Part Six, 1940-1949

In January 1940 Gibson wrote to the Department of External Affairs, asking about the possible sovereignty implications of closing the post at Craig Harbour – the only high Arctic post still manned year-round – for the duration of the war. The lack of adequate institutional memory on sovereignty matters is vividly illustrated by Skelton's response. He asked one of the department's young legal officers, Max Wershof, to produce a memo on the subject (doc. 546). With little knowledge either of international law on the polar regions or of the background to Canada's sector claim, Wershof proceeded on the assumption that the sector principle and effective occupation were completely unrelated matters, and he expressed confusion as to which of them was the true basis for the Canadian claim.[40] In Wershof's mind, if there was for the time being no concrete occupation in the high Arctic, Canada's title would be seriously weakened – a conclusion that showed a complete disregard of the principles stated in the Eastern Greenland decision. Wershof conceded that Canadian sovereignty would not be entirely nullified; nevertheless, the implications of his statements were bleak. Skelton himself (who had carefully followed the progress of the Eastern Greenland case)[41] then took over and – apparently without bothering to enlighten Wershof about the basis for his more positive thinking – he informed Gibson that, while occupation was always desirable, closing the post for a time "would neither nullify nor seriously weaken Canada's claims" (doc. 547).

Skelton died suddenly of a heart attack in January 1941. With his passing, insider knowledge of the Arctic policy regime created during the 1920s was all but lost. Pearson continued to uphold the sector theory, but he often found his colleagues at External Affairs badly informed about the principle, sceptical of its value, and convinced that, in Hume Wrong's often-quoted phrase, Canada's sovereignty over the islands on which there were no actual posts was

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[40] American lawyer Charles Cheney Hyde, a former State Department employee who upheld the application of the regular standard for effective occupation in the polar regions, had by this time published a definition of the sector theory which asserted that it was "unconcerned with ... absence of control. It purports to reserve from the application of commonly accepted principles of international law particular areas deemed to possess a unique relationship with the claimant state." Hyde, "Acquisition of Sovereignty over Polar Areas," *Iowa Law Review*, vol. 19, no. 2 (January 1934), p. 289. This definition was later repeated in Hyde's *International Law Chiefly as Interpreted and Applied by the United States*, 2nd edn (Boston: Little, Brown, 1947), p. 347.

[41] See LAC, vols 1552 and 1553, file 1929-896. In 1932 Canada's representative at the League of Nations, Walter Riddell, was alerted by Dag Hammarskjöld (then the registrar of the PCIJ) that the decision in the Eastern Greenland case would be "of the greatest importance in respect to unoccupied hinterlands." Skelton accordingly requested copies of the court documents. (Riddell to Skelton, 14 July 1932, and Skelton to Georges P. Vanier, 19 September 1932.) Even before the dispute had been taken to the PCIJ, the members of the NWTYB were already aware of its potential significance for Canada. In 1931, George Mackenzie had pointed out to Finnie that the matter was "of particular interest to us because the question of effective occupation has been raised by Norway." (Mackenzie to Finnie, 26 February 1931, LAC, RG 85, vol. 749, file 4419.) But by the time the PCIJ rendered its decision in 1933, Finnie and Mackenzie had both retired.