

## EDITORIAL COMMENT

### ANTARCTIC SECTORS

The partition of Antarctica proceeds apace. So far the United States seems to have made no positive claim to any portion of that vast area which has become known to a large extent by the discoveries of Americans, beginning in 1820. Palmer Land and Wilkes Land are accepted names upon the map which bear witness to these early landfalls. No claim to Antarctic territory by the United States was ever made upon the basis of these discoveries. Of late years the expeditions of Byrd and, even more recently, of Ellsworth, have resulted in vast extensions to the scientific knowledge of Antarctica. In the meanwhile the sector theory of territorial possession has come into being—a doctrine with which the United States has shown little sympathy. Antarctic exploration has long been engaged in under many flags, American, British, French, Russian, Japanese, Belgian, Swedish, Norwegian, and German.

The concrete results are to be seen in the adoption of the sector principle by the British, which established the Falkland Islands Dependencies by Order in Council of March 26, 1917, comprising all lands to the South Pole between 20° and 80° longitude west from Greenwich. By an Order in Council of July 30, 1923, the sector known as the Ross Dependency was set up with its administration allocated to New Zealand. This sector comprises Antarctica south of the 60th parallel between 150° west and 160° east longitude. Thus Palmer Land and Wilkes Land, to which the United States forbore to make any claims, both lie within British sectors.

Basing its claim upon the alleged landfall of D'Urville in 1840 (one day after Wilkes saw the Antarctic Continent) and apparently with no additional claims based upon discovery, France, by a decree of November, 1927, laid claim to Adélie Land upon the continent and to the islands of St. Paul, Amsterdam, Kerguelen and Crozet. All were placed under the administration of the Governor General of Madagascar. The claim of France to Adélie Land was specifically recognized by Great Britain in claiming sovereignty over the large sector assigned to Australia, lying between the 45th and 160th degrees of east longitude "comprising all the islands and territories *other than Adélie Land*." That there is no contest between Great Britain and France in these regions is further shown by the agreement of October 25, 1938, between these two Powers regarding aerial navigation in the Antarctic. By these three sectors Great Britain, therefore, lays claim to almost two-thirds of the entire Antarctic area.

The eastern sector between the Falkland Islands Dependencies and the Australian sector has now been claimed by Norway. By an Order in Council of January 14, 1939, "that part of the mainland coast in the Antarctic ex-

tending from the limits of the Falkland Islands Dependencies in the west (the boundary of Coats Land) [longitude 20° west] to the limits of the Australian Antarctic Dependency in the east (45° east longitude) with the land lying within this coast and the environing sea, shall be brought under Norwegian sovereignty." This is not the first assertion of territorial claims by Norway in Antarctica. In January, 1928, sovereignty was asserted over Bouvet Island (in latitude 54° south and longitude 3° east), and by a similar order Peter I Island (in latitude 68° 50' south and longitude 90° 35' west) was claimed in 1931. The object of these acquisitions was declared by the Norwegian Government "to give the Norwegian whaling industry in that region points of support and to guard it against possible encroachment on the part of foreign Powers." It is to be observed that one of the reasons alleged for the adoption of the sector principle by Great Britain was the preservation of the whaling resources, and further that Norway until recently was opposed to the sector principle both in the Arctic and Antarctic.

The immediate foundation of the Norwegian assertion of sovereignty over the sector lying between the British sectors toward the east is the result of many Norwegian exploring expeditions, from 1929 to 1937, largely under the direction of Lars Christensen, all in a chain begun by Amundsen. Making no claim to territory within the announced boundaries of the British sectors under its promise to Great Britain in 1929, Norway asserts its sovereignty "over that land which until now has lain unclaimed and which none but Norwegians have mapped and claimed."

Since the announcement of the Norwegian claim Germany has entered upon the scene. As yet no official text of any decree of the Reich has been obtainable, but press dispatches from Berlin dated April 12, 1939, intimate that Germany will make a claim to an area within the confines of the Norwegian sector based upon the discoveries and mappings of the German expedition under Captain Ritscher which was dispatched in order "to secure a German sphere of interest in polar zones most important for whaling." It is stated that Captain Ritscher made aërial flights over 100,000 square miles of territory between longitude 4° 50' west and 16° 30' east, southward from latitude 72°. It may be assumed therefore that the German claim will be for a sector comprised between these lines, lying well within the boundaries of the Norwegian claim of last January.

Whatever may be the outcome of these conflicting Norwegian and German claims, there remains as yet unclaimed the sector on the west between the British sectors, lying between longitude 80° west and 150° west. Peter I Island, now claimed by Norway, lies within these lines of longitude, and there are other islands discovered by Russians but apparently not claimed by Russia. It is preëminently (but not exclusively) the area of recent American exploring expeditions, not only those of Byrd but of Ellsworth.

It is true that American policy has been averse to making territorial claims in the Antarctic based upon discovery and has insisted that good territorial

title requires effective occupation. As was said by Mr. Hughes, Secretary of State, May 13, 1924, in a passage often quoted:

It is the opinion of the Department that the discovery of lands unknown to civilization, even when coupled with a formal taking of possession, does not support a valid claim of sovereignty unless the discovery is followed by an actual settlement of the discovered country.

But since this assertion of the doctrine of effective occupation in the sense of the Berlin Congo General Act of 1885, the question as to the criteria of territorial title over lands not susceptible of human habitation has been much discussed, and the rigidity of the rule relaxed. Certainly the trend away from the strict adherence of the principle of the Congo Act has been quite obvious, and the Eastern Greenland decision is evidence of this trend. Antarctica might possibly have been internationalized and a system of international administration set up for the conservation of the marine and other resources of that area. But that time is long past. Whatever may be the economic and strategic factors ultimately to be disclosed, the adoption of the sector principle may assist greatly in the regulation and preservation of the whale industries. The United States has shown its interest in this matter by its ratification of the temporary treaty for the regulation of whaling. One may assert that the sector principle as applied at least to Antarctica is now a part of the accepted international legal order.

Upon the basis of the work of Byrd and Ellsworth, it is to be hoped that the current rumors are correct, namely, that the United States will assert its claim to sovereignty over the entire sector lying between the Falkland Islands Dependencies sector and the Ross sector. Whether the claim is made by the President (for which there is ample precedent) or by a joint resolution of Congress is, after all, not a matter of international law, but of constitutional theory and practice. But time is an important factor. On the basis of scientific achievement and an interest at least comparable with those of the Powers now having sector possessions, a claim to an American sector would be justified. It would probably be recognized as valid by other Powers.

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#### AGREEMENT OVER CANTON AND ENDERBURY ISLANDS

*De minimis non curat lex* is an ancient maxim of the law, but during the processes of history what were once minima cease to be "unconsidered trifles" and the "snapper-up" appears in the offing. What was rejected by the builders may become the chief cornerstone of the temple of Transportation, stream-lined in the new style. What were once, if shown at all, indistinguishable from fly-specks upon the map may emerge as of vast importance in permitting man to move quickly from one hemisphere to another. They cease to be of no value when they come to serve as stepping stones and resting places necessary for the successful operation of air clippers over the vast expanses of the Pacific. The fundamental considerations