The Canadian-American Dispute Over Dixon Entrance

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THE CANADIAN-AMERICAN DISPUTE
OVER DIXON ENTRANCE

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PART I
INTRODUCTION

The body of water between the southern tip of Alaska's panhandle and British Columbia's Queen Charlotte Islands, known as Dixon Entrance, is one of four external maritime boundaries between the United States and Canada. (See Figure I-1) This particular boundary has been an area of dispute ever since it was established and settlement does not appear to be imminent. Yet, this dispute continues to create poor management of fish stocks, trade disruption, feelings of frustration among fishermen of both nations, and in general, it remains a thorn in the side of United States-Canadian relations.

In this paper I intend to review the history behind the disputed area, the issues involved, the positions of each nation, and the applicable international law. I will examine the various options available to the United States and Canada. I will then place myself in the unenviable position of arbitor and propose a solution to this long lasting boundary dispute.
PART II
HISTORY

The history of the struggle between the United States and Canada for fishing rights in the area of Dixon Entrance is both long and complex. The struggle began with the occupation of territory in the northern Pacific by Russians exploiting the fur resources. Disputes over the occupied territory involved the countries of Great Britain, the United States, Canada, and Russia. As the present claims of Canada rely heavily on the history of Dixon Entrance, a review of this history is necessary in order to examine the validity of these claims.

A. EARLY COLONIZATION

In 1732, a Russian fleet landed in Alaska and attempted to annex the country to the Russian Empire. But, it wasn't until 1741, when the famed Danish explorer, Vitus Bering, discovered and charted much of Alaska that true Russian occupation began. Although Bering never returned to Russia (he was shipwrecked and died in the Aleutian Islands), his fleet returned with reports of the rich fur resources that they had found throughout Alaska. As furs were in great demand in China, these reports opened a floodgate of Russian
trappers, sealers, and traders seeking wealth in Alaska. Thus, Russia acquired title to the land in this part of the world through discovery, occupation, and ultimately, settlement.

From the 1760's to the 1780's, the British had their own explorer, Captain James Cook, mapping and surveying the North Pacific. In the 1790's, a former member of Cook's crew, Captain George Vancouver, mapped and surveyed the Pacific coast of North America. At the same time, a British trader and explorer for the North-West Fur Company, Alexander Mackenzie, crossed overland from Great Slave Lake. He passed through the northern Rocky Mountains and reached the Pacific Ocean at about 52°N latitude having traveled through what is now Canada's British Columbia. Shortly after the turn of the century, President Jefferson of the United States secretly dispatched his explorers, Merriweather Lewis and William Clark, to the Pacific Northwest thus laying claim to a portion of the Pacific Northwest in the vicinity of the Columbia River. This set the stage for a territorial dispute between Russia, the United States, Great Britain, and Canada.

B. THE FUR TRADE

The British and American teams wrote extensive reports of their journeys spawning a wave of fur traders to the area, most of which were Yankee traders from New England. British ships and traders,

too, flooded the area, but the ship's were withdrawn during the French Revolution and the Napoleonic Wars leaving behind only their land based fur traders.³ British, American, and Russian citizens were now competing in the fur trade of the North Pacific in an effort to meet the demands of China.

The Russians occupied much of the northern Pacific, where the fur supply was the greatest, by means of heavily fortified trading posts. Competition among the Russian companies was great and in 1799, the Russian Emperor Paul issued an Ukase (edict) granting the Russian-American Company (an exclusively Russian company despite its name) a monopoly throughout the northern Pacific from Asia to America and north of 55⁰N latitude. In return for the exclusive economic rights, the Russian-American Company was required to support the Russian Orthodox Church and encourage shipbuilding and agriculture throughout the region. Although foreign nations were not informed of the Ukase, none of them protested against the scope or the exercise of the Russian-American Company's powers. The Russian government later interpreted the silence of other nations as "tacit consent" to their claims over this territory in the North Pacific.⁴

A Russian by the name of Alexander Baranof led the Russian-American Company through a period of great prosperity during this time. But, although the company was successful, it relied heavily on materials from its homeland to support its operations. Thus, in 1812,

³ Ibid.
⁴ Ibid., pp. 2-3.
Baranof established Fort Ross, eighty miles north of San Francisco, to resupply his North Pacific bases. From 1815 to 1818, he even attempted to gain a foothold in the Hawaiian Islands, without success. Later, Baranof was supplied by American bases in the Columbia River Basin.⁵

Aside from reprovisioning the Russian trading posts, the greatest threat came from the small Yankee traders (vessels of 100-250 tons) which moved in on the Russian venture. By trading guns and whiskey to the native Aleuts, the Yankee vessels shipped large amounts of furs directly to the Chinese city of Canton. The Russians, on the other hand, were required "by some strange caprice of the Chinese"⁶ to transport their furs overland from Siberia.

The Russian government naturally protested to the American government the intrusion of its vessels into the area of Russian trade. The American government rejected the protest on the grounds that "the law of nations permitted trade in unsettled areas" but the Russians soon dropped the protest due to the threat of Napoleon's advances toward their homeland.⁷

After 1815, the Russian-American Company fell into economic decline due to the trade restrictions, resupply difficulties, and the

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⁵ Ibid., p. 3.
reduction of the stocks of fur bearing animals. In an attempt to salvage the company, the Russian Emperor again issued an Ukase in September 1821. This Ukase extended the previous Ukase by reserving to Russian subjects "the pursuits of commerce, whaling and fishery, and all other industry" on the islands and coasts of North America south to 51°N latitude. It also prohibited foreign vessels from approaching within 100 Italian miles of the coast. Through the Ukase, the Russian government attempted to completely shut off the Yankee traders. Both great Britain and the United States protested this extension of jurisdiction and attempted to have the Ukase withdrawn.

C. THE RUSSIAN-AMERICAN AND ANGLO-RUSSIAN TREATIES

On the surface, both the protests of the United States and Great Britain appeared alike. The United States Secretary of State, John Quincy Adams, protested the Russian's violation of the freedom of the seas for he knew full well that the Yankee traders would fight for the right for free trade in the North Pacific. He also argued that the Russians had no basis for a claim as far south as 51°N latitude. The British also protested the Russian's claim to 100 miles as well as all territorial claims on the American continent.

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The Americans and British initially planned to negotiate against the Ukase of 1821 together. Representatives from both countries were given the power to negotiate the treaty in St Petersburg (now Leningrad). The British negotiator was Sir Charles Bagot, a former Minister to the United States, and the United States appointed Henry Middleton, a former state governor, representative to Congress, and Minister to Russia.  

But, behind the scenes, things were different. Secretary Adams proposed to Stratford Canning, the British Minister at Washington, that they proceed in joint Anglo-American negotiations with Russia modelled after the Anglo-American Convention of 1818. The 1818 Convention had laid down the boundary between British and American territories along the 49th parallel of the American Continent to the Rocky Mountains. The area west of the Rocky Mountains, however, was subject to the open occupation limits of the "Oregon territory." This resulted in the American advantage when the United States, four months later (in the treaty of 1819), obtained the Spanish territory along the Pacific coast north of 42°N latitude. Secretary Adams had used both the treaties of 1818 and 1819 to further the territory of the United States all the way to the Pacific coast. His strategy this time was to play the British and Russians against each other in a tripartite negotiation which, he hoped, would benefit the United States.  

10 Ibid.  
11 Ibid., pp. 4-5.
Stratford Canning's cousin, George Canning, was at this time the British Foreign Minister who's views on imperialism, nationalism, and a great Oregon-Orient trade were loosing popularity. British policy was shifting toward free trade and anti-imperialism. Although Stratford Canning proposed to his cousin George the acceptance of the American proposal for joint negotiations, George was concerned that the Americans would take advantage of the British in territory considerations. Even though Secretary Adams claimed that United States territorial interests did not extend north of the 51st parallel (the Russian boundary claim), George Canning was concerned that the Americans would attempt to gain the Pacific Territory between the 49th parallel and the 51st parallel. He was also concerned that the Russians would take advantage of Anglo-American differences to further the Russian position.\textsuperscript{12}

When George Canning later learned that the United States position was to claim not just north to 51°N latitude but to 55°N latitude, he was greatly angered. The issue became further heated with the arrival of the Monroe Doctrine which stated that "the American continents...are henceforth not to be considered as subjects for further colonization by any European power."\textsuperscript{13} The British Foreign Security thus sent instructions to Sir Charles Bagot, the British representative at the negotiations in St Petersburg, not to combine his negotiations with the Americans and to complete his negotiations.

\textsuperscript{12} Ibid., p. 5.
\textsuperscript{13} Ibid., p. 6.
with the Russians prior to the United States.\textsuperscript{14} Canning had suspected that Adams intended to gratify Russia at the expense of British land territory and gratify the British at the expense of Russian sea territory. He had been correct.\textsuperscript{15}

American negotiations with the Russians proceeded quickly. The Russians paid no heed to the Monroe Doctrine and proposed a settlement based on the mutual interest of both countries. The United States representative, Henry Middleton, agreed to recognize the separation of Russian and American zones or "spheres of influence" at 54°-40'N. In return, Russia agreed to give up its maritime exclusion and agreed on a ten year provision whereby each of the other countries could fish and trade in the other's zone.\textsuperscript{16} On February 28, 1824, the Treaty between the United States and Russia relative to Navigation, Fishing, and Trading in the Pacific Ocean and to Establishments on the Northwest coast was completed. Article I prohibited the formation of American settlements north of the 54°-40'N parallel and Article III prohibited the Russians from establishing settlements south of the 54°-40'N line. Article IV allowed ships of both nations to frequent "interior seas, gulfs, harbours, and creeks, upon the coast...for the purpose of fishing and


\textsuperscript{15} Penlington, The Alaska Boundary Dispute: A Critical Reappraisal, p. 6.

\textsuperscript{16} Ibid., p. 8-9.
trading with the natives of the country" for ten years. This 54°-40′N parallel passes through Dixon Entrance. (See Figure II-1)

Great Britain had more at stake in the negotiations than access to the coast. The British government was concerned with the status of the islands along the coast as well as the delimitation of the land between Russia and Great Britain on the mainland. Bagot was unsuccessful in his negotiations with the Russians. He attempted to push the British position as far north as 59°N latitude. When the Russians wouldn't budge, he proceeded to propose boundary limits further south, but pushed the Russian claim closer to the coast. He was unsuccessful in resolving the dispute and was eventually replaced by George Canning's cousin Stratford Canning.

The Anglo-Russian Treaty was finally signed on February 16, 1825. This treaty provided the same rights of citizens of each nation to fish in the Pacific Ocean as the Russian-American Treaty had but it also provided for a more detailed description of land territorial boundaries. Article VII of the 1825 Treaty not only provided the right of access to the "inland seas, the gulfs, havens, and creeks, on the coast" but it also gave the right to navigate the rivers and streams that flow from British territory into Russian territory to British subjects in perpetuity. This treaty virtually settled the

Figure 11-1 (Source: Penlington, The Alaska Boundary Dispute: A Critical Reappraisal)
differences between Russia and Great Britain but new players were soon to arrive on the scene,

D. THE UNITED STATES PURCHASES ALASKA

On March 30, 1867, after three weeks of secret negotiations, United States Secretary of States William H. Seward and the Russian Minister to the United, States Baron Edouard de Stoeckl, signed the Treaty of Cession of Russian America. In exchange for $7,200,000 in gold, the United States received all Russian territory in the Americas. This modest sum, by today's standards, purchased 590,884 square miles of land with a coastline of 26,376 miles.\(^{20}\) Even before the Russians received payment, the territory was officially taken over by the United States. President Andrew Johnson appointed general Jefferson C. Davis to command a military force of 500 men to be stationed throughout the territory and he appointed General Lovell H. Rousseau to act as the commissioner for the ceremonies held in Sitka on August 12, 1868.\(^{21}\)

It was in this way that the United States became a party to the Treaty of 1825 formerly held between the Russians and the British. The Treaty of Cession defined the boundaries of the purchase by quoting Articles of the 1825 treaty. (See Figure II-2) In 1871, British Columbia entered the Confederation and Canada acquired an

\(^{20}\) Ireland, Boundaries, Possessions, and Conflicts in Central and North America and the Caribbean, p. 291.

Figure 11-2 (Source: Penlington, *The Alaska Boundary Dispute: A Critical Reappraisal*)
interest in the treaty.22 But, the panhandle boundary issue remained untouched until economic considerations brought it to a head.

The narrow strip of Alaska that extends down from the main body is well forested with thick undergrowth and plentiful rivers. Fish, especially salmon, and fur-bearing animals abound. Initially, economic interests in the panhandle were strictly in the fur trade. However, the decline in the seal and whale populations caused a transfer of interest to the salmon fishing industry. By 1880, several large companies controlled the fishing industry and a large cannery had been established on Prince of Wales Island.23

This area of the North American continent is also rich in gold deposits. When gold was discovered in the northern Cassier District of British Columbia in 1872, pressure for a boundary settlement increased. During this time, Canada was still a colony of Great Britain and much of its political machinery, as well as external affairs, remained under control of the parent nation. During that same year, President Ulysses S. Grant recommended to Congress the establishment of a joint U.S.-British commission to accurately determine the boundary between the Alaska and British Columbia. (See Figure II-3) But Congress felt that the sparcity of population in the area lessened the possibility of a border conflict plus the cost of a

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BRITISH COLUMBIAN AND CANADIAN CLAIMS, 1884-1903

Figure 11-3 (Source: Penlington, The Alaska Boundary Dispute: A Critical Reappraisal)
1895
Official British Columbia map

1897
Map from Year Book of British Columbia
1898
Map presented to Joint High Commission in 1898 by British Commissioners

1903
Map 37, Case of Great Britain, Appendix, Vol. II
commission's study suggested the need for a settlement at the time was not necessary. The gold reserves of the Cassier mountains were beginning to dry up along with the pressure to resolve the issue of the boundary; but, only for a short time!24

Gold, this time discovered in the Klondike in 1897, caused relations between the United States and Canada to fester. Thousands of miners set out for the new gold deposits and passage through the panhandle was again necessary to reach the gold fields. Canada expected British support for its contentions and had even sent a contingent of troop to South Africa during the Boer War in a gesture devised to earn British support in the Alaska boundary dispute.25 Great Britain, although pleased by the Canadian assistance, felt a "quid pro quo" unnecessary. In fact, Britain's policy became one of less interest in indulging in Canada's boundary extensions. The Boer war had a devastating effect on Britain's power and shattered its prestige. Its naval power was weakened and it was unable to maintain its position against nationalist and imperialist challenges throughout the world.26 Britain warned Canada in 1899 that there was "a limit to Imperial Unity" and that in the light of public opinion and its own national interests, it would not continue to support "unreasonable boundary contentions."27

E. THE ALASKA BOUNDARY TRIBUNAL

24 Ibid., pp. 20-22.
25 Ibid., pp. 48-49.
26 Ibid., p. 52.
27 Ibid., p. 50.
On January 24, 1903, U.S. Secretary of State John Hay and the British Ambassador to the United States, Sir Michael Herbert signed a boundary convention which came to be known as the Hay-Herbert Treaty. This treaty called for a tribunal to decide the Alaska boundary question. The tribunal was to be made up of six impartial jurists (three from the United States, two from Canada, and one from Great Britain) to decide the panhandle boundary. Before being passed by the U.S. Senate, the word "arbitral" was deleted with the agreement of Sir Herbert. The change in wording had the effect of transforming the tribunal from a body suggestive of arbitration to one of purely diplomatic devices. Canada was not made aware of this change.

The Alaska Boundary Tribunal, with Lord Alverstone presiding, sat in London to decide the dispute. On October 20, 1903, a majority of the tribunal, consisting of the three U.S. representatives and Lord Alverstone, agreed to establish (among other things) the boundary beginning at Cape Muzon (a point on which the tribunal was unanimous) on Dall Island running east in a straight line through Dixon Entrance to the mouth of the Portland Channel, north of Wales and Pearse Islands to the 56th parallel and then on on into the mountains. (See Figure II-4) By drawing the line (which came to be known as the A-B line) in such a way, the tribunal awarded the

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28 Ibid., p. 68.
29 Ibid., pp. 70-71.
30 Ireland, Boundaries, Possessions, and Conflicts in Central and North America and the Caribbean, p. 293.
Decision
OF THE
ALASKAN BOUNDARY TRIBUNAL
October 20, 1903

Source: A.B.T. Atlas of Award

Figure 11-4 (Source: Penlington, The Alaska Boundary Dispute: A Critical Reappraisal)
islands of Sitklan and Kannaghunut to the United States. (See Figure II-5) The Canadians were outraged and accused Lord Alverstone of selling out to the Americans.\(^{31}\) Despite the outrage, however, the land boundary between British Columbia and Alaska has remained definitive. Yet the maritime boundary has increasingly come under scrutiny. This area of dispute lies in Dixon Entrance. The question is, was the line drawn between Cape Muzon and the Portland Channel intended as a maritime boundary, or did it serve to simply divide the land territories of the two nations?

F. THE MARITIME DISPUTE

There is no record of any discussion between Canada, Great Britain, or the United States as to the legal status of the sea to the north of the 1825 Treaty boundary. However, one particular incident spurred the interest of the United States south of the boundary line. In 1897, a Canadian Fisheries protection vessel warned an American fishing vessel that "U.S. vessels are not allowed to fish anywhere in Hecate Strait or in any other territorial waters of the Province of British Columbia." This assertion of jurisdiction was immediately protested by United States Secretary of State Sherman in 1897 and, when no reply was received by Great Britain, was protested again by Secretary of State Root in 1905. In 1909, a similar action again by a Canadian Fisheries protection vessel prompted the United States Department of State to request a formal

Figure II-5 (Source: Bourne and McRae, "Maritime Jurisdiction in the Dixon Entrance: The Alaska Boundary Re-Examined")
statement on the position of Great Britain on the question of fishing rights in Hecate Strait.32

The U.S. request was forwarded by Great Britain to the Governor-General of Canada for comment. A committee of the Privy Council of Canada responded with an Order In Council asserting their right to jurisdiction over both Hecate Strait and the waters of Dixon Entrance "south of the line established by the Alaska Boundary Award of 1903." The Privy Council argues in its defense that, although it is doubtful whether the framers of the Treaty of 1825 intended to create a delimitation of the seas, the boundary tribunal, with regard to its terms of reference, the questions it was asked, and the way it drew the line, created "a boundary line separating territorial possessions - water as well as land."33

The British government referred the Privy Council's report to their law officers for review. The British government reported that, although there were matters in Canada's favor, the opinion of the Privy Council "can not be justified either by international law or by treaty rights." They concluded that Dixon Entrance was considered high seas and that if the tribunal had intended on making a decision contrary to international law, it would have made that point extremely clear.34

32 Ibid., pp. 176-177.
33 Ibid., p. 177.
Figure II-6 (Source: Alexander, "The Nature of Offshore Boundaries")
In 1914, the Privy Council reaffirmed the Canadian position on the waters of Hecate Strait and Dixon Entrance despite the arguments of Great Britain. Although the matter was never taken up again between Great Britain and the United States, Canada has continued to assert its position. In 1971, an Order in Council in Canada drew fisheries closing lines to include the waters of Dixon Entrance.35 (See Figure II-6) In 1973, the Canadian Bureau of Legal Affairs claimed that although the Territorial Sea and Fishing Act (passed by Canada in that year) lays no claim to sovereignty, "it does not bar a subsequent claim to sovereignty on historic or other grounds."36 The United States, on the other hand, has continued to assert its fisheries zone based on the equidistance method.37 (See Figure II-7)

G. SUMMARY

The waters of Dixon Entrance have been the subject of controversy for over 200 years and have involved the nations of Great Britain, Canada, the United States, and Russia. Diplomatic discussions, treaties, and behind the scenes politics have all shaped the dispute as it exists today. Economics have played a big role in

Figure II-7 (Source: Cuyvers, "Maritime Boundaries: Canada vs. United States")
bringing the issue to the forefront. First, it was fur, then gold, and now fishery resources. What is at stake now and what other treaties govern the delimitation of boundaries? Part III will review the resources at stake as well as the applicable international law.
PART III
WHAT IS AT STAKE?

The body of water known as Dixon Entrance is a protected, deep inlet along the northwest coast of North America. It is bordered to the north principally by Prince of Wales Island and to the south by Queen Charlotte Island. It allows access to Hecate Strait and numerous rivers such as the Skeena, Nass, Sitikine, and the Portland Channel.

Alaskan cities to the north include Ketchikan, population 7,198, Wrangell, population 2,184, and Metlakatla, population 1,100. Canadian cities to the east and south include Prince Rupert, population 16,197, and Kitimat, population 11,791. The only access to the Alaskan cities is via boat or plane whereas the Canadian cities have additional highway access. The Canadian cities are connected to the Alaskan Highway (97) by way of state roads 16 and 37. (See Figure III-1 and III-2)

The fisheries industry plays a large part in the boundary dispute between the two nations today. But, what of the future? The mountains are known to be rich in minerals; and what of the

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How to Determine Distance

Alberta
Land Area: 255,285 sq. mi. (5)
Population: 2,237,724 (4)
Capital: Edmonton, F-21
Largest City: Calgary, K-20

British Columbia
Land Area: 366,255 sq. mi. (4)
Population: 2,744,467 (3)
Capital: Victoria, B.C.
Largest City: Vancouver, N-9

Figure III-1 (Source: 1987 Road Atlas: The United States, Canada, and Mexico)
How to Determine Distance

Land Area: 570,833 sq. mi.
Population: 461,851
Dimensions: N-S 1,332 miles, E-W 2,250 miles
Highest Point: Mount McKinley 20,320 ft.
Largest City: Anchorage

Figure III-2 (Source: 1987 Road Atlas: The United States, Canada)
seabed? Are the security interests of the two nations important in this area? I intend to review these issues in an analysis of what is at stake in the Dixon Entrance boundary dispute.

A. NATIONAL SECURITY

Although the land boundary that the United States and Canada share remains completely unfortified, one incident nearly turned the border into a battleground. During the Venezuela Incident of 1895-96, the United States and Great Britain came to the verge of war over the arbitration of the Venezuela-British Guiana boundary. Had the two nations gone to war, the U.S. - Canadian border would have been the battle line.² Today, the United States and Canada are allies in NATO (North Atlantic Treaty Organization) and NORAD (North American Defense) and share a concern for North American security. This has not stopped the nations, however, from taking opposite positions on issues of coastal jurisdiction.

When the Japanese occupied several islands in the Aleutian chain during the Second World War, the American government, as well as the citizens of the United States, suddenly realized Alaska's strategic importance. Vast amounts of money and personnel were dispatched to Alaska to counter the threat.³ As World War II ended and the cold war began, U.S. security interests turned towards the Soviet Union, with whom Alaska shares another border.

³ Naske, An Interpretive History of Alaskan Statehood, p. ix.
How does Dixon Entrance fit into the national security picture for the United States and Canada? There has been some talk of placing a U.S. Trident missile submarine base in the area. A U.S. sea lane into Dixon Entrance would be of primary interest to the United States so that it could move its submarines in and out of port in U.S. waters. In general, though, as long as both Canada and the United States are members of NATO and share the same security concerns, there is little possibility for conflict over the boundary within Dixon Entrance.

B. NON-LIVING RESOURCES

Up till now, the central issues surrounding the Dixon Entrance boundary dispute have been ones of sovereignty and fishing, not seabed. This is not to say that there are not seabed resources in the area, only that they are not being exploited at the present time. Additionally, the Gulf of Maine boundary dispute was settled under the idea of a "single maritime boundary" which divided up the sea as well as the seabed. For these reasons, it is necessary to explore the present legislation surrounding the delimitation of the seabed.

Dixon entrance is an extremely deep indentation in the coast with its 200 meter depth line (which is considered to be the edge of the

Figure III-3 (Source: Copes, "British Columbia fisheries and the 200-mile limit")
continental shelf) no more than 27-28 miles from shore. (See Figure III-3) Additionally, nations may now claim out to the edge of the continental margin. All of the remaining seabed in Dixon Entrance that is not part of the shelf is indeed part of the continental margin.

The governing international law relating to the seabed is the 1958 Geneva Convention on the Continental Shelf to which both Canada and the United States are both parties. Article 6 of the Convention states:

"Where the continental shelf is adjacent to the territories of two adjacent states, the boundary of the continental shelf shall be delimited by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be delimited by application of the principle of equidistance from the nearest point of the baseline from which the territorial sea of each state is measured."\(^6\)

Although no specific talks have taken place between the United States and Canada concerning the continental shelf in Dixon Entrance, the two nations would take opposing views on this rule of

\(^6\) 1958 Convention on the Continental Shelf
international law. Canada would continue to assert that the A-B line continues to apply to the subsoil as well as the land and water. The United States would continue to assert that no special circumstances apply and that there is no specific treaty relating to the seabed. Therefore, the equidistant line that the United States abides by for fisheries would also apply to the seabed in accordance with international law.

The U.S. position is initially supported by the equidistance principle written into the '58 Convention. Canada's claim will rely heavily upon the Treaty of 1825 and the Proceedings of the Alaska Boundary Tribunal. "Special circumstances," although they can be interpreted to be many things, have, in the past, been successfully argued where they relate to an exceptional configuration of the coast as well as by the presence of islands or navigational channels. This is not the case in Dixon Enterance.

C. LIVING RESOURCES

Salmon, halibut, herring, and groundfish are the largest fisheries in the panhandle area. Because the continental shelf is so narrow, fish resources are confined to a narrow band along the coast. Salmon, however, travel several thousand miles, well beyond Dixon Entrance and the two hundred mile fisheries zones claimed by the United States and Canada. While in the open ocean, the salmon

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stocks intermingle so that it is impossible to tell whether they came from American or Canadian waters. Halibut are found along the coast and travel between the two nations' waters while the herring and groundfish remain in roughly the same area throughout their lifetimes.\(^8\)

Both the fishing fleets of British Columbia and Alaska are made up primarily of smaller vessels including gillnetters, trollers, and combination vessels. Additionally, the fleet is supplemented by a large number of purse seiners and trawlers. The salmon industry is the most important fishery in the region because of its large economic contribution as well as the cooperation required to maintain the spawning rivers. Most of the fish that is caught in this region is exported.\(^9\)

Canadians and Americans heavily exploit each others fishery and the question of who benefits the most is often raised. In fact, this dispute is the principle issue behind the Dixon Entrance argument. Canadian fishermen have even gone so far as to claim that the area south of the A-B line and inside the fishery closing line between Queen Charlotte Island and Cape Muzon as internal waters and that their federal government has not pushed the Canadian case far enough.\(^10\)

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9 Ibid., p. 57.
10 Ibid., pp. 57-58.
Throughout the last two decades, Canadian fishing policy has been termed as "expansionist" although not meant directly at the United States. The United States also exhibited expansionist tendencies when both countries pushed foreign fishing further from their shores in the latter half of this century. But, the two nations have also sought to accommodate each other. In the first United Nations Conference on the Law of the Sea (UNCLOS I) in 1958, Canada sought to maintain a three nautical mile territorial sea, just as the United States did, and extend fisheries jurisdiction out to twelve nautical miles. Both the United States and Canada feared that a twelve nautical mile territorial sea would interfere with the navigation and overflight rights desired by both countries.\(^{11}\)

At the second conference, in 1960, Canada and the United States worked closely to produce a six mile territorial sea plus a six mile fishing zone proposal. The conference and the proposal failed, so the Canadians turned to unilateral action. In 1964, Canada passed the Territorial Sea and Fishing Zones Act which established a territorial sea drawn from straight baselines and a contiguous fishing zone of nine nautical miles beyond that. Other maritime nations rejected the Canadian legislation which led the Canadians to unilaterally declare a twelve nautical mile territorial sea in 1970.\(^{12}\)

\(^{11}\) Ibid., pp. 52-53.
\(^{12}\) Ibid., p. 53.
After 1970, Canada and the United States both promoted much wider fishing limits at the Seabed Committee and then at UNCLOS III. Both countries accepted the 200 nautical mile fisheries zone of the conference and, in 1977, both Canada and the United States unilaterally established 200 nautical mile fisheries zones. Then, in 1988, the United States declared a twelve nautical mile territorial sea "for international purposes only."

In addition to these unilateral and multilateral actions, the United States and Canada have worked together on a number of bilateral treaties to regulate fisheries off the Alaska and British Columbia coasts. The 1923 Pacific Halibut Treaty was one of the first attempts to regulate a high seas fishery. The treaty was the result of declining halibut stocks which necessitated a bilateral conservation agreement. The treaty called for the appointment of an International Fisheries Commission, now known as the Pacific Halibut Commission. This body has the power to regulate the halibut fishery in the North Pacific Ocean.

As with the halibut question, a bilateral agreement was necessary to prevent the over-exploitation of salmon. British Columbia is a prime rearing ground for all five species of salmon. Much of the fish that spawn in the rivers of British Columbia pass through Alaskan

13 Ibid.
waters on the way to and from their spawning grounds. Valuable stocks of pink, chum, and sockeye salmon headed for the Skeena and Nass rivers (British Columbia) are intercepted by American gillnetters and seiners. The problem is not "one-way" however, as Canadian vessels intercept chinook and coho salmon off the Queen Charlotte Islands that are destined for Washington and Oregon. For these reasons, Pacific Salmon Interception Talks are on going in the Alaska-British Columbia area in an attempt to allocate these valuable stocks of fish to each nation.\textsuperscript{16}

The third United Nations Convention on the Law of the Sea, although it has not been signed by either the United States or Canada, contains provisions from which these two nations established their exclusive fisheries zones. In addition, both nations treat the majority of the Convention as "declaratory of customary international law" (with the exception of some of the seabed provisions). Article 74 of the 1982 Convention states:

"The delimitation of the exclusive economic zone between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law...in order to achieve an equitable solution."\textsuperscript{17}

\textsuperscript{17} 1982 United Nations Convention on the Law of the Sea. (Article 74)
A similar statement is found in Article 83 of the Convention dealing with the continental shelf. This is a drastic change from the 1980 draft of the Convention which included phrases referring to an equidistant line excepted by special circumstances. This change in the wording of boundary delimitations can be used to the benefit of either nation as we will see in the next section.

D. SUMMARY

This small expanse of water between Alaska and British Columbia serves many purposes. It is a waterway for vessels, people, and fish and is possibly a deposit for rich mineral resources. The issues at stake may involve national security, non-living resources, and living resources. Both nations assert overlapping claims and many conflicts have arisen as a result. Yet, a number of bilateral agreements have served to quell the disputes and provide for a more equitable solution. In the next section, we will examine the positions of the two nations.
PART IV

POSITIONS OF THE DISPUTING NATIONS

Before a full analysis of the case can be completed, a review of the positions of the disputing nations is necessary to establish the baseline arguments. Both the Canadian and U.S. claims have valid points. However, an in depth view of what concessions have been made, what historical applications exist, and how either nation may have acquiesced may assist us in developing an appropriate solution.

A. THE CANADIAN CLAIM

Canada has continued to assert that the A-B line is the international boundary between the United States and Canada in the Dixon Entrance. The following items, reviewed in detail, support the Canadian claim.

The Canadians, by virtue of being subjects of the British Crown, are, ipso facto, party to the 1825 Treaty between Great Britain and Russia. Although this Treaty did not define a "maritime boundary," it did allow for a ten year concession for navigation to Great Britain as well as a right to "forever enjoy free navigation of all rivers and streams which, in their course towards the Pacific Ocean, may cross
the line of demarcation "between the territories of Russia and Great Britain."

In 1903, the Alaska Boundary Tribunal was asked to interpret the boundary laid down by the Treaty of 1825. Although the Americans believe the A-B line was purely meant as a land definition, the Canadians treat this as a border of land and water. The use of the 54°-40'N latitude line between Cape Muzon (A) and the entrance of Portland Channel (B) was by no accident at that particular latitude. This parallel was maintained by the Russians as their southern boundary line. In fact, once the U.S. - Russian ten year concession to fish north of this line expired (in accordance with the Treaty of 1824), the United States warned its ships not to approach "any point upon the Russian American coast where there is a Russian establishment...nor to frequent the interior seas, gulfs, harbours, and creeks upon that coast at any point north of the latitude of 54°-40'N."1 This warning is proof that the United States considered this the boundary between the Russian and American territories. Placing the Canadians in the shoes of the Americans is a strong case for the A-B line to stand as both a land and water boundary. The Alaska Boundary Tribunal used these practices as a method for determining the line, thus supporting the Canadian's claim.

The incidents between the U.S. fishing vessels and the Canadian fisheries protection vessels in 1897 and 1909 (mentioned previously) are evidence of Canada's early assertion of jurisdiction in the waters of Dixon Entrance both before and after the Alaska Boundary Tribunal Proceedings. The first incident, although protested by the United States was not countered by the British Government (a fact that the Canadians can hardly be held responsible for). The second incident was upheld by the Canadian Privy Council as being within the jurisdiction of Canada. Although the British and American did not agree with the Canadian claim, the Canadians had made their statement.  

Presently, U.S. and Canadian law enforcement vessels operate in what is often referred to as a "gentlemen's agreement" or a "joint enforcement effort." A number of vessels have been seized to the north of the A-B line by the U.S. Coast Guard, but the U.S. government has allowed Canada to fish north up to the line. The United States, it can be argued, has acquiesced to the Canadian claim.

Canadian navigation charts do not recognize the U.S. fishing boundary (the equidistant line) but rather assert the position of the government as to the A-B line. Canadian aeronautical charts also

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3 Interview with Commander R. L. Nelson, United States Coast Guard, Assistant to the United States Attorney, Anchorage, Alaska, 16 March 1990 and Lieutenant J. A. Watson, United States Coast, Office of Law Enforcement, Seventeenth Coast Guard District, Juneau, Alaska, 6 March 1990.
draw the international boundary for airspace at the A-B line.⁴ (See Appendix I) Surprisingly enough, U.S. aeronautical charts, published by NOAA, also seem to acknowledge the A-B line as the international boundary between the United States and Canada.⁵ (See Appendix II) For sure, the airspace above the disputed waters of Dixon Entrance are very definitely in Canadian control. The Canadian viewpoint is clearly that the international boundary between the United States and Canada in the air, on the water, and underneath the water is the A-B line.

Canada also believes that they have a strong case for the A-B line under existing international law. The 1958 Convention on the Continental Shelf allows for "special circumstances" to justify a boundary other than the median line.⁶ The 1958 Convention on the Territorial Sea also allows for "historic title or other special circumstances" to nullify the equidistant line.⁷ Additionally, Dixon Entrance is an important fishing ground for salmon bound for the Canadian Skeena and Nass Rivers. Canada feels that Canadian regulation of the area, under UNCLOS III, is the only way to manage these stocks in cooperation with their interior fish spawning programs.⁸

⁶ 1958 Convention on the Continental Shelf, (Article 6)
⁷ 1958 Convention on the Territorial Sea, (Article 12)
Through treaty, historic rights, and acquiescence, Canada has a strong claim for the A-B to stand as the international boundary. Why haven't they pressed for a resolution? I believe that, after not being supported by Great Britain for a good part of the history of the dispute, Canada does not want to lose face to another world power. What does Canada have to lose by remaining with the status quo? They will continue to have disgruntled fishermen and must work at a joint management plan for the salmon stocks.

B. THE AMERICAN CLAIM

The Americans have protested the Canadian claim of a "maritime A-B line since its inception. Both of the early fisheries incidents (mentioned previously) were protested by the United States before and after the Alaska Boundary Tribunal completed its proceedings. The proceedings of the tribunal were held by the British law officers as not being of a maritime nature as the tribunal would have made it clear that their findings were contrary to international law. In fact, C.B. Bourne and D.M. McRae [in their article "Maritime Jurisdiction in the Dixon Entrance: The Alaska Boundary Re-Examined"] concluded that there is insufficient evidence to prove the A-B line to be a conclusive maritime boundary.9

The United States also has a strong claim in the acquiescence of the Canadians in the disputed area. Canada has allowed U.S. fishing vessels in the disputed area under flag state enforcement. U.S. navigation charts (See chart No. 177420, for example) do not recognize the A-B line but rather extend U.S. fisheries jurisdiction to the equidistant line. Additionally, the U.S. Coast Pilot, which lists directions and instructions that can not be adequately displayed on charts, makes no mention of a disputed fishing area or a territorial sea other than that claimed by the United States. The unsuspecting mariner, relying on this information, might proceed through the area as though no dispute existed.

The 1958 Convention on the Continental Shelf (Article 6) calls for a median line to be drawn in the absence of any agreement. In the American view, the Hay-Herbert Treaty and the resulting Alaska Boundary Tribunal are not an agreement over the seabed. There are no special anomalies in the seabed that would call for the line to be moved closer to either side. The continental slope is roughly equivalent as it extends from the continent throughout Dixon Entrance. Therefore, the median line should prevail, in the American viewpoint, in accordance with the 1958 Convention on the Continental Shelf.

The 1958 Territorial Sea Convention (Article 12) calls for an equidistant line between adjacent and opposite states. Since Dixon Entrance is greater than 24 miles wide, this convention does not apply directly. However, the U.S. position would be to argue that this convention at least allows the United States to claim a territorial sea around Dall Island and Prince of Wales Island where the Canadians have attempted to deny the U.S. of its territorial seas. Since both nations claim a territorial sea of twelve miles (although the Canadians' is drawn from straight baselines) both nations should be allowed to claim their territorial sea as far as the geography allows.

UNCLOS III provides for boundary delimitation for the exclusive economic zone as well as the continental shelf to be based upon "equitable principles." In the American view, these "equitable principles" equate to "equidistance" as it was used in the 1980 draft of the Convention. Historically, the U.S. could claim it had just as much right to fish and trade throughout the waters of Dixon Entrance as the Canadians. After all, the "sphere of influence" to the south was American before it was Canadian. Although the United States is not a party to UNCLOS III, it considers the Convention to be declaratory of emerging customary law (with the exception of certain provisions relating to the seabed).

As to fisheries management, the groundfish and halibut fisheries are evenly distributed throughout Dixon Entrance with little

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movement towards one side or the other. The salmon issue is the spearhead of the dispute due to the stock movements and the significantly greater economic demand. In the American view, the Canadians are attempting to control the entire fishery. Salmon, however, travel much further than Dixon Entrance. They are indeed subject to interception by vessels other than Canadian or American origin when they penetrate the 200 miles offshore boundary.¹³ No matter where the boundary line is drawn in Dixon Entrance, Canadian and American cooperation must continue if both nations are to adequately manage this valuable resource.

C. SUMMARY

Both the Canadians and Americans have valid claims to the waters of Dixon Entrance. These claims are based on historical rights, treaty, international law, and practice. The alternatives available to the two nations will be presented in Part V.

PART V

ALTERNATIVES

A number of alternatives are available to the United States and Canada in the resolution of the Dixon Entrance boundary dispute. No solution will ever completely please both nations. Therefore, a compromise is in order. I intend to review the alternatives available throughout the spectrum giving weight to each side's claim.

A. NO RESOLUTION

The maintenance of the status quo is one option for Dixon Entrance. The boundary dispute has gone on at least since 1903 and the disputing countries show no sign of reaching an agreement. The number of people impacted is small, as is the economic gain presently derived. The greatest difficulty lies in the frustration of the fishermen. As one Canadian fisherman put it, "We've all fished back and forth over the line for as long as I can remember. We fish and we yack on the radio about our regulations and gear. Its all very friendly. But there's always some yahoo who will radio his coast guard to say someone is fishing in his waters and that's when it all gets nasty." ¹

The frustration level is high and a number of vessels are seized each year by Canadian and U.S. Coast Guards for fishing too far south or north. Fishermen on both sides attempt to push the line as a result of the frustration they feel in competing with each other in the disputed zone. Already beleaguered by high interest rates, ever increasing gas prices, and declining catches, there is still the uncertainty of fishing in a disputed area. On July 5, 1989, two Canadian fishing vessels, the F/V Viscount and the F/V Fonzie, were seized by the U.S. Coast Guard for salmon fishing west of Cape Muzon. The problem here relates to how the A-B line is extended offshore, yet another problem resulting from the disputed area. Their catch was sold, the vessels seized, and the trial will be held in the summer of 1990. The frustration continues.

B. JOINT MANAGEMENT AREA

A joint management area or "dual sovereignty" area is another possible solution to the dispute. This would work well in the area of fisheries as it would allow for better management of the fish stocks. In a sense, the Pacific Halibut Commission and the Pacific Salmon Interception Talks already provide the framework for such a management scheme. These organizations could be used as a springboard for the joint ownership of the waters of Dixon Entrance.

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2 Ibid.
3 Interview with Commander R. L. Nelson, United States Coast Guard, Assistant to the U.S. Attorney, Anchorage, Alaska, 16 March 1990.
On the other hand, sovereignty is difficult to "share." Present relations between the United States and Canada are good and, although there is some conflict in Dixon Entrance, the present system of dual enforcement seems to work. But what would happen if Canada and the United States were to become at odds with each other? The dual sovereignty area would come under dispute again and another solution would have to be reached. The same would happen if another more profitable resource, like oil, were found in the area. A joint management plan would work for the present but would crumble should new economic or security issues be raised.

C. THE A-B LINE

A solution in favor of the A-B line is the hope of the Canadian government. They feel that they have a strong historic case behind the 54°-40'N parallel as drawn by the Alaska Boundary Tribunal upon interpretation of the Treaty of 1825. Parzival Copes [in his article "British Columbia Fisheries and the 200-Mile Limit] speculates that the U.S. in fact considers that Canada does have a strong case in international law with respect to the A-B line. This may be a reason that the issue has yet to go before arbitration.

A review of the American claim, however, may mitigate the Canadian view. Specifically, Canada has acquiesced somewhat to the

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equidistant line by allowing the American vessels to fish that far south. I do not foresee a resolution strictly in favor of the A-B line.

D. EQUIDISTANCE

The United States has a strong case through the existing international law for the use of the equidistant line. However, UNCLOS III (1982) has modified the language somewhat since the draft of 1980 to take out the more specific "median" line and replace it with the less specific "equitable principles" to settle the boundary disputes. This factor, combined with the strong Canadian claim for the A-B line would definitely not favor a strict ruling for the equidistant line. In my opinion, both the United States and Canada will have to give somewhat in order to reach an "equitable" solution.

E. AN AMERICAN TERRITORIAL SEA

The United States is particularly interested in gaining a strip of water in the disputed area adjacent to the U.S. coast so that its vessels may pass unimpeded to the south of Cape Muzon and Prince of Wales Island. This would allow U.S. access to Clarence Strait, Revillagigedo Channel, and the city of Ketchikan from the south. Coincidentally, a twelve mile territorial sea, which the United States and Canada both claim, would also allow the United States to claim the valuable groundfisheries along the northern portion of the Continental Shelf in Dixon Entrance.
This solution is somewhat of a concession, albeit slight, on the part of the Americans. However, the Canadians could be expected to vehemently oppose this solution because, although they gain some additional water space and part of the continental slope, they do not gain much of the continental shelf and its associated resources.

F. SPLIT THE DIFFERENCE

On the surface, "splitting the difference" appears to be an equitable solution. The Canadians gain more water and seabed than the equidistance or territorial sea methods. The United States gains a navigable waterway around the south end of Cape Muzon and Prince of Wales Island as well as a portion of the seabed. In dividing the disputed area between the two nations, I would give the unclaimed area to the Canadians and draw a line through the disputed area in a way that would divide the territory appropriately and allow for an American waterway. (See Figure V-1)

In my opinion, this is the best solution available to the disputing nations. Both nations stand equally when the issue is approached from the vantage point of natural prolongation of the coast, proportionality to the length of the coastline, and unity of the seabed. The only issues this dispute truly hinges on is the conduct of the two parties with respect to the Treaties of 1824 and 1825, as well as the proceedings of the Alaska Boundary Tribunal. Both nations show a history of use that would allow a "split the difference" solution to be appropriate.
Figure V-1 (Source: Copes, "British Columbia fisheries and the 200-mile limit" division line added)
G. SUMMARY

There are a number of options available to the potential arbiter. The solution hinges not on proportionality, geography, or coastline. It is a matter of interpretation of the applicable treaties and international law. It is then modified with respect to the conduct of the parties, namely through acquiescence. In their article "Maritime Jurisdiction in the Dixon Entrance: the Alaska Boundary Re-Examined," C. B. Bourne and D. M. McRae stated that, after a review of the Treaties of 1824, 1825 and the Alaska Boundary Tribunal Proceedings, "there is sufficient evidence to make both (the United States and Canadian) claims, but insufficient evidence to make either claim conclusive."5

I believe that an equal division of the disputed area is the best solution available. But, regardless of the outcome, a joint management of the salmon fisheries is still necessary to maintain the stocks of this economically beneficial resource.

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PART VI

CONCLUSION

The waters of Dixon Entrance have been the home and pathway of Russians, Americans, British, and Canadians for over 200 years. In a series of agreements between the respective nations, disagreement arose. The result is a thorn in the side of Canada and the United States along their North Pacific boundary.

Canada, believing that the A-B line drawn by the Alaska Boundary Tribunal in 1903 was a maritime boundary, has claimed, for nearly a hundred years, rights to the waters of Dixon Entrance up to the 54°-40'N parallel. The United States, on the other hand, believes that the A-B line was merely meant to allocate land territory, not water. The United States believes that the equidistant line between the two nations is the appropriate boundary.

The result is a disputed area of questionable jurisdiction in Dixon Entrance between the equidistant line and the A-B line. The greatest conflict in this area lies over the living resources that inhabit these waters, namely salmon, halibut, and groundfish. Although security and non-living resource issues have not appeared, their potential for escalating the conflict loom just over the horizon.
If the Dixon Entrance boundary dispute is not settled in this era of fisheries conflict, what will come of relations between Canada and the United States should oil be discovered beneath these waters? My guess is that if the issue is not resolved now, it will certainly escalate over oil resources.

I have proposed a solution based on dividing the disputed area equally between the two nations. In any event, fish stocks must be jointly managed by both countries no matter what the outcome. Although I may be accused of "selling out" to one side or the other just as Lord Alverstone was, I feel that some concessions must be made by both sides.

The boundary in Dixon Entrance is one of four external maritime boundaries between Canada and the United States. Only one, in the Gulf of Maine, has been settled. That case has set the standard by which we should settle the remaining boundaries. Only an "equitable" solution can be expected to keep relations between Canada and the United States on solid ground. Let's settle this dispute once and for all in order that we may move on to the greater issues of resource cooperation and management.


Nelson, R. L. Commander, United States Coast Guard, Assistant to the United States Attorney, Anchorage, Alaska. Interview, 16 March 1990.


Watson, J. A. Lieutenant, United States Coast Guard, Office of Law Enforcement, Seventeenth Coast Guard District, Juneau, Alaska. Interview, 6 March 1990.