s and early 1960s would certainly have made such a challenge a counterproductive overreaction. Even in 1973 when the Canadian government did state publicly and for the first time that it considered the waters of the Arctic archipelago to be internal waters on a historic basis there was no serious backlash, and this at a time when the subject had become a heated international issue. Rather than a firm foundation built upon decades of consistent government policy, Canada faced the *Manhattan* crisis with little preparation and a poor idea of its own situation. When word of the supertanker's planned passage was received in Ottawa it set off a scramble to review the country's legal position and even to research past pronouncements to see what the government's policy might actually be. External Affairs discovered that, aside from the March 1956 Liberal Cabinet directive, there had never been any government decision to determine the nature of Canadian sovereignty over the Arctic waters.⁹⁶

The voyage of the *Manhattan* certainly shocked the government out of its complacency. With the publicity generated by the event, the Canadian policy of quietly consolidating its title became untenable. Irresistible pressure for some kind of assertion of sovereignty was soon coming from the press, the opposition and even from within the government's own Standing Committee on Indian and Northern Affairs, which issued a report recommending the use of straight baselines to Parliament in December 1969.⁹⁷

Since the late 1950s the Canadian position had been intentionally designed to avoid situations like the one the *Manhattan* generated. Premised on the idea that it could defer its Arctic claims and allow time and American acquiescence to gradually confer legitimacy, the Canadian government had spent nearly two decades without announcing, following or even accepting any real policy. This unwillingness of successive governments to maintain or even discreetly announce a uniform policy line created the impression of inconsistency and confusion. The damage this may have done to the Canadian legal position of course remains conjectural while the impact it had on United States policy decisions remains classified. Nonetheless it remains difficult to see how it could have had a beneficial effect.

In part this discretion had been forced upon the government by circumstances, as neither the legal nor international political situation in the 1950s and 1960s were likely to be friendly to any Canadian claim. Yet the extent

to which this cautious ambiguity was carried and the lack of bipartisan cooperation must be considered a failing. All the more so since it appears as though there was a generally consistent recognition across governments of what needed to be done. The original policy framework had been created by the St. Laurent Liberals and passed onto the Diefenbaker government. The Conservatives had access to the cabinet decision, the same advisors as their predecessors and government bureaucracy seemed to have continued to operate on the basis of that decision.⁹⁸ Yet this policy was not adopted at the highest levels and certainly did not filter through the ministries to the public.

That the policy was a success for a time is owed more to the attitude and priorities of the United States than to any Canadian diplomatic prowess. Yet, this implicit acceptance seems to have been somewhat reevaluated as the potential strategic and economic importance of the Arctic increased and as the broader global threat to American strategic mobility, presented by creeping maritime jurisdiction, became more pronounced. By the early 1960s at the latest the United States was definitely set against recognizing Canadian sovereignty and time could no longer be considered an ally in Canada's gradualist approach to consolidating its Arctic claims.

Notes

- 1 Both the U.S. Coast Guard and Humble Oil notified Canada of their intentions beforehand, a practice not required under international law to transit an international strait. Yet this fell short of the request for permission which the government of Canada suggested the United States make.
- 2 See, for example, Donat Pharand, *The Law of the Sea of the Arctic with Special Reference to Canada* (Ottawa: University of Ottawa Press, 1973) and *Canada's Arctic Waters in International Law* (Cambridge: Cambridge University Press, 1988).
- 3 J.L. Granatstein, "A Fit of Absence of Mind: Canada's National Interest in the North to 1968," in *The Arctic in Question* ed. Edgar Dosman (Toronto: Oxford University Press, 1976), 13-33; Edgar Dosman, *The National Interest* (Toronto: McClelland and Stewart, 1975), and Elizabeth Elliot-Meisel, *Arctic Diplomacy: Canada and the United States in the Northwest Passage*, (New York: Peter Lang, 1998).
- 4 Whitney Lackenbauer and Peter Kikkert, "Sovereignty and Security: The Department of External Affairs, the United States, and the Arctic, 1943-1968," in *Serving the National Interest: Canada's Department of Foreign Affairs and International Trade, 1909-2009*, eds. Greg Donaghy and Michael Carroll (Calgary: University of Calgary Press, forthcoming 2011), 12. See also Lackenbauer, "Right and Honourable: Mackenzie King, Canadian-American Bilateral Relations, and Canadian Sovereignty in the Northwest, 1943-1948" in *Mackenzie King: Citizenship and Community* eds. John English, Kenneth McLaughlin, and P.W. Lackenbauer (Toronto: Robin Brass Studio, 2002): 151-68.
- 5 Lackenbauer and Kikkert, "Sovereignty and Security," 12.

- 6 Lackenbauer and Kikkert, "Sovereignty and Security," 2.
- 7 L. B. Pearson, 'Canada Looks Down North,' *Foreign Affairs* 24 (1946), 638.
- 8 For instance, two extensive government studies from 1936 and 1949 examining the legal foundation of Canadian sovereignty look only at the lands and specifically exclude the waters from the sector principal; Department of the Interior, *British Sovereignty in the Arctic*, 3 June 1936 & MacDonald, Vincent, *Canadian Sovereignty in the Arctic*, [date uncertain – in External folder from January 1949]. Library and Archives Canada (LAC), RG 25, vol. 4, file 9057-40
- 9 Donat Pharand, "The Arctic Waters and the Northwest Passage: A Final Revisit," in *Ocean Development and International Law* 38 (2007), 10.
- 10 Meisel, *Arctic Diplomacy*, 98
- 11 Gordon Smith, "Sovereignty in the North: The Canadian Aspect of an International Problem," *The Arctic Frontier*, R.J. Sutherland ed. (Toronto, 1966), 194.
- 12 H.L. Keenleyside, "Recent Developments in the Canadian North," in *Canadian Geographical Journal*, 39:4 (Oct, 1949), 163.
- 13 For instance see: Policy Statement, 1 July 1951, Department of State, *Polar Regions, Foreign Relations of the United States* (FRUS), 1 (1951), 1724.
- 14 Pharand, "Final Revisit," 10.
- 15 Letter from C.S. Jackson to the Deputy Minister of Justice. 3 June 1950, LAC, RG 85, vol. 750, file 4419, file part 6.
- 16 Fisheries Case (United Kingdom v. Norway), 1951, *I.C.J. Reports*, 115.
- 17 *I.C.J. Reports*, 1951, 131.
- 18 Donat Pharand, *Canada's Arctic Waters in International Law* (Cambridge, 1988), 142-143.
- 19 Canada, Department of Mines and Technical Surveys, *The Boundaries of Canada, it's Provinces and Territories* (Ottawa: Edmond Cloutier, 1954).
- 20 Mr. Robertson (Expert on territorial waters brought to the committee meeting by Mr. Lesage) speaking in: Canada, Parliament, House of Commons, *Special Committee on Estimates Minutes of Proceedings and Evidence*, 23 March 1955, no. 15, 446.
- 21 Memorandum: U.S. Territorial Waters, 13 July 1954, LAC, RG 25, vol. 4286, file 10600-5-40.
- 22 B.G. Sivertz to M.W. Cunningham, 24 December 1952 & Deputy Attorney General to Secretary to the Cabinet, 23 December, 1952, LAC, RG 2 vol, 236, file T-30-1.
- 23 Memo to Cabinet, 2 March 1956, LAC, RG 2, box 81, accession 1990-91/154, file T-30 1956.
- 24 Memo from Legal Division, 12 July 1968, LAC, RG 25, vol. 15729, file 25-4-1.
- 25 Memo: Enclosure to Letter of 16 November 1956 for Minister of Mines and Technical Surveys, LAC, RG 25, vol. 11, file 9057-40.
- 26 House of Commons, *Debates*, 22nd parliament, 3rd session, 3 Aug. 1956, 6955.
- 27 J.A. Beesley to External Affairs Legal Division, 12 July 1968, LAC, RG 25, vol. 15729, file 25-4-1.
- 28 J.L. Granatstein, "A Fit of Absence of Mind," 27.
- 29 Granatstein, "A Fit of Absence of Mind," 28.
- 30 House of Commons, *Debates*, 22nd parliament, 5th session, 6 April 1957, 3187.
- 31 Memorandum for Head of Legal Division, 1952 [undated], LAC, RG 2, series 8, vol, 236, file T-30-1-C.
- 32 United Nations, *Convention on the Territorial Sea and the Contiguous Zone*, 29 April, 1958.
- 33 Pharand, "Final Revisit," 22.

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- 34 Enclosure to Letter of 16 November 1956 for Minister of Mines and Technical Surveys.
- 35 United Nations Secretariat, "Juridical Regime of Historic Waters Including Historic Bays" A/CN.4/143 Extract from the *Yearbook of the International Law Commission* 2 (1962).
- 36 Pharand, "Final Revisit," 24.
- 37 Canada, *Statutes of Canada*, 1906, 5 Edw. VII, c. 13.
- 38 Pharand, "Final Revisit," 26.
- 39 Smith, "Sovereignty in the North."
- 40 Letter from the Canadian Embassy, Oslo to External Affairs, 19 July, 1963, LAC, RG 25, vol. 4135, file 9057-40, part 12.
- 41 House of Commons, *Debates*, 22nd parliament, 3rd session, 3 Aug. 1956, 6955.
- 42 House of Commons, *Debates*, 22nd parliament, 5th session, 6 April 1957, 3187.
- 43 Mr. Beesley to Mr. de Blois, 5 April 1968, LAC, RG 25, vol. 15729, file 25-4-1. (Italics Added)
- 44 Parliament, House of Commons Standing Committee on Mines, Forests, and Waters (CMSCMFW), *Minutes of Proceedings and Evidence*, 10 June 1958, no. 3-6, 217. (Italics added)
- 45 House of Commons, *Debates*, 24th parliament, 1st session, 14 August 1958, 3512.
- 46 House of Commons, *Debates*, 24th parliament, 1st session, 14 August, 1958, 3540 & 16 August 1958, 3652.
- 47 CMSCMFW, *Minutes of Proceedings and Evidence*, 10 June 1958, no. 3-6, 217.
- 48 House of Commons, *Debates*, 24th parliament, 3rd session, 29 March 1960, 2577.
- 49 External Affairs to Air Commodore Birchall, 24 October 1962, LAC, RG 25, vol. 4135, file 9057-40 pt. 12.
- 50 *I.C.J. Reports* (1951), 138.
- 51 *Ibid.*, 157, 180, 201.
- 52 Gordon Smith, *Ice Islands in Arctic Waters* (Ottawa, 1980), 50.
- 53 Smith, *Ice Islands*, 88.
- 54 Fisheries Case, (1951), *I.C.J. Pleadings*, 462.
- 55 Maurice Bourquin, "Les Baies Historiques" in *Mélanges Georges Sauser-Hall* (1952) cited in "Juridical Regime of Historic Waters Including Historic Bays."
- 56 Donat Pharand, "Historic Waters in International Law with Special Reference to the Arctic," *University of Toronto Law Journal* 21 (1971), 10.
- 57 Bourquin, "Les Baies Historiques," 23-51.
- 58 Ivan Head, "Canadian Claims to Territorial Sovereignty in the Arctic Regions," *McGill Law School Journal*, 9 (1962-3), 225.
- 59 Granatstein, "Fit of Absence of Mind," 30.
- 60 U.S. Embassy to Secretary of State for External Affairs, 19 December 1949, LAC, RG 25, vol. 5737, file 17.E (s).
- 61 House of Commons, *Debates*, 22nd parliament, 5th session, 6 April 1957, 3186.
- 62 Under Secretary for External Affairs to Marc Boyer, 9 May 1958, LAC, RG 25, vol. 3047, file 113.
- 63 The *New York Times* even suggested that cargo carrying subs might soon begin to use the Arctic waters as a shorter passage than the Panama Canal; Felix Belair, "Nautilus Sails under the Pole," *New York Times*, 9 August, 1958, 1.
- 64 Memorandum from Under-Secretary of State for External Affairs to Secretary of State for External Affairs, 10 June 1960, *DCER*, vol. 27 (1960), document no. 665.
- 65 G. P. Steele, *Seadragon: Northwest under the Ice* (New York, 1962).
- 66 Memorandum from the Deputy Minister of Defence to the Undersecretary

- of State for External Affairs, 18 July 1962, LAC, RG 25, vol. 11, file 9057-40.
- 67 Naval Message, from CHINFO to USS *Seadragon*, September 1960, National Archives and Records Administration (NARA) RG 59, Entry 5298, Box 13, Bureau of European Affairs: Country Director for Canada, Records Relating to Military Affairs, 1942-1966.
- 68 Note: Re. Draft Memo for Minister on Arctic Sovereignty, 18 Sept. 1962, LAC, RG 25, vol. 11, file 9057-40.
- 69 M. D. Williams, *Submarines under Ice* (Annapolis, 1998), 174.
- 70 Because of the similarities between the Canadian Arctic and the Indonesian and Pilipino claims, Canada broke ranks with the U.S. and some of its traditional Western European allies by refraining from condemning Indonesia and the Philippines; Note From Deputy Minister of Transport to Under Secretary of External Affairs, 23 May 1962, LAC, RG 25 vol 22, file 9057-40.
- 71 Memorandum on Passage of U.S.S. *Skate*, 20 September 1962, LAC, RG 25, vol. 11, file 9057-40.
- 72 For example: Letter from Canadian Ambassador in Washington to Secretary of State for External Affairs," 20 June 1946, LAC, RG 25, vol. 3047, file 113 & Secretary of State for External Affairs to Canadian Ambassador in Washington, 23 September 1948, RG 25, vol. 3841, file 9060-G-40.
- 73 Williams, *Submarines under Ice*.
- 74 For instance: L. C. Green, "Canada and Arctic Sovereignty," *The Canadian Bar Review*, 48 (1970), 760 & E.J. Dosman, "The Northern Sovereignty Crisis," *The Arctic in Question*, ed. E.J. Dosman (Toronto: Oxford University Press, 1976), 34- 35.
- 75 Head, "Canadian Claims to Territorial Sovereignty," 219.
- 76 Edgar Dosman, "The Northern Sovereignty Crisis," *The Arctic in Question*, ed. Edgar Dosman (Toronto, 1976), 34-5.
- 77 Memorandum to the Secretary of State from the Undersecretary of State, December 1963, NARA, RG 59, Central Foreign Policy Files, Canada-US, POL 33-4 1963.
- 78 Canadian Cabinet Conclusions, 7 August 1963, LAC, RG 2, vol. 6245.
- 79 Statement of the Deputy Undersecretary of State (To a meeting with Canadian External Affairs Representatives), 4 December 1963, NARA, RG 59, Central Foreign Policy Files 1957-1966, Pol 33-8 CAN-US.
- 80 Canada – U.S. Meeting on the Law of the Sea, 28 August 1963, NARA, RG 59, Subject Numeric Files, POL CAN-US 33-4, Entry 1613, Box 2152,
- 81 Deputy Secretary of Defence to U Alexis Johnson, 16 September 1963, NARA, RG 59, Central Foreign Policy Files, Canada-US, POL 33-4 1963.
- 82 Memorandum of Conversation Discussion of Proposed Extension of Fisheries Zone, 12 February, 1964, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-4 CAN-US.
- 83 Statement of the Deputy Undersecretary of State, 4 December 1963.
- 84 Memorandum of Conversation: Raymond T. Yingliong, Bernard Glaxer, Guiseppa Maria Borga (Italian Embassy) NARA, RG 59, Central Files 1957-1966, POL 33-4 CAN-US.
- 85 Statement of the Deputy Undersecretary of State (To a meeting with Canadian External Affairs Representatives), 4 December, 1963, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-8 CAN-US.
- 86 Memorandum of Conversation Discussion of Proposed Extension of Fisheries Zone, 12 February, 1964, NARA, RG 59 Central Foreign Policy Files 1957-1966, POL 33-4 CAN-US.
- 87 Canadian Cabinet Conclusions, 22 January 1964, LAC, RG 2, vol. 6253.

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- 88 Memorandum: Law of the Sea Negotiations, 16 August 1963, LAC, RG 25, vol. 5388, file 10600-5-40.
- 89 Statement of the Deputy Undersecretary of State, 4 December 1963.
- 90 Memorandum of Conversation, 5 February 1964, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-4 CAN-US & Memorandum of Conversation, 6 July 1964, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-8 CAN-US.
- 91 Memorandum of Conversation, 5 February, 1964, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-4 CAN-US.
- 92 Memorandum of Conversation, 5 February, 1964.
- 93 Memorandum of Conversation, NARA, RG 59, Central Files 1964-66, POL 33-4 CAN-US.
- 94 Memorandum of Conversation, 6 July 1964, NARA, RG 59 Central Foreign Policy Files 1957-1966, POL 33-8 CAN-US.
- 95 While Canada did officially enclose some of the waters along the coast of Labrador, Nova Scotia and the Queen Charlottes it refrained from attempting to enclose the St. Lawrence Gulf or the Bay of Fundy.
- 96 Gregoire de Bois to Mr. Beesley, 5 April, 1968, LAC, RG 25, vol. 15729, file 25-4-1.
- 97 House of Commons, 28th parliament, 2nd session, Standing Committee on Indian Affairs and Northern Development, 1969-70, 1:5.
- 98 For example, see the 1962 advice send from External Affairs to Air Commodore Birchall regarding Canadian Arctic boundaries; Memorandum, Legal Division External Affairs, 24 October 1962, LAC, RG 25, vol. 4135, file 9057-40 pt. 12.

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ABSTRACT: Climate change is transforming the Arctic. Questions abound about what this will mean for the Canadian Forces, for Canada's sovereignty position, for northern peoples, and for stability and security in the circumpolar world. Fortunately, Canadians have encountered and debated similar issues in the past. This volume, featuring chapters by established and emerging scholars, offers essential historical analysis on Canadian Arctic security and sovereignty policies and practices since the Second World War. The "lessons learned" lay a solid foundation for future research and historiographical debate in this dynamic field, and should inform Canadian thinking on what is necessary to protect national interests in the twenty-first-century Arctic.

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