

#9497

DEPARTMENT OF NATIONAL DEFENCE
CANADA
DEFENCE RESEARCH ANALYSIS ESTABLISHMENT

DRAE REPORT NO. 23

CANADIAN SECURITY, SOVEREIGNTY, AND NATIONAL DEVELOPMENT:
POSSIBLE CONTRIBUTIONS BY THE ARMED FORCES AND THE
DEFENCE RESEARCH BOARD

by

G.R. LINDSEY

This report does not necessarily represent the views of
the Canadian Forces or of the Defence Research Board.

CONDITIONS OF RELEASE

This information is furnished with the express understanding that:

- a. Proprietary and patent rights will be respected.
- b. It will not be released to another nation without specific approval of the Canadian Department of National Defence.

TABLE OF CONTENTS

	<u>Page</u>
<u>ABSTRACT</u>	ii
<u>INTRODUCTION</u>	1
Security	1
Sovereignty	2
National Development	3
<u>RELATIVE PRIORITIES OF SECURITY, SOVEREIGNTY, AND NATIONAL DEVELOPMENT</u>	3
<u>ROLES OF DEFENCE ESTABLISHMENTS IN THE PAST</u>	5
<u>POSSIBLE ROLES OF THE CANADIAN ARMED FORCES IN THE FUTURE</u>	6
<u>ROLES FOR THE DEFENCE RESEARCH BOARD</u>	10
<u>CONCLUSIONS</u>	15
<u>REFERENCES</u>	18
<u>ANNEX</u>	
A - <u>SOVEREIGNTY</u>	19
Canadian Sovereignty	23
References for Annex A	31

ABSTRACT

This ⁵⁰paper discusses future roles of the Armed Forces and DRB in relation to three established Government objectives, the preservation of security, the protection of Canadian sovereignty, and the fostering of national development. [The traditional role of the Forces has been the preservation of security against external threat, but it is clear that the skills of the Forces and of DRB could make a special contribution to the furtherance of the other two objectives, perhaps without detriment to their traditional role.] An attempt is made to define the concept of Canadian sovereignty, and to discuss the range of social, economic and scientific factors involved in the concept of national development. Finally, possible roles for the Armed Forces and for DRB are listed and briefly discussed. /

P R É C I S

Cette étude traite des futurs rôles des Forces armées et du Conseil de recherches pour la défense par rapport aux trois objectifs établis du gouvernement, à savoir: maintien de la sécurité, protection de la souveraineté canadienne et accroissement de l'expansion nationale. Le rôle traditionnel des Forces armées a toujours été d'assurer le maintien de la sécurité en face de toute menace de l'extérieur, mais il est évident que les talents des Forces armées et du Conseil de recherches pour la défense pourraient, désormais, être spécialement mis à contribution afin d'aider à atteindre les deux autres objectifs, peut-être sans que ce soit au détriment de leur rôle traditionnel. L'auteur tente de définir le principe de la souveraineté canadienne, et d'exposer l'étendue des facteurs sociaux, économiques et scientifiques que comporte le principe de l'expansion nationale. Enfin, il énumère et explique brièvement les rôles possibles des Forces armées et du Conseil de recherches pour la défense.

CANADIAN SECURITY, SOVEREIGNTY, AND NATIONAL DEVELOPMENT:
POSSIBLE CONTRIBUTIONS BY THE ARMED FORCES AND THE
DEFENCE RESEARCH BOARD

INTRODUCTION

1. Before discussing possible contributions to Canadian security, sovereignty, and national development, it may be worthwhile to devote some attention to the definitions and meanings of the three terms. They mean different things to different people, and are being used in new ways.

SECURITY

2. The Oxford Dictionary (1) defines "security" as "the condition of being protected from or not exposed to danger."

3. In the sense used with reference to national defence and international affairs, there is a certain distinction between external and internal security. External security refers to dangers originating from foreign countries, such as physical invasion by military forces, and to less violent, but still intentionally malevolent activities such as espionage. It could include dangers unintentionally caused by nuclear testing or even pollution of the sea or air across international boundaries. Note, for example, the statement in the Canadian note handed to the United States Government on 16 April 1970 (2): "It is the further view of the Canadian Government that a danger to the environment of a state constitutes a threat to its security."

4. To extend the definition further, unintentional influences

from abroad which tend to erode the loyalty and sense of identity of the citizens constitutes a threat to national security. In John Holmes' article on "Canada and the United States: Political and Security Issues" (3) he quotes Roger Swanson:

"National security must, if it is to have any contemporary relevance, include survival of national identity and values.... Indeed, in a strategic sense, Canada is caught in a dilemma of Kafkaesque proportions. Among possible threats to national security are the United States and the USSR. The one force (United States) that guarantees Canada's security and thereby eliminates a second possible security threat (USSR) itself then constitutes a national security threat of a different nature and magnitude, but no less relevant concerning Canada's existence and identity."

5. Internal security concerns dangers originating within the country. It usually refers to threats intentionally caused by humans, such as riot, insurrection, subversion, or large scale crime. But it could include natural dangers such as earthquakes, floods, fires, or pollution originating in the country.

SOVEREIGNTY

6. The exact meaning of sovereignty is not simple to establish. It is discussed at some length in ANNEX A, with quotations from eminent authorities, both in general and with reference to the particular problems of Canada.

7. In summary, most of the threats to the legal sovereignty of the Federal Government of Canada stem from the extension of international or supranational jurisdiction, or from internal constitutional problems with the provinces. They are essentially political problems.

8. There are, as well, unresolved questions of sovereignty and jurisdiction in the waters of the Arctic and on the deeper portions of the Continental Shelf. These include the right of passage between the islands of the Arctic Archipelago, the width of the territorial sea around Canada's coast, and the extent of the right to control pollution beyond territorial waters.

9. There does not appear to be any challenge to Canadian sovereignty on the Arctic mainland or islands. The presence of a few US troops in Canada resulting from agreements on North American defence are not considered to affect Canadian sovereignty (at least in the legal sense), nor does the economic power and influence of US or international corporations or labour unions. These can reduce the power and independence of the Canadian Government without removing its right to make the laws.

NATIONAL DEVELOPMENT

10. There does not appear to be much disagreement concerning the meaning of national development in the economic sense. It should be possible to extend the definition to include social and cultural development, using these terms in their broad sense encompassing strengthening of national identity, improvement of the administration of justice, welfare, and education, creation and dissemination of scientific knowledge, and many other activities related to the quality of life in Canada.

RELATIVE PRIORITIES OF SECURITY, SOVEREIGNTY, AND NATIONAL DEVELOPMENT

11. There is a current compulsion to place priorities on everything that we plan to do, although the precise significance of these priorities is not clear. Should we devote some

resources to attaining the objective of lowest priority and more to those higher on the list? If so, how do we establish the proportion? Or should no effort at all be devoted to a low priority objective unless all of those higher up are completely satisfied?

12. For most objectives of concern to national defence (and to external affairs and several other government activities) the relative importances depend on the international situation. This is especially true for security, sovereignty and national development.

13. If a world conflict can only be prevented by great efforts towards deterrence, if one appears imminent, or if one does break out, security becomes the dominant objective. Sovereignty, national development, and most other objectives become luxuries to be put away for the duration. Indeed, any nation which faces a serious threat to its security but takes inadequate steps to protect itself may not survive long enough to enjoy the fruits of sovereignty or national development. Israel, the Soviet Union, and China are sacrificing national development in the interests of security, Egypt in the interests of sovereignty. Iceland, Austria, and Finland are sacrificing sovereignty in the interests of security.

14. If there is no immediate threat to security then resources can be transferred to national development. This occurred in the Western countries right after the two world wars and there is pressure to do the same today. The danger in making a complete transfer is that the institutions needed to provide security cannot be built quickly, although they can be dismantled almost overnight. Moreover, their absence offers an invitation for a threat to develop which had been kept in abeyance by their previous existence.

ROLES OF DEFENCE ESTABLISHMENTS IN THE PAST

15. Up to the present century, the major countries of Western Europe were faced with frequent serious problems of security and sovereignty. Armies and navies were used in the pursuit of external security, to deter or oppose invading armies, and also for territorial aggrandizement at the expense of a neighbour or in the establishment of colonies. Armed forces were needed to enforce sovereignty in captured territories, and also for the maintenance of the central authority at home. As law and order became better established, the functions of riot control, crime prevention, and law enforcement were transferred to civil police authorities, although some of the police forces in many European countries retain a paramilitary character.

16. The organization of the Canadian Government and defence forces followed the pattern of late nineteenth century Europe. However, the scale of the peacetime defence establishment before and after World War I was very low, since the security of Canada was not seriously threatened, and help could be obtained from Great Britain. The role of the small defence force was to serve as a training cadre for the larger army which would be recruited from the civilian populace in the event of war. It was assumed (and justifiably so in 1899, 1914, and 1939) that the war would be far away and long-lasting, allowing plenty of time to train green troops.

17. The cycle of slow but far-reaching mobilization of the nation for war followed by rapid and nearly complete demobilization for peace was broken by the onset of the Cold War in 1949 and the Korean War in 1950. This faced Canada with a new requirement, for professional armed forces large enough to put into the field without augmentation from the mobilization of non-professionals for an indefinite period. There is now, for

the first time in a century, a direct threat to the security of Canada. The skills to maintain and fight with modern weapons have become increasingly demanding, and it can no longer be assumed that the time to train a civilian force to an adequate military standard will be available.

18. During the two decades 1949-1969 the Canadian Armed Forces (CAF) devoted virtually all of their efforts to external security. There were no important problems of sovereignty, and large strides were made in national development, especially on the economic side. Canadian prosperity owed a lot to the good economic co-operation with the US, probably encouraged by parallel co-operation in the defence and other spheres.

POSSIBLE ROLES OF THE CANADIAN ARMED FORCES IN THE FUTURE

19. The character of the Canadian Armed Forces has been moulded by their historical origin and their recent roles. They have become highly skilled career professionals devoted to the objective of external security.

20. It is not the purpose of this paper to argue about the importance of security, or to discuss the amount of effort which Canada should devote to external security. Let us take as a hypothesis that security is of fundamental long-term importance, but that the external threat to Canada and her allies is on a decreasing part of the cycle at the present time, so that an adequate response can be made with a reduced scale of effort. It is recognized that this assumption is highly debatable, and has been, is being, and will be debated. Let us also assume that the objectives of internal security, sovereignty, and national development are of increasing importance. This is less debatable, and, if accepted, increases the pressure to reduce expenditures on external security.

21. The question then arises as to the possibility of transferring some of the activities of the Armed Forces away from external security and into internal security, sovereignty, and national development. Can they perform effectively in these other roles? Will it be possible to switch them back effectively to external security in future years if the cycle reverses again? Or should the Armed Forces be reduced and other agencies used to accomplish internal security, sovereignty, and national development?

22. The Chief of the Defence Staff has likened national defence to insurance. Unless and until disaster comes, and the money is claimed, the insurance funds are not left idle, but are usefully invested. To pursue the analogy further, a large insurance company relies on the statistics of large numbers to predict the probable rate at which claims will be presented. If too many claims were presented simultaneously, it might not be possible to liquidate the invested reserves and pay off. For this reason, the fine print at the bottom of the policy exempts the company from claims arising from insurrections, war, or acts of God. Unfortunately for the Armed Forces, these are precisely the circumstances under which they will be required to pay off. The expression "liquidate their reserves" is an unfortunate one in this context, but the analogy holds. There are distinct limitations to the extent to which personnel can be diverted from external security if a full capability to return to that function on short notice is to be retained. On the other hand, refusal to divert any activity may simply result in a permanent reduction with no capability at all for rapid return.

23. Obviously the most efficient arrangement would be achieved if new roles supporting these three objectives could be identified, allowing the Armed Forces to use their present bases, equipment, and training. For control of riot and insurrection this may be possible for Mobile Command and other

forces based in Canada. However, in this area, as in many others, prevention is better than cure. Prevention can best be done by social and economic development and by good police work. Crime prevention and law enforcement is another job for the police, although it might be possible to arrange for some support from the Armed Forces in special situations. However, the role of relief to areas stricken by natural disaster requires good organization and discipline, good transport and medical facilities, and large numbers of physically fit and courageous men. All of these qualities are possessed in abundance by the Canadian Armed Forces. They and Canada Emergency Measures Organization (EMO) could prepare for disaster relief on an international as well as a national scale.

24. It has been argued above that the threats to Canadian sovereignty (other than those of the supranational or a constitutional type) are all of a maritime nature. It is by no means clear that establishment of a twelve-mile territorial sea, a hundred mile Arctic pollution zone, control over passages through the Arctic Straits, or the exclusive right to exploit the more distant portions of the Canadian continental shelf will need to be (or even could be) won by military means. However, laws that are opposed need to be enforced, and "historic rights" need to have some real history behind them. Claims to waters that are never sailed or commercial rights that are never exploited may be hard to defend in an international assembly or court. It would appear that there are activities suitable to Maritime Command in support of Canadian sovereignty. They may require nuclear submarines to go under the ice, submersibles and divers to operate on the seabed, and ships able to penetrate ice-infested waters, as well as long range patrol aircraft and other instruments of surveillance.

25. If there is a need for land or air forces to patrol and police the land in the north, this should be described as a contribution to national development or law enforcement, but not

sovereignty. There may be important opportunities for the Canadian Armed Forces to contribute to economic, social, and cultural development in the north. This would probably require a clear government direction to approve the use of military airlift and construction engineering for projects which private enterprise would prefer to undertake if the rewards were sufficient. However, in an atmosphere of change, where the Armed Forces were being directed to make basic alterations to their objectives and activities, it should be possible to override the objections of contractors and labour unions in the interests of national development.

26. There will be many activities useful to the economy which are already pursued by the Armed Forces for military purposes. Examples could include flying training, the control of air traffic, ice reconnaissance, mapping, the interpretation of aerial photographs, fire protection, provision of emergency communications, and the maintenance and repair of vehicles and electronic equipment.

27. Once the Armed Forces were established in northern localities for sound economic reasons, their presence in small and impressionable communities could be used for social and cultural development as well. It would be important to arrange for co-operation with other government agencies active in the same location.

28. Social and cultural development can take many forms, such as youth programs, adult education and training, medical, dental and optometric services, encouragement of general physical fitness, and instruction in water safety and firearms. These are much less likely to be needed or appreciated in the large and sophisticated cities than in the small isolated communities which are the most suitable targets for economic development with the aid of the Armed Forces. It would be possible to select Indian, Eskimo, or Métis communities for special attention.

One result of a successful program could be to recruit young and healthy members of these communities into the Armed Forces.

29. Search and rescue, already an important service rendered by the Armed Forces, is particularly important in isolated areas. Another dimension may need to be added with the arrival of commercial activity under water.

30. If a serious redirection away from external security and towards internal security, sovereignty, and national development were made, the rather unappealing title of "Canadian Armed Forces" could be a handicap. It would still be important to retain a considerable proportion of the forces on the military duties necessary for external security, and one purpose would be to maintain the entire organization in a state readily convertible back to the external security role. However, the emphasis on arms would be reduced.

ROLES FOR THE DEFENCE RESEARCH BOARD

31. Although there was some defence research in Canada at an earlier date, the history of the Defence Research Board (DRB) began with the Cold War. It has lived through only one phase of Canadian defence, that of the medium-sized professional establishment dedicated to external security. Most of the DRB research program was in support of the Armed Forces objectives, but as with most defence research, there was a considerable spin-off to the benefit of economic development (4). In addition, much of the research has contributed to general scientific knowledge and could therefore be credited to cultural development in the broad definition of that term.

32. If there were a serious effort to redirect the DRB program toward internal security, there would be opportunities

in the areas of pollution and of natural disasters such as earthquakes, floods, and fires. The identification of the sources of pollution, whether airborne, waterborne, or in edible material, and the monitoring of safety levels requires scientific techniques not yet developed, and could also need aircraft, ships, and a good communication system. A related activity would be the study of the benefits and dangers of pesticides.

33. The study of the origins of and the methods of predicting earthquakes, floods, and fires may belong with Energy Mines and Resources, Forestry, or Agriculture, but the development of the techniques for minimizing and containing damage, and carrying out rescue and repair could be a task for DRB, the Armed Forces, and Canada EMO.

34. Another task for which the same agencies have prepared in the context of a direct attack on Canada or the US, but which could suddenly assume great significance in the event of a nuclear war between the Soviet Union and China, is the monitoring of radioactive fallout and the taking of the necessary precautions in Canada.

35. The measures for internal security involving malevolent or irresponsible behaviour, such as riots, insurrection, subversion, and crime could benefit by the attention of psychological and sociological as well as physical, chemical, and engineering research. Development of devices and methods of crowd control should be pursued in close co-operation with the police and armed forces. Certain other public dangers, such as road or air accidents, probably fall into the jurisdiction of other government departments, but certainly do deserve continued research.

36. Since the main threats to Canadian sovereignty are of a maritime nature, DRB's present work in support of maritime forces forms an excellent base for furthering the objective of

sovereignty. Increased activity on diving and underwater photography could be useful, as could the development of devices for the detection of ships, submersibles, and activity on the sea bottom and the recovery of persons or vehicles following an accident. Improved knowledge of ice and weather conditions would be valuable. If Canada should procure submarines for use under the ice, a considerable program of research would be needed.

37. The Science Council of Canada (5) has identified six national goals as a framework for the establishment of a sound science policy intended to serve economic, social, and cultural development. These are:

- National prosperity
- Physical and mental health and high life expectancy
- A high and rising standard of education, readily available to all
- Personal freedom, justice, and security for all in a united Canada
- Increasing availability of leisure and enhancement of the opportunities for personal development
- World peace, based on a fair distribution of the world's existing and potential wealth.

38. DRB programs have already contributed to national prosperity with the airborne doppler navigation system, Arctic communication, components for electronic systems, improved electric batteries, and other developments pursued for military purposes. Lasers may soon be another example. The Industrial Research Program is intended to foster economic development. It would obviously be possible to redirect DRB research further in this direction. Special emphasis could be placed on economic development of the Arctic or the seabed, or on reclamation of waste, since these would contribute towards enhancement of sovereignty and reduction of pollution. However, DRB should

not aim at the same objectives as the National Research Council or other research agencies of the Federal Government, and should retain a significant responsibility for research in the area of external security.

39. Considerable DRB contributions to physical and mental health have been made as a result of military programs, in such areas as the practice of medicine and the design of clothing for the Arctic; mass immunization and the control of epidemics; protection against insects; research on respirators; detection of, protection against, and treatment for exposure to radiation, and the study of group behaviour under conditions of stress, and techniques of crowd control. This type of research can be continued and extended, perhaps to include morale and motivation. Study of the effects of noise and means to abate it are being undertaken but could be extended.

40. The military world faces a constant and heavy requirement for training and retraining in a wide variety of skills, including language, leadership, management, and many highly technical specialties as well as those needed for proficiency in combat. Not only the techniques of training, but also the testing of aptitudes, selection of recruits, and management of large numbers of instructors and pupils are involved. Systems analysis and computer science can be used to good effect. There is an obvious carryover to civilian problems of adult education and training.

41. Military systems require elaborate and effective means for the collection, sorting, dissemination, and display of information. This applies to operational information such as the movement of ships and aircraft, but also to intelligence of a technical or strategic nature. There is a certain similarity to the requirements of police work, including crime detection, identification, and apprehension of criminals, as well as crowd or traffic control. Automatic intrusion alarms have both

military and civilian uses.

42. Improved communications, including wise choice of content as well as the technical means of transfer of information, can contribute to national pride and a sense of unity. So can the development of leadership and discipline, always stressed by the Armed Forces. In connection with the storage and retrieval of information, the increasing tabulation of personal and private records in central computers raises the possibility of the improper use of confidential information. The precautions necessary to ensure the responsible handling of this data are similar to those used to protect classified defence information.

43. Defence science is not particularly directed towards personal development or the improved use of leisure time. However, a dedicated research scientist continues personal development throughout his career, and many persons associated with the Armed Forces have been able to pursue personal development in many ways, such as service in many parts of Canada and in foreign countries, learning of languages, and acquiring skill in sports and hobbies. Many outdoor sports such as rifle shooting, parachute jumping, and skiing have roots in military life, as do improvements in equipment and safety practices.

44. The last goal of world peace takes us right back to the beginning: security. This has always been the prime goal of the Armed Forces and DRB, although they have not addressed themselves to the Science Council's goal of bringing about a fair distribution of the world's wealth. Science can contribute to peace in a number of other ways, as well as increasing the effectiveness of our Armed Forces.

45. For determination of defence and foreign policy, and to make helpful contributions in international councils, a background of research is necessary in strategic problems and

international relations. This type of research is not done by physicists, chemists, and engineers in laboratories, but it is none the less defence research. This can include research into arms control measures as well as improved weapon systems.

46. Other research in the area of the social sciences includes sociological studies of communities in which peace-keeping operations are being, or may be conducted, and of the basis of hostile relationships which may lead to conflict.

47. Lessons learnt by military units concerning such matters as diet, and hygiene for varied climatic conditions are available for general use in the developing countries.

48. One policy decision which would have to be faced, and which might require some change in the organization and procedure for establishing the DRB program, is whether the majority of DRB research should continue to be directly in support of the Armed Forces. It could be that the contributions of the forces and of DRB towards the objectives of internal security, sovereignty, and national development would be most effective if pursued in different areas.

CONCLUSIONS

49. The main objective of the Canadian Armed Forces and the Defence Research Board has been to further external security, although this has not precluded contributions to economic development as a by-product. If the world situation allows reduced Canadian effort towards the objective of external security during the next few years, and there are other objectives demanding increased resources, then a transfer of effort is indicated. A key decision then must be made as to whether the CAF and/or DRB should transfer some to their effort towards

these other objectives, or should be reduced in size but continue to specialize in external security. In the second case, other agencies would need to expand in order to advance the other objectives.

50. Three objectives which appear to be increasing in importance are internal security, Canadian sovereignty, and national development. Both the CAF and DRB have the facilities, skills and personnel to make increasing contributions towards all three. Moreover, by selecting the new activities properly, it should be possible to retain the facilities, skills, and personnel which may be required on short notice in the event that a major effort towards external security should be required again.

51. A transfer of this type will require important changes of attitude both inside and outside of DND. The Armed Forces will have to accept responsibilities that will weaken their former individual concentration on external security and preparation to engage in various types of warfare on very short notice. Certain civilian interests may have to accept the presence of the defence department in activities from which they have formerly been excluded. A transfer of the objectives of DRB research should not pose difficult problems.

52. General acceptance of such a redirection might be easier to obtain if certain titles and definitions were altered, broadened, or extended. Today "defence", "security", and "armed forces" suggest battles, bombings, and barbed wire. But there can be defence against subversion, crime, trespass, poverty, and ignorance. There can be security against injustice, floods, pollution, or intolerance. The forces to provide such defence and security may not need to be armed.

53. As a final caution, however, the main justification for using the Armed Forces and DRB rather than other agencies to

further these objectives is to retain as much power as is needed to ensure external security today, and to retain the capability to redirect all of their resources back to external security, quickly and effectively, should this become necessary. However, this is not the only justification; in many roles the special skills and disciplines of the Armed Forces and the specialized research capabilities of DRB could make them the logical bodies to undertake certain civil tasks on the grounds of efficiency and economy alone.

REFERENCES

- (1) The Shorter Oxford English Dictionary. Revised. Oxford (1959)
- (2) Appendix to House of Commons Debates. (17 April 1970) p 6027
- (3) Canada and the United States: Political and Security Issues... John W. Holmes. Behind the Headlines (March 1970). Canadian Institute for International Affairs. Quotation from an article by Roger Swanson to be published in Behind the Headlines.
- (4) DRB: Re-organization for Closer Ties with Canada's New Forces. R.J. Uffen. Science Forum. Vol 1 No. 3, 6-10 (June 1968)
- (5) Towards a National Science Policy for Canada. Science Council Report No. 4 (October 1968)

SOVEREIGNTY

1. The Oxford Dictionary (1) defines sovereignty as "supremacy in respect of power, domination, or rank; supreme dominion, authority, or rule."

2. The Encyclopaedia Britannica (2) says that "the old distinction between sovereign and non-sovereign States has ceased to exist. A sovereign State is now obsolete. Even the United States is not absolutely sovereign. There is no State more rigorously bound by treaties."

3. Hans Morgenthau, in "Politics Among Nations" (3) has a chapter on sovereignty, certain key points of which will be outlined below. He begins with the statement that "... despite the brilliant efforts of a few outstanding scholars, there is much confusion about the meaning of the term, and about what is and what is not compatible with the sovereignty of a particular nation."

4. Morgenthau devotes much attention to the distinction between national and international law. In one paragraph he says:

"The doctrine of sovereignty has retained its importance throughout the modern period of history, and in the conception of popular sovereignty it has provided the national democratic state with a potent political weapon. Yet it has also been subject to reinterpretations, revisions, and attacks, especially in the field of international law. The source of these doubts and difficulties

lie in the apparent logical incompatibility of two assumptions that are of the essence of modern international law: the assumption that international law imposes legal restraints upon the individual nations and the assumption that these very same nations are sovereign - that is, the supreme law-creating and law-enforcing authorities - but not themselves subject to legal restraints. In truth, however, sovereignty is incompatible only with a strong and effective, because centralized, system of international law. It is not at all inconsistent with a decentralized, and hence weak and ineffective, international legal order. For national sovereignty is the very source of that decentralization, weakness, and ineffectiveness."

Discussing law enforcement, he says:

"... on a given territory only one nation can have sovereignty - supreme authority - and no other state has the right to perform governmental acts on its territory without its consent. In consequence, all enforcement actions, provided for by international law, short of war, are limited to the exercise of pressure upon the recalcitrant government - such as diplomatic protests, intervention, reprisal, blockade - all of which leave intact the territorial sovereignty of the lawbreaking nation."

5. A section entitled "What Sovereignty is Not", includes the statement:

"Sovereignty is not actual independence in political, military, economic, or technological

matters. The actual interdependence of nations in those matters and the actual political, military, and economic dependence of certain nations upon others may make it difficult or impossible for certain nations to pursue independent domestic and foreign policies, but it does not normally affect their supreme law-giving and law enforcing authority within their own territories - that is, their sovereignty. They may be unable, because of prevailing actual conditions, to enact and enforce the kind of laws which they would wish and which more powerful nations are able to enact and enforce. But the authority, within the limits of their obligations under international law, to enact and enforce the laws they please is not thereby abrogated. The actual inequality of nations and their dependence upon each other have no relevance for the legal status called sovereignty."

6. In a section headed "How Sovereignty is Lost" we find the following paragraphs:

"... sovereignty points to a political fact. That fact is the existence of a person or a group of persons who, within the limits of a given territory, are more powerful than any competing person or group of persons and whose power, institutionalized as it must be in order to last, manifests itself as the supreme authority to enact and enforce legal rules within that territory."

"... the federal government is today sovereign within the territory of the United States; for there is no supranational authority which could

challenge its power, nor are there sectional or functional authorities within its territory which could think of doing so. This sovereignty, no less than the sovereignty of the French monarchy in the sixteenth century, is the result of the actual distribution of power in the state. It is, therefore, primarily the result of the Union's victory over the Confederacy in the Civil War. If the supreme authority of the federal government within the territory of the United States were to be whittled down by political or economic organizations strong enough to legislate for themselves and enforce their laws without effective control on the part of the federal government, a situation might arise similar to the one that confronted the emperor of the Holy Roman Empire when at the end of the Middle Ages the territorial states substituted their own supreme authority for his. The United States would then split up into a number of territorial or functional units that would be actually sovereign although the federal government might still for a time, like the emperor, retain the legal attributes and the prestige of the sovereign power."

"Effective international control of atomic energy, in view of its actual military and prospective economic and social importance, would make the power of the agency exercising the control paramount within the territory of its operation. As a matter of political fact, such an agency would exercise supreme authority within the territory concerned; its control would be supranational rather than international. The national governments, however great their autonomy might be in all fields other than atomic energy, would have

lost their sovereignty."

"It has been said frequently ... that while the permanent members of the (United Nations) Security Council have retained their sovereignty, the other members of the United Nations have lost theirs ... if a majority vote could put the instrumentalities of law enforcement of the individual states at the disposal of the United Nations to be applied against any recalcitrant member, then the Security Council would indeed have supreme authority over the member states who are not permanent members of the Security Council. It, instead of the government of those states, would be sovereign."

However, the author goes on to show that "the potentialities for superseding the national sovereignties with the sovereignty of the Security Council ... are ... incapable of realization at present or in the foreseeable future."

CANADIAN SOVEREIGNTY

7. If the preceding points of view are accepted, any threats to the sovereignty of Canada appear to lie in the areas of federal-provincial relations, the waters of the Arctic, and the seabed on the continental shelf.

8. Agitation for a stronger United Nations, stronger international law, and for supranational controls over such activities as arms control or control of nuclear energy are in opposition to the enhancement of Canadian sovereignty. Since these developments are supposed to be favoured by the Canadian Government, it does not seem logical to place "enhancement of Canadian

sovereignty" at the top of the list of overall national goals.

9. The government press release respecting Canadian participation in NATO (4) referred to sovereignty in two passages:

"The precise military role which we shall endeavour to assume ... will depend in part on the role assigned to Canadian forces in the surveillance of our own territory and coast lines in the interests of protecting our own sovereignty."

and, in summary,

"We shall maintain appropriate defence forces which will be designed to undertake the following roles:

- (a) the surveillance of our own territory and coast lines, i.e. the protection of our sovereignty; ..."

10. In a statement in the House of Commons on Canadian Sovereignty (5) the Prime Minister used the following words:

"I have already informed the house that Canada's sovereignty over its Arctic regions, including the islands of the Arctic archipelago, is well established and that there is no dispute concerning this matter ..."

"Canada's sovereign rights over the continental shelf in the Arctic follow from Canada's sovereignty over the adjacent lands, and again there is no dispute on this matter. No country has asserted a competing claim to the resources in question; no country has challenged Canada's

'claim on any other basis, and none can do so under international law ..."

However, note the following:

"It is also known that not all countries would accept the view that all the waters between the islands of the archipelago are internal waters over which Canada has full sovereignty. The contrary view is indeed that Canada's sovereignty extends only to the territorial sea around each island. The law of the sea is a complex subject which, as can be understood, may give rise to differences of opinion. Such differences, of course, would have to be settled not on an arbitrary basis but with due regard for established principles."

11. The First Report of the Commons Standing Committee on Indian Affairs and Northern Development (6) contained a section labelled "Arctic Sovereignty", with the following paragraphs:

"Your Committee rejects the suggestion that an international waterway exists through the Canadian Arctic Archipelago.

The Committee does not accept the assertion that the waters of the Canadian Arctic Archipelago, which are ice locked and traversable by motorized vehicle for 7 or 8 months of the year, and through which no international maritime route, commercial or otherwise, has existed heretofore, are analogous to the waters of the Pacific Archipelagos or other areas of the world where international maritime trade routes have existed for centuries.

The waters of the Canadian Arctic Archipelago lie over the continental shelf; the Arctic islands and the continental shelf are a geological extension of the Canadian mainland and the North American land mass ...

Your Committee considers that the waters lying between the islands of the Arctic Archipelago have been, and are, subject to Canadian Sovereignty historically, geographically, and geologically ...

Your Committee recommends that the Government of Canada indicate to the world, without delay, that vessels, surface and submarine, passing through Canada's Arctic Archipelago are and shall be subject to the sovereign control and regulation of Canada."

12. Two bills now before Parliament bear on this subject. C202, the Arctic Waters Pollution Prevention Bill, is an exercise of extraterritorial jurisdiction for the prevention and control of pollution out to a distance of 100 miles from every point of Canadian coastal territory above 60°N. But it is not a claim to sovereignty (7). Bill C203, the Territorial Sea and Fishing Zone Act, extends territorial waters from three to twelve miles, and does therefore increase the area of Canadian sovereignty (7). In particular, note the statements (8):

"The Canadian Government is aware of the USA interest in ensuring freedom of transit through international straits, but rejects any suggestion that the Northwest Passage is such an international strait",

and by the Secretary of State for External Affairs (9):

"Canada has always regarded the waters between the islands of the Arctic archipelago as being Canadian waters. The present government maintains that position; and ... there is no abandonment of these claims whatever in the legislation that has been put forward here."

and later (10):

"What then is the effect of the 12-mile limit with respect to the Northwest Passage? It is known that the United States regards the waters of the Northwest Passage beyond three miles from shore as high seas. I think I have already demonstrated the weakness of the legal basis for such an assertion ... Since the 12-mile territorial sea is well established in international law, the effect of this Bill on the Northwest Passage is that under any sensible view of the law, Barrow Strait, as well as the Prince of Wales Strait, are subject to complete Canadian sovereignty."

13. Bill C203 also provides for the extension of fishing zones in certain areas such as the Gulf of St. Lawrence and Queen Charlotte Sound.

14. The United States has objected to both of these bills. A press release (11) states:

"International law provides no basis for these proposed unilateral extensions of jurisdictions on the high seas, and the USA can neither accept nor acquiesce in the assertion of such jurisdiction."

15. Another difference of opinion concerning maritime

jurisdiction, if not sovereignty, is brewing in connection with the rights to commercial exploitation of the seabed. Canada subscribes to the 1958 UN Geneva Conference on the Law of the Sea, which

"recognizes that a coastal state has sovereign rights, for purposes of exploration and exploitation of natural resources, over its continental shelf defined as: 'the seabed and the sub-soil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas'."

(12)

16. A number of the members of the United Nations, led by Malta (12), have been pressing for a limitation to the national rights of the coastal states on the seabed, and a dedication of the major portion to the UN, with the economic proceeds to be shared among underdeveloped and landlocked countries. A very recent statement by President Nixon (13) indicates that the US may also oppose extended jurisdiction by coastal states, but the implications are not clear.

17. It seems clear that many disputes lie ahead regarding the law of the sea. As the Prime Minister said (14):

"It is well known that there is little or no environmental law on the international plane and that the law now in existence favours the interests of the shipping states and the shipping owners engaged in the large scale carriage of oil and other potential pollutants. There is an urgent

need for the development of international law establishing that coastal states are entitled on the basis of fundamental principle of self-defence, to protect their marine environment and the living resources of the sea adjacent to their coasts."

And, referring to sovereignty over Arctic passages, Professor Johnston says (15):

"... the extent of national environmental authority over Arctic waters has generally been regarded as limited by the traditional principle of the freedom of the high seas.

The propriety of this general assumption is now the subject of intensive debate among specialists on the international law of the sea."

Later, the same author writes (15):

"Most of the Canadian Arctic sector consists of solid ice. The extent of Canadian sovereignty over the ice has long been the subject of debate among lawyers. Analogies with land and water have been placed in competition with common sense....

... the legal status of Arctic waters close to the Canadian land mass and islands has never been established beyond question in international law, and consequently it is not settled whether there has ever been a right of innocent passage in these areas."

18. To summarize, Canada does not seem to face any challenge

to her territorial sovereignty on the mainland or the Arctic islands. But there is the prospect of considerable international opposition regarding sovereignty over the waters between the Arctic islands, jurisdiction over offshore waters for control of pollution, and jurisdiction on the deeper portions of the continental shelf.

19. There is another area in which it is sometimes claimed that Canadian forces are needed to protect sovereignty. A government statement (4) declared that "To the extent that it is feasible we shall endeavour to have those activities within Canada which are essential to North American defence performed by Canadian forces." It is not clear that this should be considered as a contribution to sovereignty, at least in the legal sense used above.

20. In the same general sense, the extensive holdings in Canada of large American and international corporations is not a threat to our legal sovereignty, although it does represent great economic power beyond our national control.

21. There are other examples, such as the affiliation of Canadian labour unions with American or international bodies, which represent the internationalization of many of the world's important activities. Internationalism can be in conflict with nationalism without being a threat to legal sovereignty.

22. This paper takes the view that sovereignty is essentially a legal concept. In the worlds of economic and military affairs, or even labour, social, and cultural affairs, it is more meaningful to speak of power and influence rather than sovereignty.

REFERENCES FOR ANNEX A

- (1) The Shorter Oxford English Dictionary. Revised. Oxford (1959).
- (2) Encyclopaedia Britannica, (1949) Vol 21 p 99
- (3) Politics Among Nations. Hans J. Morgenthau. 4th Edition. (Revised 1967). Knopf
- (4) House of Commons Debates. (18 April 1969) pp 7724-5
- (5) House of Commons Debates. (15 May 1969) p 8720
- (6) Votes and Proceedings of the House of Commons. No. 38. (16 Dec 1969) pp 208-9.
- (7) House of Commons Debates. (16 April 1970) p 5941
- (8) Summary of Canadian note handed to the United States Government on 16 April, 1970. Appendix to House of Commons Debates (17 April 1970) p 6028
- (9) House of Commons Debates. (16 April 1970) p 5948
- (10) House of Commons Debates. (17 April 1970) p 6015
- (11) House of Commons Debates. (15 April 1970) p 5923
- (12) Control of the Seabed. Arvid Pardo. Foreign Affairs (October 1968). Reprinted in Survival XI 18 (January 1969)

- (13) Globe and Mail, Toronto (28 May 1970) p 4
- (14) House of Commons Debates. (8 April 1970) p 5624
- (15) Canada's Arctic Marine Environment: Problems of Legal Protection. Douglas M. Johnston. Behind the Headlines (July 1970). Canadian Institute of International Affairs