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WAS AUSTRALIAN ANTARCTICA WON FAIRLY?

by

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A thesis submitted in partial fulfilment of the requirement of the
Bachelor of Antarctic Studies with Honours at the Institute of
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November, 2007

Declaration

This thesis contains no material which has been accepted for the award of any degree or diploma in any university, and to the best of my knowledge and belief, this thesis contains no copy or paraphrase of material previously published or written by any person, except where due reference is made in the text of the thesis.

Noel David Barrett

Abstract

The *Winning of Australian Antarctica* (A. Grenfell Price) described the Douglas Mawson led British Australian New Zealand Research Expedition (BANZARE) and the contest to claim Antarctic territory ahead of Norway. Norwegian versions of this contest, by Bjarne Aagaard and Hans Bogen, were critical of Mawson and Australia's claim to a sector of Antarctica west to 45° E. By investigating the historical drivers that led Norway and Britain to the contest, this thesis establishes, through the consideration of official documents, the reasons for it and whether or not Australian Antarctica was won fairly.

Norway's inexperience in diplomacy and foreign affairs, after gaining independence from Sweden in 1905, alerted Britain to the value of whaling in the Antarctic region and resulted in Britain annexing territory to create the Falkland Islands Dependencies and the Ross Dependency. As he was restricted by British whaling regulations, the Norwegian whaling magnate Lars Christensen sought territory free of British control. This led to Norway claiming Bouvet Island which the British believed was theirs. Britain, with the stated desire to include the whole of Antarctica in the British Empire, formulated processes to achieve this in Eastern Antarctica at the 1926 Imperial Conference in London. The process was specifically developed to thwart attempts by other nations to claim the same territory. This was achieved by omitting vital geographic coordinates from the published conference summary, an omission that favoured the BANZARE in proclaiming territory from 45° E to 160° E for Britain. To remove a possible Norwegian challenge for the territory, Britain agreed to relinquish its claim to Bouvet Island in return for Norwegian recognition of British hegemony in Antarctica.

Based on primary documents, Australian Antarctica was acquired directly as a result of Britain's desire to include the whole of Antarctica in the Empire. The process by which this was achieved was legal according to international law of

the period. This thesis has concluded that the process was unfair in only one major aspect, in that it failed to publicly specify the geographical limits of the territory of interest to the British. Taking this into account, and the legality and fairness of the remainder of the process, its implementation and the views expressed by the Norwegian Government, Australian Antarctica was not won, but acquired fairly.

Acknowledgments

I am indebted to numerous people who have made it possible for me to complete this work. My sincere thanks go to my supervisors, Associate Professor Marcus Haward for his continued and enthusiastic support that boosted my confidence when I needed it and to Dr. John Gibson, for the inspired suggestion to examine the role of Norwegians in Antarctica and his continued support with snippets of additional Norwegian information. I am particularly indebted to my Norwegian friend Mr. Tor Skjellaug, who kindly agreed to translate sections of Bjarne Aagaard's *Fangst of Forskning I Sydishavet* and to the Australian Antarctic Division library staff: Dr. Andie Smithies, Mr. Graham Watt and Ms. Meredith Inglis for their assistance in sourcing the very documents I needed. I am very appreciative of the help provided by Hank Brolsma (Australian Antarctic Division), with maps of Antarctica and Dr. Elizabeth Freeman (School of History and Classics) in establishing a method for footnoting the references from Bush. My thanks are extended to the staff of IASOS and my fellow Honours students for their help, humour and friendship. Finally to my wife Ricki, for understanding my need to study and proof reading the final copy in a way only a teacher could and our dog Daisy whose demand for walks cleared my mind and opened the way to fresh ideas.

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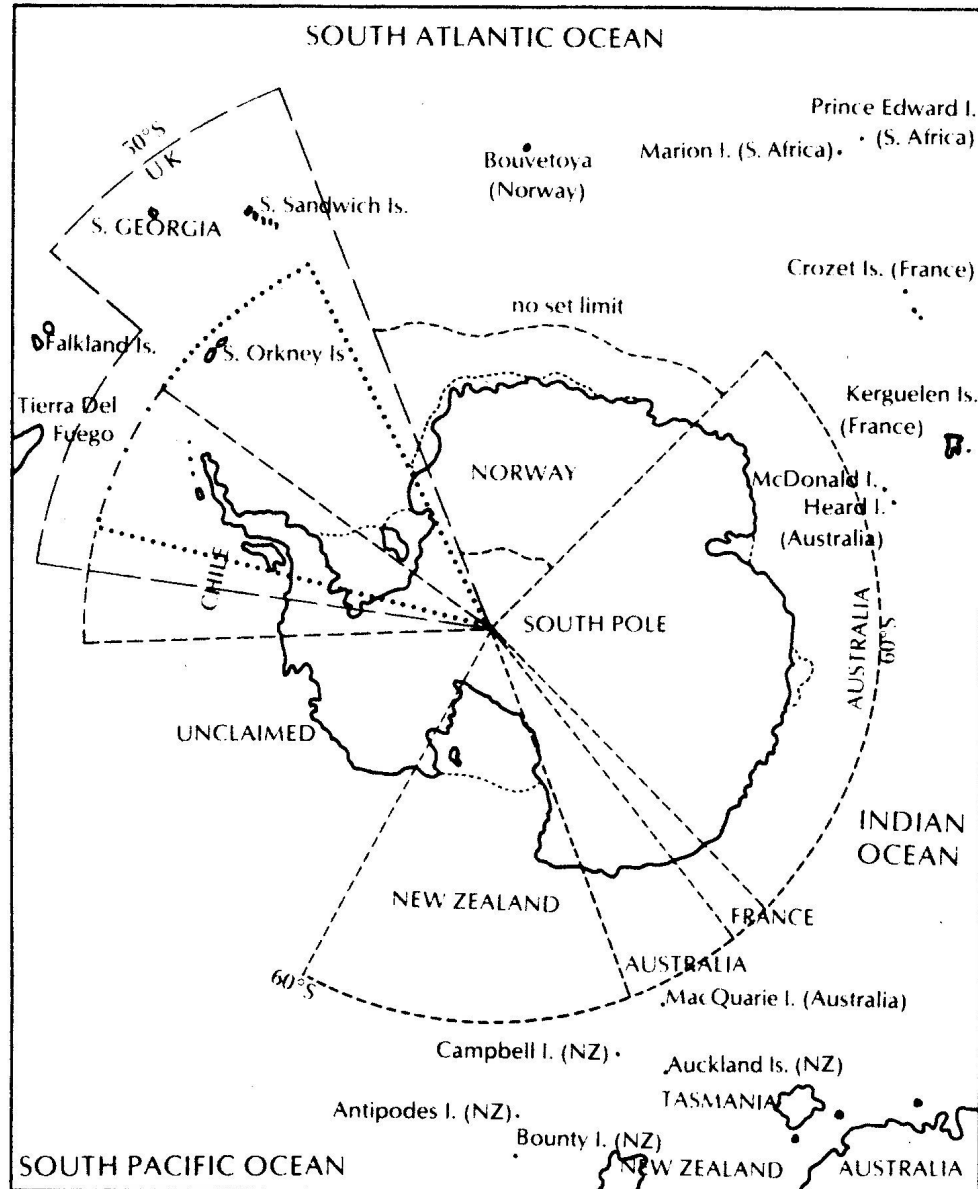
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Abbreviations

AAE	Australasian Antarctic Expedition
AAT	Australian Antarctic Territory
BANZARE	British Australian New Zealand Antarctic Research Expedition
BFO	British Foreign Office
FID	Falkland Islands Dependencies

Map 1 - Antarctica and Sub-Antarctic Islands



Source: B. Brewster, *Antarctica: Wilderness at risk*, (Sydney, 1982) p. 33.

Map 1

Antarctica and Sub-Antarctic Islands

Chapter 1 - Introduction

In 1933 Australia formally acquired sovereignty over territory in Antarctica, territory that had been claimed by Britain in pursuit of their policy to include the whole of Antarctica within the British Empire. Britain, the second largest whaling nation after Norway, had a strategic interest in controlling whaling. Control was necessary to ensure that the wealth that could be gained from the harvesting of the resource remained within the British Empire. Whale oil was not only the source of fat (margarine) for a fat starved post-war Europe, but also the source of glycerine, an essential item in the manufacture of explosives and therefore of strategic importance. Britain had a vital interest in maintaining stocks and controlling Norway, their larger rival in this industry and in so doing reaping additional wealth from the royalties paid by Norwegian whalers. To this end Britain had annexed Antarctic territory to form the Falkland Islands Dependencies in 1908 and the Ross Dependency in 1923. In pursuit of further Antarctic territory Britain was aided by Australia, which was still subject to British Foreign Policy, and Australian explorers.¹

The principal Australian explorer involved in the acquisition of what was to become the Australian Antarctic Territory (AAT) was Sir Douglas Mawson, who had led the Australasian Antarctic Expedition (AAE) in 1911. Mawson's role in the acquisition of Australia's Antarctic Territory is the prime subject of A. Grenfell Price's *The Winning of Australian Antarctica*.^{2,1} This book is based on Mawson's papers leading up to, and including, the British Australian New Zealand Antarctic Research Expeditions (BANZARE), which took place between October 1929 and March 1931. These expeditions were touted as being scientific, and indeed they were, but this was not the primary motive for their undertaking. As will be shown, the primary motive and function of the voyages, particularly the first, was to formally claim territory for Britain.

¹ The foreign policy of Britain continued to be rigidly adhered to by Australia until 1942 when Prime Minister Curtin recalled Australian forces to defend Australia and with the adoption of Statute of Westminster. (S. Macintyre, *A Concise History of Australia* (Cambridge, 2004), p. 192.)

² End notes are denoted in italic numerals.

The evocative title “*The Winning of Australian Antarctica*” suggests the territory gained by Australia in 1933 had been won in a contest. Price talks of the “battle which Mawson fought for Britain and Australia.”³ Swan, whom Price used as a key source for his non-Mawson material, has a chapter headed “Eyes South! Australia Returns to the Attack.”⁴ Was this a battle with the formidable elements of Antarctica or an attack on a rival nation seeking Antarctic territory? It was the latter. Norway, Britain’s whaling rival, was seeking Antarctic territory free from British control in which to continue whaling. The initial rhetoric from Price and Swan suggest it was a battle, when in fact it was a contest led by Britain to claim Antarctic territory ahead of the Norwegians; a race for territory that included the territory Mawson had referred to in 1919, when he said, “I think that we might fairly claim that the section of the Antarctic between 90° and 180°E should be under the control of Australia.”⁵ Was, as Mawson suggested, this territory to be acquired fairly? Was the contest with Norway fair?

Indeed was Australian Antarctica won fairly? To answer this question it is necessary to define the meaning of ‘fairly’ to be applied in this thesis. *The Macquarie Dictionary* defines fairly as “in a fair manner, justly, impartially, properly, legitimately” and fair is defined as “free from bias, dishonesty or injustice.”⁶ In this work ‘fairly’ is interpreted as having a meaning similar to the colloquial ‘fair-play’, that is “action conforming to the generally accepted ideas of what is fair or acceptable in competition” where what is acceptable is just, impartial, proper and legitimate.⁷ Based on these definitions and taking into account *The Winning of Australian Antarctica*, this thesis will explore the means by which Australia won Antarctic territory and will establish whether or not it was ‘won’ fairly in the contest with Norway.

³ A. G. Price, *The Winning of Australian Antarctica* (Sydney, 1962), p. vii.

⁴ R. A. Swan, *Australia in the Antarctic* (Melbourne, 1961), pp. 181-206.

⁵ ‘Argus, 30 April 1919’ as cited in Swan *Australia in Antarctica*, p. 157.

⁶ *The Macquarie Dictionary* (Revised Edition), (Dee Why, 1985), p. 631.

⁷ *The Macquarie Dictionary* (Revised Edition), (Dee Why, 1985), p. 631.

In doing this the thesis will take into account the views of the Norwegian historians Bjarne Aagaard² and Hans Bogen,³ whom Price cites as a reason for the publication of *The Winning of Australian Antarctica* as they “had given their versions of the story and claimed for Norway the discovery and naming of lands, coasts, and other features, on grounds which in certain instances were doubtful and in others invalid.”⁸

This argument is developed through the following chapters. Additional material germane to the argument is included in the appendices.

Chapter 2, **Norway and Whaling in British Antarctica**, will establish the context for the ‘Norwegian Advance’ on Antarctic territory of interest to Britain and Australia. It will use primary documents cited by Aagaard to show why, as Price wrote, “the Norwegians were not unnaturally incensed by the extension of British jurisdiction over territory and whaling, first in the Falkland Islands Dependencies [and] the Ross Dependency.”⁹ Following a brief history of Norway and the importance of whaling to its economy, Norway’s whaling activities in the Falkland Islands region, which commenced prior to its separation from Sweden in 1905, will be discussed. This discussion will highlight the newly independent nation’s relative ineptitude at foreign diplomacy that resulted in Britain claiming sovereignty over the region and imposing whaling regulations. Similar events in the Ross Sea area will show Norway’s maturing diplomacy and its concern over Britain’s claim to territory that included areas discovered and claimed by Norwegians. The chapter will demonstrate that it was British actions over territory and whaling that drove the Norwegians to seek their own Antarctic territory free of British control. This was done by the actions of Consul Lars Christensen, a Norwegian whaling magnate, who first sponsored an expedition to Bouvet Island and claimed it for Norway. Christensen later sponsored further expeditions to Antarctica that generated concerns in Australia.¹⁰

⁸ Price, *The Winning of Australian Antarctica*, p. vii.

⁹ Price, *The Winning of Australian Antarctica*, p. 15.

¹⁰ Bouvet Island (Bouvetøya) will be referred by the English name in this thesis.

Chapter 3, **Australian Antarctica – Motives and Acquisition Process**, will initially establish the prime motive for the acquisition of Australian Antarctica. This will be done first by examining Australia's interest and involvement in Antarctica from the Australian Antarctic Expedition (AAE) in 1911-14 when the first territorial claim was made by Mawson. Central here too is what Price refers to as the "Causes of the British Australian New Zealand Antarctic Research Expedition (BANZARE)." ¹¹ Price gives these causes as scientific exploration, the British desire to regulate whaling, the advance of Norwegians and the French issuing decrees covering Adélie Land in 1924. ¹² This chapter will show that while these 'causes' played a role in the establishment of the BANZARE the prime 'cause' was the British goal that "the whole of the Antarctic should ultimately be included within the British Empire." ^{13,4} The chapter will then examine the process devised at the 1926 Imperial Conference in London to achieve this goal. The process and its implementation are critical factors in establishing if Australia acquired the territory fairly. In this regard it will be shown that elements of the process were designed to confuse other contestants in the contest for the Antarctic territory the British believed was theirs by virtue of discovery. The chapter will then follow the BANZARE voyages to show how this process was implemented by proclaiming the territory between Oates Land and Enderby Land for Britain. The chapter concludes with the Order in Council ceding the territory to Australia and the Australian Antarctic Territory Acceptance Act in 1933, and that Australia had one motive in common with Norway for gaining Antarctic territory, whaling and the revenue it would generate.

Chapter 4, **The Norwegian Advance Halted**, describes how Christensen's aim to claim Antarctic territory for Norway as far east as 60°E was thwarted by the British in return for Bouvet Island, thus excluding Norway from the contest. This was not achieved, however, without a struggle, as the Norwegians who, while they had agreed not to claim territory listed by the Imperial Conference in return for Bouvet Island,

¹¹ Price, *The Winning of Australian Antarctica*, p. 12.

¹² Price, *The Winning of Australian Antarctica*, pp. 12-16.

¹³ W. M. Bush *Antarctica and International Law*, Vol. 2 (London, 1982) (AU19111926), p. 104 (see also en 4)

continued to map, name and claim Antarctic territory. This resulted in Price's claim stated above, that Aagaard and Bogen had "claimed for Norway the discovery and naming of lands, coasts, and other features, on grounds which in certain instances were doubtful, and in others invalid."¹⁴ It will be shown that these claims were a direct result of the 1926 Imperial Conference summary listing the territories of interest by name only without any geographical limits.

Chapter 5, **The Norwegian View – Was it Fair-Play?** Price is very critical of Aagaard for putting forward the Norwegian view opposing the addition to British Antarctic Territory and Mawson's role in procuring it.¹⁵ In doing this, he failed to realise that many of the concerns voiced by Aagaard and subsequently by Bogen (who uses Aagaard as his main source), were also the concerns of the Norwegian Government. Chapter 5 will first examine the Norwegian Government's concerns and then endeavour to establish if they are valid. This will be done to determine whether the Norwegians considered Australian Antarctic had been won fairly.

Chapter 6, **International Law and Rights to Territory**, will examine the legality of territorial claims as a key component in establishing whether or not AAT was won fairly. To establish this, the process followed to gain AAT will be examined in detail against the legal precedents and will include the proclamations made by Mawson and others and the discoveries on which they were based. It will also take into account the 'sector principle' (which was rejected by Norway), and the effects of the 1933 East Greenland case. In addition to the legality of the Australian territorial claim, the legality of Britain's reaction to Norway's claim to Bouvet Island will be examined. This is important since it led to Norway agreeing not to claim territory that had been listed in the summary of the 1926 Imperial Conference. As discussed in chapter 4, this had the effect of annulling any contest for territory in the Australian sector. Action by Britain to hobble the only competitor must be viewed with suspicion given

¹⁴ Price, *The Winning of Australian Antarctica*, p. vii.

¹⁵ Price, *The Winning of Australian Antarctica*, p. 164.

their history with Norway over the Falklands Island Dependencies and the Ross Dependencies and must be examined for fairness as well as legality.

Chapter 7, **Conclusion**, will answer the question posed by the thesis title. It will do this by applying each of the key player's territorial aspirations and motivations to their actions and processes to realise what Price referred to as the *Winning of Australian Antarctica*. By objectively applying the definition of 'fair' and 'fairly', as outlined in the Introduction, to each of these actions and processes, chapter by chapter, and weighing up the evidence, the conclusion will establish whether or not Australian Antarctic and won fairly.

Appendix 1 is a chronology of historical and associated explorations, events and declarations of relevance to the thesis, thus providing additional detail to activities discussed within the body of the thesis.

Appendix 2 focuses on the detail of discoveries made by the AAE and BANZARE in support of the proclamations made by Mawson.

Appendix 3 examines the detail of the Eastern Greenland case and its relevance to the legality of territory acquisition.

End notes:

¹ Archibald Grenfell Price was a geographer, historian and educator. Born in North Adelaide in 1892, he gained B.A. Hons., Dip.Ed. and M.A. at Oxford and wrote numerous history and historical geographical works on Australia and the Pacific Islands, usually from the Imperial perspective of his time. He was knighted in 1963 for services to education and died in 1977. *The Winning of Australian Antarctica*, published in 1962 was written by Price following a request from Lady Mawson, as a contribution to the geographical report on the British Australian New Zealand Antarctic Research Expeditions (BANZARE). (Price, Sir Archibald Grenfell (1892-1977)' *Australian Dictionary of Biography* – (Online Edition) at <http://www.adb.online.anu.edu.au/biogs/A160036b.htm> 07/05/2007) Price sources most of non-Mawson material from R. A. Swan, *Australia in the Antarctic* (Melbourne, 1961) without due referencing.

² Bjarne Aagaard was the Norwegian author of *Fangst of Forskning I Sydishavet*, (*Science of Whaling and Sealing in the Southern Ice Sea*) a four volume work on whaling and exploration in the Southern Ocean. Aagaard was born in Sandjeford, Norway in 1892. He worked for shipping companies in Glasgow, Hong Kong and South America, and after retiring in 1925, settled in Stavern, Norway, where he wrote numerous articles and books on whaling and Antarctic history. He was strongly nationalistic and influenced both the public and the Norwegian Government regarding Norway's claims to Bouvet and Peter I Islands and to Queen Maud Land. He died in 1956. (*Bjarne Aagaard collection*, Hub Archives Scott Polar Institute, <<http://www.archiveshub.ac.uk/news/03080501.html>>, 12/12/2006.). Relevant sections of Aagaard's work were translated by Tor Skjellaug for this thesis.

³ Hans Bogen, a Norwegian historian with an interest in whaling, wrote *Main Events in the History of Antarctic Exploration* after deciding to write of Norwegian expeditions and achievements from a Norwegian perspective. As the work was to be also published in English, it provided Bogen with the opportunity of presenting the Norwegian view on the Antarctic in a world language, (H. S. I. Bogen, *Main Events in the History of Antarctic Exploration*, (Sandefjord, 1957) pp. 2-4. This work relies heavily on Aagaard and is well referenced.

⁴ W. M. Bush's *Antarctica and International Law*, a collection of inter-state and national documents, is the principle source of primary documents in this thesis. Referencing this work will include the identification number used by Bush. This will be done in two ways. When referencing a primary document the reference number will appear first e.g. AU19111926: 'Report of the Committee appointed by the Imperial Conference to consider British policy in the Antarctic' (19 November 1926), in W. M. Bush, (ed.), *Antarctic and International Law*, Vol. 2 (London, 1982), p.101. When referencing a note by Bush with respect to the above document the identification number will appear at the end e.g. W. M. Bush (ed.), *Antarctic and International Law*, Vol.2 (London, 1982) (AU19111929), p. 104.

Chapter 2 - Norway and Whaling in British Antarctica

To understand what Price refers to as ‘The Norwegian Advance’ and why Norwegians were “incensed by the extension of British jurisdiction over territory and whaling” it is necessary to provide some detail of Norwegian history and the British reaction to their whaling in the Antarctic.¹ This will provide the context for establishing the fairness of the contest for future territorial claims based on the equality of the contestants. In doing so it is well to realise that both Britain and Norway were whaling nations in competition with one another and that British whaling vessels were largely manned by Norwegian sailors.²

Norwegian History

In 1380 the Kingdoms of Norway and Denmark became united under the one crown. This state of affairs continued until after the end of the Napoleonic wars, when Norway broke away from Danish control only to be annexed by Sweden in 1814. While Norway retained their own constitution and parliament (*The Storting*) all foreign affairs were under the control of the Swedish monarch and Swedish diplomatic staff.³ Norway separated from Sweden on 25 November 1905 and, with a new monarch (Haakon VII), and no foreign affairs tradition, established a naïve, but independent consular service. In this they were assisted by the polar explorer Fridtjof Nansen, who became the first Norwegian minister in London.⁴ Norway’s industrial development had been hampered by the absence of coal and it was only with the development of hydro-electric power that new industries were established. The prime source of national income had been, and continued to be, from merchant shipping, whaling and fishing. Despite Norway’s neutrality during the 1914-18 war, more than

¹ A. G. Price, *The Winning of Australian Antarctica* (Sydney, 1962), pp. 15-16.

² Norway’s main British competition was from the Chr. Salvesen and Co. of Leith, Scotland. When leases were to expire in South Georgia in the 1920s Salvesen wrote to the Colonial Office saying “we think it is indisputable that it is the interest of this country (Britain) that whaling concessions should be in the hands of British rather than foreign companies.” cited in J. N. Tønnessen and A. O. Johnsen, *The History of Modern Whaling*, (R. I. Christophersen translator), (London, 1982), p. 343.

³ N. Davies *Europe: a History* (London, 1997), p. 738.

⁴ T. K. Derry, *A Short History of Norway* (London, 1957), p. 199.

half their merchant ships were sunk by the German Navy. After the war, economic mismanagement and high wages pushed the country into a depression and it was not until 1929, with increased shipping and the development of modern whaling factory ships, that the country's economy started to recover.⁵ In 1920, the League of Nations awarded Spitzbergen to Norway, the first new territory to be gained since losing their earlier Greenland possessions to Denmark in 1814.

The Norwegian experience with whaling in British Antarctica

Falkland Island Dependencies (FID)

The first whaling station on South Georgia was established by the Norwegian C. A. Larsen in 1904 when Norway was still under Swedish control. Larsen had previously led an expedition to carry out a whaling survey of the Eastern Antarctic Peninsula and the Weddell Sea in 1892-3. He had discovered and named the Føyn Coast and raised the Norwegian flag on Seymour Island.⁶ The station at Grytviken, owned by an Argentinean company and managed by Larsen, was built without permission from the Governor of the Falkland Islands as Larsen believed South Georgia to be no-man's-land.⁷ In 1905 the British Foreign Office was advised by the Colonial Office "the island of S. Georgia figures as a dependency of the Falklands but our claim cannot be said to be very strong in as much as we have never formally taken possession of it."⁸ On this basis Larsen's belief was justified. After a frigate had been dispatched to the island to assert British presence in February 1906, a contract to pay an annual ground rent was agreed to by the company.

In February 1906, a few months after separation from Sweden, the Norwegian Chargé d'Affairs, London, wrote to the British Foreign Secretary enquiring about the sovereignty of territories, including the South Shetland and South Orkney Islands, in

⁵ Derry, *A Short History of Norway*, pp. 222-227.

⁶ H. R. Mill, *The Siege of the South Pole* (London, 1905), p. 377.

⁷ Tønnessen and Johnsen, *The History of Modern Whaling*, p. 165.

⁸ Cited in Tønnessen and Johnsen, *The History of Modern Whaling*, p. 165.

the area between longitudes 35° W and 80°W and latitudes 40°S and 65°S.⁹ The letter also asked if permission could be obtained to establish whale fisheries in the Falkland and South Georgia Islands.¹⁰ This, as will be shown later, was the first of a series of diplomatic faux pas that cost Norway dearly. As Tønnessen and Johnsen observed, “it was tactically unwise of Norway to pose a question of this nature, as this merely drew Britain’s attention to these areas and provided her with an opportunity to proclaim her sovereignty.”¹¹ This letter illustrates Norway’s lack of diplomatic experience.¹²

The letter led to three outcomes. The first was a reply in May 1906 stating that South Georgia, South Shetlands, the South Orkneys and Graham’s Land were Dependencies of the Falkland Islands.¹³ The second, in October 1906, was the publication of new Falklands Whale Fishing Ordinances setting an annual fee and limiting the number of licences and areas each licensee could operate in. The ordinances also stated that royalties were to be paid on every whale killed under the licence whether outside or inside British Territorial waters.¹⁴ The Norwegian whalers were incensed by the claim for royalties on whales caught on the high seas, and the British claim to the South Shetlands, South Orkney and Graham’s Land.¹⁵ This provoked another letter to Britain from Norway, asking when had these areas belonged to Britain, on what international custom was their claimed sovereignty based and had the British Government notified other countries that these areas were British?¹⁶ The British

⁹ UK23021906: ‘Norwegian Chargé d’ Affaires, London (J. Irgens) to British Foreign Secretary (Sir E. Grey), February 23, 1906’, in W. M. Bush (ed.), *Antarctica and International Law*, Vol. 3 (London, 1982), pp. 239-240.

¹⁰ See Document 1 at the end of this chapter.

¹¹ Tønnessen and Johnsen, *The History of Modern Whaling*, p. 179.

¹² Bush notes, “The importance of his note in the assertion of British claims to Antarctic territories within the Falkland (Malvinas) Island Dependencies cannot be over-estimated. Norway was the main British rival in the whaling industry and indeed Norwegians had led that industry’s revival from early 1890’s. ... The enquiry made of the British must be counted as a significant diplomatic mistake of the independent kingdom recently separated from Sweden” (Bush (ed.), *Antarctic and International Law*, Vol. 3, (UK23021906), p. 240.)

¹³ UK16051906: ‘Foreign Secretary (Sir E. Grey) to Norwegian Minister, London, May 16, 1906’, in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 240-241.

¹⁴ Tønnessen and Johnsen, *The History of Modern Whaling*, p. 180.

¹⁵ B. Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), (Oslo, 1934), pp. 864, 866.

¹⁶ UK04031907: ‘Norwegian Memorandum to the United Kingdom requesting information on territorial rights over the South Orkney Islands, the South Shetland Island and Graham Land’ (March 4th, 1907) in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 241-242.

Foreign Secretary replied in April 1907 stating that formal possession had been made by British ship captains on each island and Graham's land and that it was not British practice to notify foreign Governments of additions to British territory.¹⁷ No mention was made regarding previous claims by other nationals, Norwegian or French. As Aagaard observed, "no doubt the British had rights to this area and as far as England was concerned no other country had rights."¹⁸ The third outcome was on 21 July 1908 when the British Government formally claimed South Georgia by Letters Patent. This consolidated earlier territorial claims from 1775, as Dependencies of the Falkland Islands and included other territories such as the South Orkneys, the South Shetlands the Sandwich Islands and Graham Land all lying between 20°W and 80°W and south of 50°S.¹⁹

The role of Norway in the creation of the FID illustrates their lack of diplomatic experience which placed them at a disadvantage when dealing with Britain. It also shows how dependant they were on the new southern whaling areas for national income following the closure of the northern Norwegian Finnmark fishery in 1904 and the increase in competition by whalers from Britain and other nations in northern seas²⁰

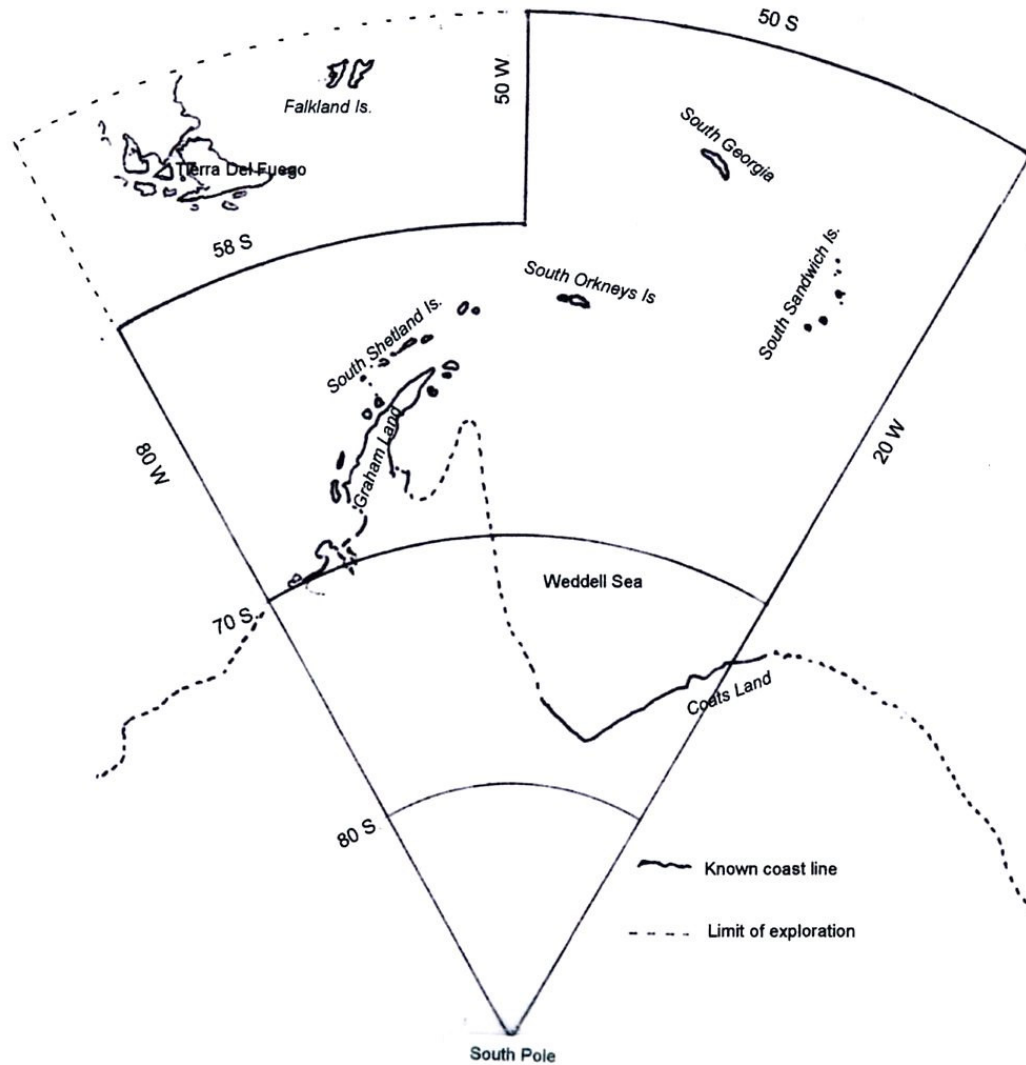
¹⁷ UK30041907: Foreign Secretary (Sir E. Grey) to Norwegian Minister, London (Dr. F. Nansen) April 30, 1907', in Bush (ed.) *Antarctica and International Law*, Vol. 3, p. 245.

¹⁸ Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), p. 886.

¹⁹ UK21071908: Letters Patent providing for the Government of the Falkland Islands Dependencies (21 July 1908) in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 251-254. (Note, after protests from Argentina and Chile, a new Letters Patent was issued 28 March 1917 changing the northern boundary between 50°W and 80°W to 58°S This was done to removed the southern areas of Chile and Argentina from the British claim.)

²⁰ Tønnessen and Johnsen, *The History of Modern Whaling*, pp. 161-163.

Map 2 - The Falkland Islands Dependencies



The Falkland Islands Dependencies as provided by British Letters Patent of July 1908 with the northern boundary at 50° S. including the - - - section through South America and, as amended by Letters Patent of March 1917, with the northern boundary at 58° S. west of 50° W as shown by the solid line. (Source: Bush, *Antarctica and International Law*, Vol. 3 (UK21071908), p. 253.

Ross Sea Dependencies

Amundsen was the most notable Norwegian to explore the Ross Sea area of Antarctica and claim parts of the continent for Norway. He was preceded, a decade and half earlier, by Bull and Borchgrevink, Norwegians, like C. A. Larsen, who were interested in whaling.²¹ Larsen expressed his interest in whaling in the Ross Sea in the 1920s when, according to Tønnessen and Johnsen, the Norwegian Ministry of Foreign Affairs believed “all the territory around the [Ross] Sea was no man’s land, and for this reason no concession was necessary, but the Norwegian Minister in London, referring to Ross’s voyage there, opined that without any doubt it was subject to British sovereignty and advised applying for a concession.”²² Larsen and partner applied for the license in June 1922 and after a period of protracted negotiations it was issued for whaling “from the Balleny Islands in the Antarctic Ocean and over and along the waters adjacent to Victoria Land.”²³ This was issued on 21 December 1922, before Britain had claimed sovereignty over the area and was, according to Hayes, invalid under international law.²⁴ However, following the receipt of the application from Larsen, the Colonial Office had requested legal advice concerning British Sovereignty from the Law Officers of the Crown. The reply dated 3 January 1923 in effect stated Britain had an inchoate title to the area, annexation would be unwise and the appropriate course was by Order in Council.²⁵

On 30 July 1923 an Order of the (British) King in Council was issued claiming “all islands and territories between the 160th degree of East Longitude and the 150th degree of West Longitude which are south of the 60th degree of Latitude.” The area was named The Ross Dependency and placed under control of the New Zealand

²¹ See appendix 1 for full details on these explorers, Amundsen’s territorial claims are important to the discussion which follows.

²² Tønnessen and Johnsen, *The History of Modern Whaling*, p. 347.

²³ Tønnessen and Johnsen, *The History of Modern Whaling*, p. 347.

²⁴ J. G. Hayes *Antarctica: A treatise on the Southern Continent* (London, 1928), p. 360.

²⁵ NZ0301123: ‘Opinion of the Law Officers of the Crown concerning British sovereignty over the Ross Sea coasts and their hinterland’ (3 January 1923), in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 42-43.

Governor-General.²⁶ According to Tønnessen and Johnsen, “Britain’s action aroused a storm of fury among the general public in Norway.”²⁷ As Aagaard asserted, once again the British claimed an area of Antarctica because Norwegians were interested in whaling in that area, this time it was in the Ross Sea.²⁸

According to Aagaard, “Norway was not notified of the Ross Dependency Claim.”²⁹ On hearing of the claim, the Norwegian Minister, London (Benjamin Vogt) wrote to the British Foreign Secretary on 24 February 1925 querying the establishment of the Ross Dependency.³⁰ Not realising that the sector claimed terminated at the South Pole, the Norwegian Government was concerned the annexation would jeopardise present and future Norwegian interests in the area and presumed that:³¹

1. The annexation only applied to islands between Edward VII Land and Queen Victoria Land discovered by British citizens.
2. That, as a southern boundary was not stated, it did not include the area around the South Pole claimed by Amundsen in 1911 or the territories south of Edward VII Land on either side of his route to the South Pole including Queen Maud’s Range discovered by Amundsen.³²

The British replied eight months later on 3 November 1925 and stated that “there is no coast or island known to exist within the Dependency which is not, indisputably, a British discovery.”³³ The British response also indicated that no southern boundary was specified because the eastern and western boundaries meet at the South Pole and that Shackleton, in January 1909, had reached a point less than 100 miles from the

²⁶ NZ30071923: ‘Order in council under the British Settlements Act, 1887 (50 & 51 Vict. c. 54), providing for government of the Ross Dependency’ (30 July 1923), in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 44-45.

²⁷ Tønnessen and Johnsen, *The History of Modern Whaling*, p. 347.

²⁸ Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), p. 873.

²⁹ Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), p. 874

³⁰ NZ24021925: ‘Norwegian Minister, London (B. Vogt) to Foreign Secretary (A. Chamberlain) February 24, 1925’, in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 48-50.

³¹ Norway also had not realised the FID sector terminated at South Pole and would raise this matter again in reference to the Australian Antarctic Territory.

³² Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), p. 874. (See Bush NZ24021925 for the full translation)

³³ NZ03111925: ‘Foreign Secretary (Sir A. Chamberlain) to Norwegian Minister, London (B. Vogt) November 3, 1925’, in Bush (ed.), *Antarctica and International Law*, Vol. 3, p. 50.

pole and had taken possession of the plateau for Great Britain.³⁴ Norway responded eighteen months later, in May 1927, pointing out to the British Foreign Secretary that while Scott had sighted King Edward VII Land in 1902 it had been formally claimed by Lieutenant K. Prestrud for the King of Norway on 8 December 1911 while on a sledging party.³⁵ In response to this claim, the British “forcefully asserted that the earlier sighting ... constituted its discovery.”³⁶ In the May 1927 letter, Norway had reasserted their claim to the South Polar plateau south of 89°S, as Shackleton had only reached 88° 23’S, and their claim to the territories either side of Amundsen’s route to the South Pole. Letters between the countries continued with Norway reserving her right to the Polar Plateau and Amundsen’s route between 120°W and 175°W south of 85°S.³⁷ Norway, in their 1927 letter, raised questions regarding the validity of the British claims to the Ross Ice Barrier.³⁸ These questions will be discussed further in Chapter 6.

The reaction of Norway to the British claim to the Ross Sea was much more developed and forceful than their earlier reaction to the Falkland Island Dependencies claim by Britain. Clearly the Norwegian foreign affairs ministry had matured but there were long delays in responding to British letters because of political turmoil associated with changing cabinets and a militant Labour Party. This was finally resolved when the Labour Party gained power with a majority in 1927.

³⁴ NZ03111925: ‘Foreign Secretary (Sir A. Chamberlain) to Norwegian Minister, London (B. Vogt) November 3, 1925’, in Bush (ed.), *Antarctica and International Law*, Vol. 3, p. 50.

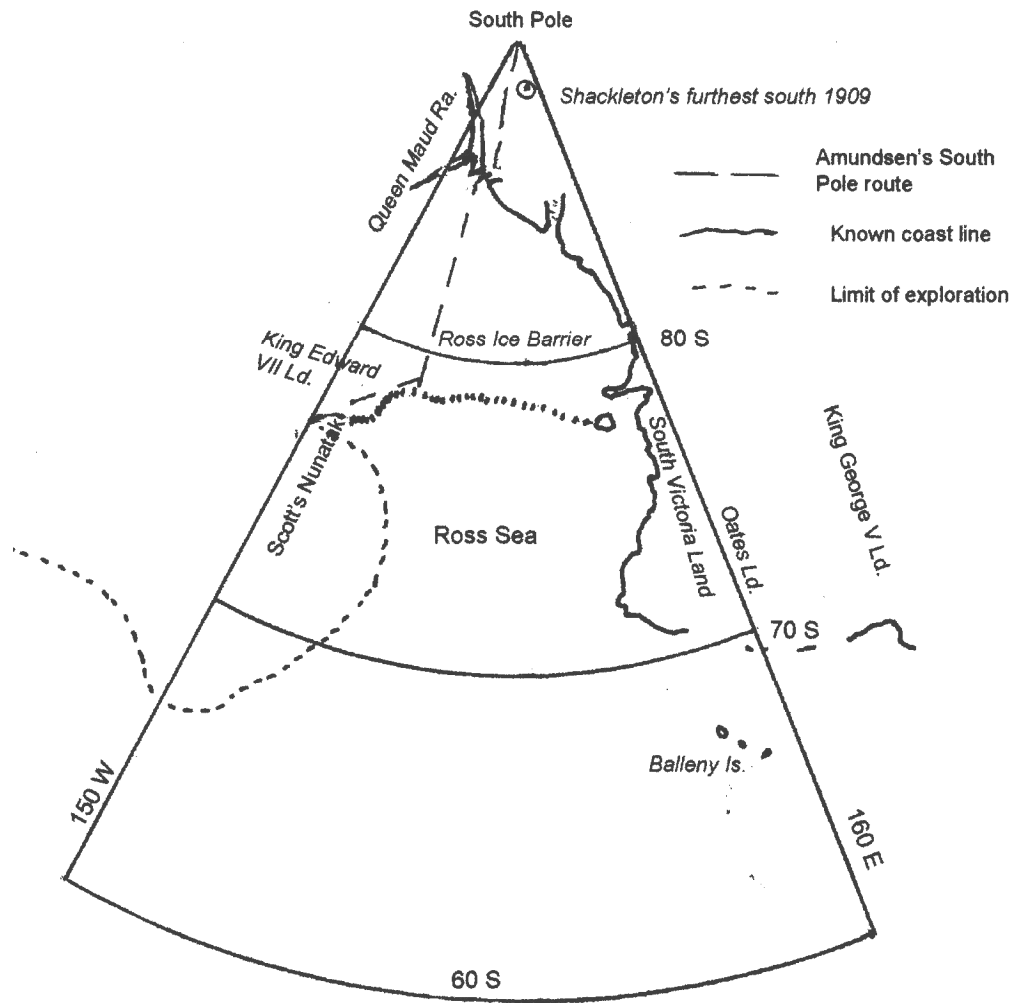
³⁵ NZ13051927: ‘Norwegian Minister, London (B. Vogt) to Foreign Secretary (A. Chamberlain) May 13th 1927,’ in Bush (ed.), *Antarctica and International Law*, Vol. 3, p. 57-59 (Details of Amundsen’s expedition and Prestrud’s role are given in Appendix 1.)

³⁶ Bush (ed.), *Antarctica and International Law*, Vol. 3, (NZ13051927), p. 58.

³⁷ Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), p. 876

³⁸ The USA while, not recognising existing claims, appeared, in the 1950s to recognise Norway’s claim to the polar plateau and Amundsen’s route the South Pole and also the rights of other countries to the routes taken by their explorers. (F. M. Auburn, *Antarctic Law and Politics* (London, 1982), pp. 71-73.)

Map 3 – The Ross Dependency



The Ross Dependency as annexed by Britain in accordance with the Order of the King in Council in July 1923 and placed under the authority of the Governor-General of New Zealand. The routes taken by Amundsen to the South Pole, and that of Prestrud's to Scott's Nunatak in King Edward VII Land, are shown. (Source: J. G. Hayes, *Antarctica: A treatise on the Southern Continent*, (London, 1928) pocket at end.)

Following the British Order in Council claiming the Ross Sea area and placing it under the jurisdiction of the Governor General of New Zealand, new Whaling Regulations were issued in 1926.³⁹ New Zealand was now netting income from the licensed Norwegians operating both within and outside the territorial waters of the Dependency. Between 1923 and 1930 royalties and fees amounted to nearly NZ £35000.⁴⁰ With the introduction of floating factory ships fitted with slipways, unlicensed pelagic whaling was developing and this was to prove a vulnerable point in the whaling policy of the British Colonial Office as it removed, or at least reduced, the need for shore based facilities.

Lars Christensen and Norwegian activity prior to BANZARE

Like all Norwegian activity in the Antarctic and Southern Oceans, Lars Christensen was driven by the primary desire to find new whale fisheries. Christensen also had other interests, notably the desire to undertake scientific investigations in oceanography and meteorology as an aside to whaling. In common with other Norwegian whalers he also wished to find whale fisheries that could be worked under a Norwegian concession, not a British one.⁴¹ To this end he was interested in exploring the area between 90°W and 50°E and claiming territory for Norway.⁴² Christensen “planned to bring under the sovereignty of Norway all the land between 60°E and 20°W.”⁴³ Christensen sponsored seven expeditions between 1927 and 1937 and took part in four of them. On 31 August 1927 the Norwegian Government

³⁹ According to Charteris, because the “Ross Sea Order in Council of July 30, 1929 was purported to be made under the British Settlements Act, 1887 which does not authorize the Crown in Council to delegate its statutory powers to anyone” the whaling regulations made by the Governor of the Ross Dependency i.e. the Governor General of New Zealand, are invalid and therefore were not enforceable. (A. H. Charteris, ‘Australasian Claims in Antarctica’ *Journal of Comparative Legislation and International Law*, 3rd Ser., Vol, 11, No. 4. (1929), p. 230.)

⁴⁰ A. S. Helm and H. J. Miller, *Antarctica* (Wellington, 1964), p. 31.

⁴¹ The Norwegians realised during the First World War that the cancellation of whaling concessions by Britain was possible as was the threat not to renew them in retaliation against Norway’s trade policy as a neutral power. Norway was always concerned about the security of the concessions, particularly after the war, with the British demand for national protectionism due to unemployment. (J. N. Tønnessen and A. O. Johnsen, *The History of Modern Whaling*, p. 341)

⁴² H. S. I. Bogen, *Main Events in the History of Antarctic Exploration* (Sandefjord, 1957), p. 56.

⁴³ L. Christensen, *Such is the Antarctic*, (E. M. G. Jayne translator) (London, 1935), 32

formally authorised the Captain of Christensen's *Norvegia* "to claim possession of new land which they might find in the name of His Majesty the King of Norway."⁴⁴

Bouvet Island

Christensen's first expedition sailed from South Georgia in January 1927 to explore Peter 1 Island. The expedition found no suitable landing sites or sheltered bays for factory ships and no new whaling fisheries.⁴⁵ The next expedition sailed from Norway, on the *Norvegia* in September 1927, explored Bouvet Island and claimed it for the King of Norway on 1 December 1927.⁴⁶ At this stage the British thought the island was theirs but it was not so marked on the British Admiralty chart of the day.⁴⁷ The motivation for claiming Bouvet was to establish Norwegian territorial seas in the area and avoid the requirement to gain British concessions to undertake whaling.

In January 1928 the Norwegian Minister, London (Benjamin Vogt) advised the British Foreign Secretary that the captain of Christensen's *Norvegia* had been authorised to claim new land "not previously in due form been occupied by any other Government [and that] Bouvet Island has been occupied on 1st December 1927, a depot has been placed there, and the Norwegian flag has been hoisted on the island."⁴⁸ This advice prompted the British to provide a summary of the 1926 Imperial Conference to Norway on 13 February 1928. The Norwegian Government, after being advised that the United Kingdom Government would waive their claim to Bouvet Island in return for some recognition of British hegemony in Antarctica, agreed to refrain from occupying any land within the areas specified in the above

⁴⁴ NW31081927: 'Ministry of Foreign Affairs to Consul Lars Christensen' (Oslo, 31 August 1927) in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 113-114.

⁴⁵ Bogen, *Main Events in the History of Antarctic Exploration*, p. 58.

⁴⁶ Christensen, *Such is the Antarctic*, p. 33.

⁴⁷ Bogen, *Main Events in the History of Antarctic Exploration*, p. 56. (Britain believed the island was theirs because they had been prepared to issue a whaling/sealing licence prior to the Norwegian claim, on the understanding that Bouvet was British).

⁴⁸ NW19011928: 'Norwegian Minister, London (Benjamin Vogt) to British Foreign Secretary (Sir A. Chamberlain) January 19, 1928', in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 114-115.

summary.⁴⁹ The effect of Norway's claim to Bouvet Island was to influence the acquisition of Australian Antarctica. As Bogen wrote "by agreeing to this it appeared later that Norway had relinquished its right to the occupation of any land discovered by Norwegians between 50° and 160° E, five years before the so-called Australian sector had been set up."⁵⁰

⁴⁹ AU14111928: 'Norwegian Memorandum to the United Kingdom concerning territories which the Imperial Conference, 1926 asserted to be British' (14 November 1928), in Bush (ed.), *Antarctica and International Law*, Vol. 2, pp. 115-116.

NW19111928: 'Parliamentary questions and answer announcing the waiver of British claims to Bouvet Island in favour of Norway' in Bush (ed.), *Antarctica and International Law*, Vol. 3, p. 122. The British Government only decided to waive their claim after the Foreign Office had concluded the British claim was weak. (Bush (ed.), *Antarctica and International Law*, Vol. 3, (NW23041928), p. 119.)

⁵⁰ Bogen, *Main Events in the History of Antarctic Exploration*, p. 60.

Document 1

UK23021906

23 February 1906

NORWEGIAN NOTE TO THE UNITED KINGDOM ENQUIRING ABOUT THE SOVEREIGNTY OF TERRITORIES BETWEEN LONGITUDES 35° W AND 80° W AND LATITUDES 40° S AND 65° S

Norwegian Chargé d'Affaires, London (J. Irgens) to British Foreign Secretary (Sir E. Grey)

Légation de Norvège.

Londres, le February, 23, 1906

Sir,

A company of whale fishers in Sandefjord, the well known centre for this business in Norway, propose to send this spring a whale fishing expedition to the Southern Ocean.

On the application of this company I have the honour, by order of my Government, to apply for your kind assistance in order to obtain information as to the following questions:

- (1) Which clusters of islands and which countries are belonging to the British empire in the territory between 40°-65° Southern latitude and 35°-80° Western longitude?
- (2) Are the South Shetland islands and the South Orkney islands considered to be international territory?
- (3) Could the said Norwegian company obtain permission from the proper British authorities to land at some harbour on the Falkland islands or on South Georgia with a floating whale fishing establishment and to carry out whale fishing from the same harbour, if this should be considered necessary?

I beg to notice that the purpose of the proposed expedition is merely ordinary whale fishing like similar expeditions to the Shetland and the Faeroe islands, only with this difference that the present expedition is supplied with a floating boiling and manufacturing establishment instead of the usual fixed establishment ashore.

I have the honour to be,
with the highest consideration, Sir,
Your most obedient humble servant.
J. Irgens.

The Right Honourable
Sir Edward Grey, Bart.
etc. etc. etc.

SOURCE: FO file: Argentina/6793/1906 in PRO file: FO371/4, pp. 266-67.

The first diplomatic note from Norway to the British Foreign Secretary concerning whaling in the Antarctic.

W. M. Bush (ed.) *Antarctic and International Law*, Vol. 3 (London, 1982), pp. 239-240

Chapter 3 - Australian Antarctica – Motives and Acquisition Process

The Norwegian claim to Bouvet Island had an effect on the process by which Australia acquired Antarctic territory. The impact of the Norwegian claim was not evident until much later in the process that started with the Australasian Antarctic Expedition (AAE) (1911-14) led by Douglas Mawson. The AAE was essentially a scientific and exploratory expedition to Antarctica south of Australia. The expedition was heavily supported by the Australasian Association for the Advancement of Science.¹ Prior to the AAE, interest in scientific research and whaling had been promoted by the Australian Antarctic Committee, which was established in June 1886. The committee, with outside support, had made an unsuccessful bid to mount an expedition with the aid of the Swedish explorer Nordenskjöld in the late 1890s.²

The AAE established a base on Macquarie Island, a main base at Cape Denison in King George V Land and a western base on the Shackleton Ice Shelf in Queen Mary Land; proclamations were made at each site claiming areas for Britain (see appendix 2). The expedition discovered and named Wilkes Land “to commemorate the name of a navigator whose daring was never in question, though his judgment as to the actuality of *terra firma* was unreliable.”³ The expedition explored areas of the Antarctic coast between 160°E and 90°E, confirming the discoveries of d’Urville, but discounting the claims of ‘appearances of land’ made by Balleny and those made by Wilkes, whose reports were found by Mawson “to be erroneous.”⁴ In dismissing the discoveries of Wilkes the only other non-British rival for territory in the Australian Sector was the French.⁵ Map 4 shows the extent of these coastal discoveries and the

¹ D. Mawson, ‘The Australasian Antarctic Expedition’, *The Geographical Journal*, Vol. 37, No. 6. (Jun., 1911), p. 610.

² R. A. Swan, *Australia in the Antarctic* (Melbourne, 1961), pp. 45, 74.

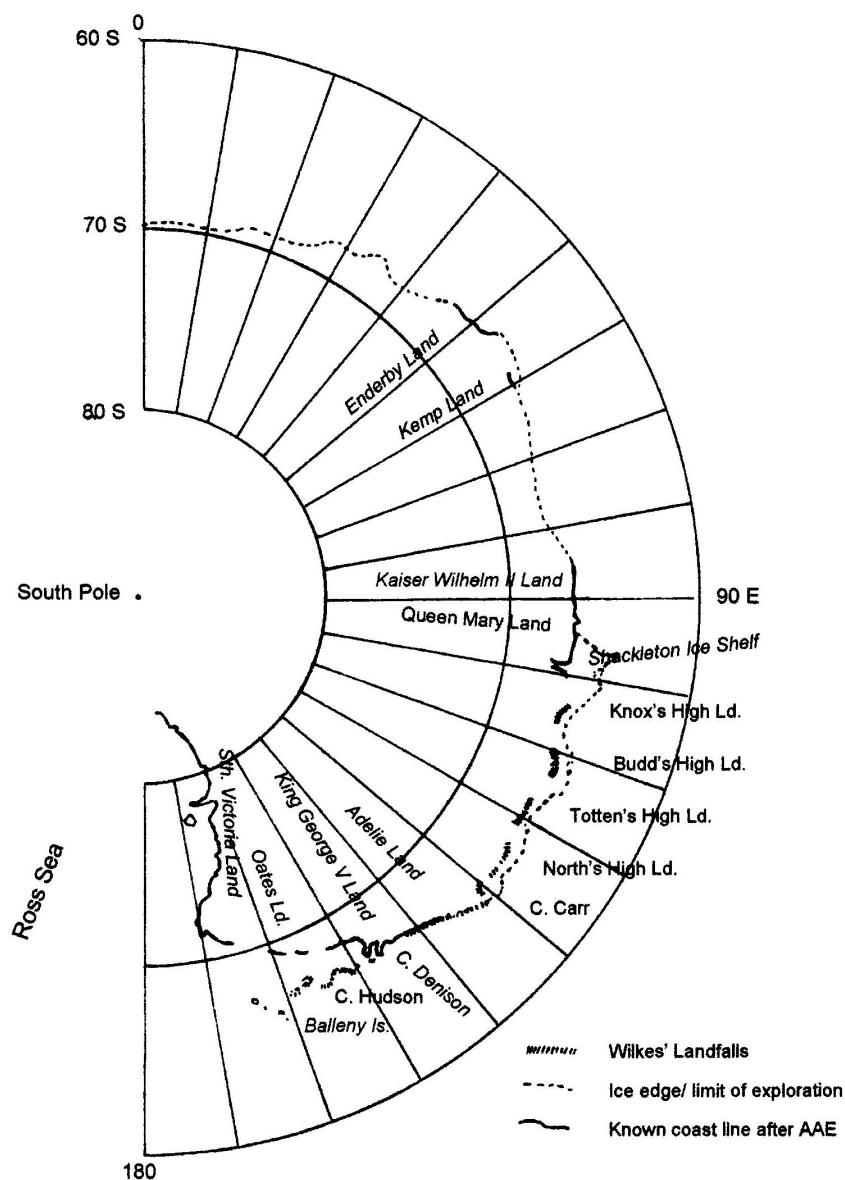
³ D. Mawson, ‘Australasia Antarctic Expedition, 1911-1914’, *The Geographical Journal*, Vol. 44, No. 3. (Sep., 1914), p. 265.

⁴ D. Mawson, ‘Australasia Antarctic Expedition, 1911-1914’, p. 258.

⁵ Any German claims for Kaiser Wilhelm II Land (see appendix 1) were extinguished at the end of the 1914-18 war. Mawson’s dismissal of Wilkes’ discoveries resulted in a controversy involving the USA writers Hobbs and Bertrand. See Price, *The Winning of Australian Antarctica*, pp. 174-181.

Wilkes' landfalls dismissed by Mawson. (A summary of Wilkes' discoveries is given in Appendix 1.)

Map 4 - Eastern Antarctica as known in 1926



Eastern Antarctica, showing the known coastline in 1926 and the locations of the two Australasian Antarctic Expedition's bases at Cape Dennison and on the Shackleton Ice Shelf. (Sketch map based on Hayes, *Antarctica: A treatise on the Southern Continent*, (London, 1928), pocket at end.)

The land sighted by Wilkes and discounted by Mawson is also shown. (K. J. Bertrand, *Americans in Antarctica 1775-1948*, (New York, 1971) p. 182.)

Mawson, who had lobbied the British Government to annex the newly proclaimed Antarctic territory in 1914 without success, was reported in 1919 as saying, “I think that we might fairly claim that the section of the Antarctic between 90° and 180°E should be under the control of Australia. Once whaling and sealing begin in earnest there will have to be some authority to control the killing of the animals, or what happened to the old-time sealing grounds of Bass Strait, New Zealand and Macquarie Island will be repeated.”⁶ This was Mawson’s first public call for Australia to claim Antarctic territory, not for territorial gain, but to control and preserve the resource most likely to be exploited.

Causes of the British Australian New Zealand Antarctic Research Expedition (BANZARE)

In 1924 the French Government issued a number of decrees concerning its territories in southern waters and the Antarctic. The first was issued on 27 March and covered economic exploitation regulations and rights for French citizens in Adélie Land and the Crozet Island.⁷ Later decrees of 2 April and 21 November consolidated French claims to Crozet, Kerguelen, Saint-Paul and Amsterdam Islands and Adélie Land and placed them under the administration of the Governor-General of Madagascar.⁸ By issuing decrees covering administrative matters and regulations France had in effect declared occupancy of these territories. France had previously advised Britain, on 12 April 1912, of their continued claim to Adélie Land.⁹

The assertion by the French of their claim to Adélie Land worried those in Australia who believed Australia was entitled to the Australian sector (90°E- 160°E) discovered by Mawson. According to Swan, “Mawson was reported in the press as opposing the French claim and as recommending that the sector principle as applied in the Arctic

⁶ *Argus* 30 April 1919 as cited in Swan, *Australia in the Antarctic* (Melbourne, 1961), p. 157.

⁷ R. K. Headland, *Chronological List of Antarctic Expeditions and Related Historical Events*, (Cambridge, 1989), p. 272.

⁸ Headland, *Chronological List of Antarctic Expeditions and Related Historical Events*, p. 272

⁹ FR16041912: ‘French Foreign Minister (R. Poincaré) to British Ambassador, Paris (Sir F. Bertie) Le 16 avril 1912’ in W. M. Bush (ed.), *Antarctic and International Law*, Vol. 2 (London, 1982) pp. 481-482.

should be applied in the Antarctic.”¹⁰ This would imply that Australia could only claim the sector directly south of Australia and France south of the Kerguelen Islands, Reunion Island and Madagascar. The action by the French resulted in the Australian National Research Council urging the Commonwealth Government to contest the French claim and advance the British claim of the Australian sector.¹¹ This and the other causes listed by Price in themselves did not cause BANZARE, neither did the application from Lars Christensen to whale in the ‘Pacific Sector’ or the unlicensed whalers using Hobart as their base. They simply hastened the process toward the British desire to dominate Antarctica.¹² This was the real cause: it was expressed in 1920 and the policies to achieve it were formulated at the 1926 Imperial Conference.

British Domination of Antarctica

The British Government in 1920 proposed to New Zealand and Australia a policy to extend control over Antarctica since:

His Majesty’s Government have ... come to the conclusions that it is desirable that the whole of the Antarctic should ultimately be included within the British Empire, and that, while the time has not yet arrived that a claim to all continental territories should be put forward publicly, a definite and consistent policy should be followed of extending and asserting British control with the object of ultimately making it complete.¹³

This statement is clearly an indication that the whole Antarctic continent, including French Adélie Land, which had already been claimed by France in 1912, should be part of the British Empire. By the time of the 1926 Imperial Conference in London, the Falkland Islands Dependencies had been annexed and the Ross Dependency placed under control of New Zealand. The conference noted that “No protests were

¹⁰ Swan, *Australia in the Antarctic*, p. 170.

¹¹ P. Ayres, *Mawson – A Life* (Melbourne, 2003) pp. 150-151

¹² Price, *The Winning of Australian Antarctic*, pp. 12-14. A. H. Charteris, ‘Australasian Claims in Antarctica’, *Journal of Comparative Legislation and International*, 3rd Ser., Vol. 11, No. 4. (1929), pp. 228-229.

¹³ Bush (ed.), *Antarctic and International Law*, Vol. 2, (AU19111926), p. 104. (The source of this key document is a “despatch from Colonial Office (Colonel L. S. Amery) to the Governor-General (Sir R. Munro Ferguson) of 6 February 1920.”)

received against the assertion of British authority and sovereignty over these areas.”¹⁴ This was not correct. While Norway had not protested over formation of the Falkland Island Dependencies they certainly had raised questions with the British concerning the validity of their action. Norway had also raised objections with respect to the Ross Dependency claim and was continuing to do so at the time of the conference.¹⁵

Up until the Imperial Conference, the Australian claim was for Antarctic territory that lay to the south of Australia between 160°E and 90°E, the sector that Mawson, in 1914, had lobbied the British Government to annex without success. Mawson had also tried to persuade Australian Prime Minister Hughes to take the matter up with the British, again without success.¹⁶ At the conference, as will be shown, the area to be claimed had increased and now spanned from 160°E to 45°E.¹⁷

The 1926 Imperial Conference

At the 1926 Imperial Conference, the Committee on British Policy in the Antarctic proposed a gradual process for the acquisition of further Antarctic territory as “any attempt to do so by immediate acts of annexation of large sectors in the great part unexplored would probably lead to opposition on the part of other Powers who might

¹⁴ AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 100.

¹⁵ According to Bush “The British had long been aware that that Argentina had pretension at least towards the South Orkney Islands and that Chile had purported to exercise jurisdiction in the Antarctic region.” (Bush (ed.), *Antarctic and International Law*, Vol. 2, (AU19111926) p.105, note 5.

¹⁶ *Territorial Claims in the Antarctic*, Great Britain, Foreign Office, Research Department, (London, 1945), p. 97, para. 350.

¹⁷ According to Aagaard, Australia’s claim to the Australian Sector was heavily debated by Prime Minister Bruce and Attorney General Latham, however there were concerns that South Africa might have the same wish (to claim a sector south of Africa). The South African Prime Minister said they had too many problems with the Boers and Natives to discuss the matter, but as they had a common interest with Australia they would support a claim to south of Africa as far west as 40°E. Hence, according to Aagaard, the territory demanded by Australia was increased and the western limit was moved from 90°E to 45°E as this was close to Biscoe’s first sighting of Antarctic even though it is south of Madagascar. (B. Aagaard, *Fangst of Forskning I Sydishavet*, (V.3) (Oslo, 1934), pp. 881-882).

be in a position to put forward claims to particular areas within those sectors.”¹⁸ As will be shown, there were areas that had not been discovered by British explorers, areas such as those discovered by Wilkes and Drygalski.¹⁹ These and other areas were open to challenge from other nations including the USA and Germany.

The Committee believed that “if His Majesty’s Government proceed cautiously, and steadily follow up and develop the valid claims they now possess, it may be hoped that foreign Powers will acquiesce, and that practically complete British domination may in time be established.”²⁰ The process to achieve British domination of Antarctica was by way of three stages. The first was intimation to the world at large of the special British interest in the seven areas listed below. The second stage was to be a formal taking of possession by an authorised officer of any areas not so taken at the time of discovery. This would be necessary in all the areas except those claimed by authorised members of AAE. The third stage would be the issue of Letters Patent annexing the area and making provision for its government.²¹ The seven Antarctic areas of interest to the British were stated as being:

Part of Coats Land between longitude 20°W and longitude 16½°W
Enderby Land between longitude 45°E and longitude 52½°E
Kemp Land between longitude 58½°E and longitude 60°E
Queen Mary Land between longitude 86½°E and longitude 101°E
An area between longitude 131°E and longitude 135½°E denominated Wilkes Land by the AAE in 1912 and west of Adélie Land.
King George V Land between longitude 142°E and longitude 153°E lying East of Adélie Land.
Oates Land between longitude 157°E and longitude 159°E²²

¹⁸ AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 101-102. para. 16.

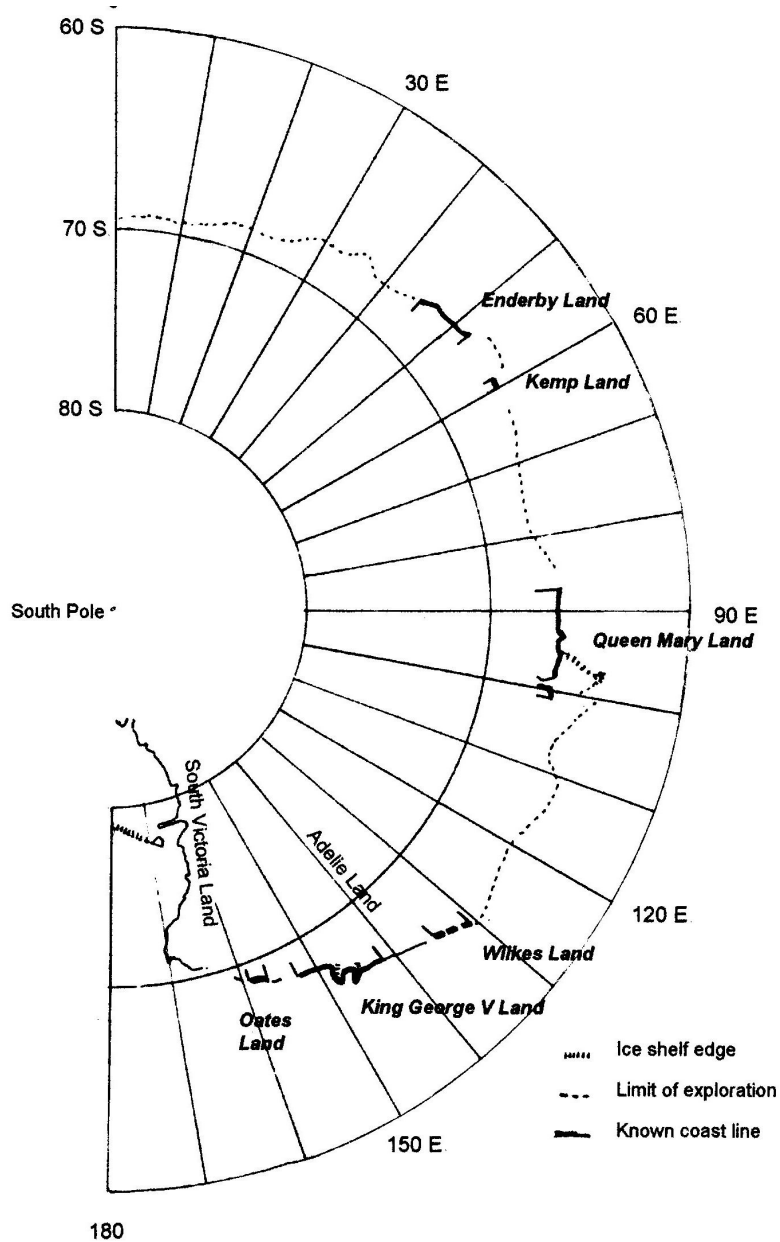
¹⁹ Details on the discoveries of Charles Wilkes and Erich von Drygalski are given in Appendix 1. The British claims did not include Adélie Land which was situated between King George V Land and Wilkes Land.

²⁰ AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 102. para. 17.

²¹ AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 101-103.

²² AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol.2, pp. 100-102.

Map 5 – Territories listed by the Imperial Conference



Sketch map of Eastern Antarctica showing the territories listed in the summary of the 1926 Imperial Conference. These territories, and the gaps between them, would become part of Australian Antarctic Territory.

Public intimation of the intention to appropriate the above areas was through the publication of the ‘Summary of Proceedings of the Imperial Conference, 1926’ in which it was stated, with respect to British Antarctic policy, “that there are certain areas in [Antarctic] regions to which a British title already exists by virtue of discovery.”²³ In an attempt to limit challenges from other Powers, the seven areas were listed by name only. No limits of latitude or longitude were given, and as the lands were ill-defined on maps of the day, this would disguise the extent of the proposed claim.²⁴ Long stretches of undiscovered coastal land existed between Wilkes Land and Queen Mary Land, and between Queen Mary Land and Kemp Land, to which the British could not claim inchoate title by virtue of discovery.²⁵ All the areas listed, except Coats Land, which was to be added to the FID, were to be part of Australian Antarctic Territory (AAT).

A copy of the conference summary was forwarded to Norway on 13 February 1928 after the British Foreign Secretary had been advised by Norway, in January, that Norway had occupied Bouvet Island. A letter, which accompanied the summary, reminded the Norwegian Foreign Minister of discussions which took place at the Imperial Conference and that the British Government did not wish to belittle the objectives of the *Norvegia* expedition but to “avoid the risk of complication arising as a result of any acts which may be performed by the expedition in ignorance of the existence of British title to areas referred to in the Imperial Conference report.”²⁶ No mention was made of Bouvet Island, but the tone of the British note suggests they were not pleased. As Norway was not a party to the Imperial Conference they would not be aware of any discussions except those contained in the summary. As inchoate title had been established by virtue of discovery of both Enderby and Kemp Lands a

²³ AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 102.

²⁴ AU111926: ‘Summary of proceedings concerning the Antarctic of the Imperial Conference, 1926 in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 107.

²⁵ Discoveries by Wilkes between Wilkes Land and Queen Mary Land had been discounted by Mawson in 1914.

²⁶ AU13021928: ‘British Minister, Oslo (Sir F. Lindley) to Norwegian Foreign Minister (Prof. Bull) February 13th, 1928, in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 108.

century before, Norway could still have legally claimed these areas and any which were yet to be discovered such as the territory between Queen Mary Land and Kemp Land.

The United States, with the Byrd expedition pending, was also notified in November 1928.²⁷ Both notifications, according to Bush, were contrary to the usual British practice of not notifying foreign governments of additions to British territory.²⁸

It should be noted that the Committee on British Policy in the Antarctic had received an application from Lars Christensen for a licence to whale between the western boundary of the Falkland Islands Dependencies and the eastern boundary of the Ross Dependency (the Pacific sector). In consideration of granting a licence the Committee concluded “the issue of the licence would constitute a useful assertion of authority in this region.”²⁹ As discussed in Chapter 2 the issue of such a licence was not legally required as this was still unclaimed territory.

With this background, the establishment of a ‘scientific’ (one of Price’s ‘causes’) expedition to formally land and claim the territory was required even though the Australian Government had been prepared to annexe the territory (the third stage) in 1927 without an expedition.³⁰ With delays in organising an expedition and getting a ship, and with knowledge of Norwegian activity, R.G. Casey, then the Commonwealth of Australia Liaison Officer, London, wrote in October 1928 to a friend, Sir John Irvin, who was linked to Kerguelen Sealing and Whaling Co. Ltd., requesting the company’s assistance in asserting British sovereignty at as many points possible between Enderby Land and Queen Mary Land. The company had been granted a whaling licence by the British to operate in this area which included the

²⁷ Richard E. Byrd organised and led the first American expedition to explore Antarctic since Wilkes. The expedition wintered at Little America between 1928 and 1930 in an attempt to claim Antarctic territory for the USA.

²⁸ See reference to UK30041907 in chapter 2.

²⁹ AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 103.

³⁰ Bush (ed.), *Antarctic and International Law*, Vol. 2, (AU19111926), p. 104.

stipulation that they “hoist and maintain the British flag over any and every establishment that they may erect or maintain in the lands or territorial waters of the said area.”³¹ This was not the first time this tactic had been used to get private individuals to claim territory on behalf of the Empire.³² Even issuing a licence before the land had been formally claimed was questionable as the area between Kemp Land and Queen Mary Land was yet to be discovered; it was no-mans land with no territorial sea.³³

On 14 December 1928 the Norwegian Government advised the British Government that while they “have not sufficient knowledge of the basis upon which are founded British claims to each of the territories which the last Imperial Conference asserted to be British [they were] prepared to express their willingness to refrain from occupying any land within these territories.”³⁴ Despite this assurance, the Norwegian claim to Bouvet and the presence of Christensen’s ships in the South Atlantic were the final cause to get the first BANZARE under way. The security of the yet to be claimed Mac-Robertson and Princes Elizabeth Lands, which were to lie between Kemp Land and Queen Mary Land (60°E – 86°E), was at stake.³⁵

British Australian New Zealand Antarctic Research Expedition (BANZARE)

The second stage of the process decided at the Imperial Conference, that of formal possession, commenced when the first BANZARE sailed on the *Discovery* from Cape Town on 19 October 1929. The expedition sailed with the knowledge that Norway

³¹ AU101928: ‘Commonwealth of Australia Liaison Officer, London (R. G. Casey) to Sir John Irvin’ (October 1928) in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 114-115

AU03101928: ‘Whaling Licence to the Kerguelen Sealing and Whaling Company, Limited in respect of the area from Enderby to Queen Mary Lands’ (3 October 1928), in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 109-114

³² Attempts were made to have the British flag flown on Heard Island by sealing and whaling companies. (Bush (ed.), *Antarctic and International Law*, Vol. 2, (AU09101926), p. 99.

³³ See the issue of licences to Larsen for the Ross Sea and Christensen for Pacific Sector of Antarctica discussed previously.

³⁴ AU14111928: ‘Norwegian Memorandum to the United Kingdom concerning territories which the Imperial Conference, 1926 asserted to be British’ (14 November 1928), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 115.

³⁵ A. G. Price, *The Winning of Australian Antarctica*, (Sydney, 1962), p. 17.

would not occupy the areas specified but not before a controversy had been created by the publication of sensational articles in the South African and British Press. Based on an interview with Mawson, these greatly offended the Norwegians.³⁶

The sailing instructions, issued under the authority of Prime Minister Bruce, instructed Mawson to proceed to the “western extremity of Queen Mary Land (west of Mount Gauss) thence you will cruise westward to Enderby Land[then] to longitude 45° east, and, at your discretion, if conditions are favourable to 40° east.”³⁷ Further instructions were given with respect of hydrographic surveys, planting the British flag and reading the proclamation.³⁸ These instructions were worded so that the unclaimed area between 60°E and 86°E was to be sighted and claimed before the Norwegians got there. Mawson, with authority to claim the territories unknown, as well as those specified in the Imperial Conference Summary, was now racing the Norwegians south.

Sailing in accordance with the instructions, no land was sighted until 26 December when a mirage of “what appeared to be the undulating surface of snow-covered land” was seen from the ship at nearly 72° E.³⁹ Further sightings were made of new land using the aircraft carried aboard *Discovery* as the ship sailed westward and further south. Areas of the coast were also seen from the ship often due to looming and the mirage effect.⁴⁰ (Map 6 shows details of the ship’s passage and sightings.)

³⁶ This will be discussed in chapter 5.

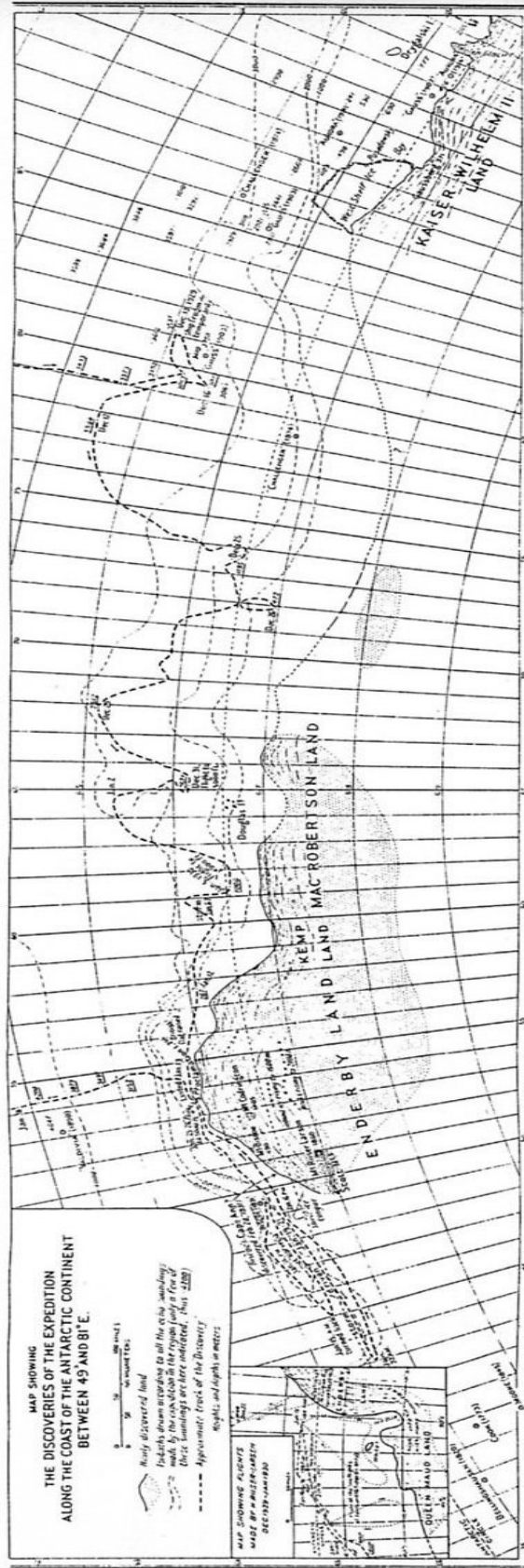
³⁷ Price, *The Winning of Australian Antarctica*, p. 22.

³⁸ A full copy of the proclamation is given in Appendix 2 and discussed in chapter 6.

³⁹ D. Mawson, ‘The B.A.N.Z. Antarctic Research Expedition, 1929-1931, *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932) p. 124.

⁴⁰ Full details of the sightings are given in Appendix 2.

Map 6 - The route and discoveries of the first BANZARE



The route and discoveries of the first BANZARE voyage in December 1929 and January 1930 along the coast of Antarctica, between 49° E and 81° E. Inset: Flights made by Riiser-Larsen in December 1929.

Original source: D. Mawson, 'The Antarctic Cruise of Discovery 1929-1930', *Geographical Review*, Vol. 20, No. 4, (Oct., 1930) pp.535-554 (map), this version sourced from Price, *The Winning of Australia Antarctica*, p. 52.

The sighting on the 26 December was the first sighting of what would become Mac-Robertson Land and some of the detail and the estimated distance from the shore would be changed following the Second BANZARE voyage. This was the first claimed sighting in an area not listed by the Imperial Conference, the validity of which was queried later by the Norwegians who believed land could not have been seen from the ship at this position. The sighting was made during a period of mirage effect, as were those of Wilkes, which Mawson had discounted.⁴¹ Based on the first sighting and subsequent observations, Mawson claimed sovereignty over the sector between 47°E and 73°E and south of 65°S for Great Britain on 13 January 1930 from Proclamation Island.⁴²

On 14 January 1930 the *Discovery* and *Norvegia* met and Riiser-Larsen came aboard the *Discovery*, having been told four days before by Christensen that he should operate west of 45°E. Not knowing this, Mawson explained that they were on a duly organised scientific expedition and, to avoid overlap, he hoped the Norwegians “would keep west of 40°E and that Norway had been informed that we would not go west of that line.”⁴³ According to Christensen the advice to the Norwegian Government did not mention 40°E, only Enderby Land, which he understood to mean 45°E.⁴⁴ Mawson also said “that we had mapped in coast approximately from about 73 E longitude to present position, that we had been right along Kemp-Enderby Land Coast.”⁴⁵ According to Price “at a later date Mawson emphasized that he had exaggerated the completeness of the BANZARE surveys in order to turn the Norwegians westwards.”⁴⁶

While the Norwegians went west, the first BANZARE continued to survey the Enderby coast to 45°E. Flights were made on 17 January and on 25 January from a position just off Proclamation Island. On the last flight Campbell and Mawson flew a

⁴¹ Price, *The Winning of Australian Antarctica*, pp. 85, 169-170.

⁴² Price, *The Winning of Australian Antarctica*, p. 71.

⁴³ Price, *The Winning of Australian Antarctica*, p. 76.

⁴⁴ L. Christensen, *Such is the Antarctic*, (E. M. G. Jayne translator) (London, 1935), p. 161.

⁴⁵ Sir D. Mawson, *Mawson's Antarctic Diaries*, F. Jacka and E. Jacka (eds.) (Sydney, 1988), p. 317.

⁴⁶ Price, *The Winning of Australian Antarctica*, p. 74.

few miles south over the continent, dropped a flag and proclaimed, according to Price, “all the land discovered including the newly discovered slice at our farthest west.”⁴⁷ This was the first aerial proclamation in the AAT.⁴⁸ *Discovery*, running out of coal, turned north, and the first BANZARE ended. As Mawson had predicted, a second voyage was necessary to complete the brief. In the belief they had stalled the Norwegians, part of the second stage of the process defined at the Imperial Conference had been carried out. The validity of the claims in respect of contemporary international law is covered in Chapter 6.

The second BANZARE voyage sailed from Hobart on 22 November 1930. The sailing instructions required the expedition to complete the coastal discoveries of the territory between 140°E and 55°E concentrating on the area between Adélie Land and Queen Maud Land, landing on the latter and carrying out further exploration between Gaussberg and Mac-Robertson Land. They also required that “on such land or island within the area specified you will plant the British flag wherever you find this practicable and in doing so you will read the proclamation of annexation.”⁴⁹

Mawson landed at Cape Denison on 5 January 1931 and took formal possession of King George V Land, defined as that section of Antarctic coast-line between 142°E and 160°E.⁵⁰ Sailing west, land was seen from the aircraft in the direction of Wilkes’ Knox Land, thus confirming a sighting discounted by Mawson after the AAE. New land was again sighted on 9 February, from the aircraft, which was subsequently called Princess Elizabeth Land.⁵¹ This land, like Mac-Robertson Land, was within the area not specified by the Imperial Conference between Kemp and Queen Mary Lands.

⁴⁷ Price, *The Winning of Australian Antarctica*, p. 82. (The actual wording of the proclamation dropped from the aircraft was the same as that made on Proclamation Island on 13 January 1930. See Appendix 2.)

⁴⁸ See chapter 5 for legality of aerial dropped proclamations. The technique was also used by Riiser-Larsen and Wilkins)

⁴⁹ AU30101930A: ‘Australian Acting Prime Minister (J. J. Dally) to leader of BANZ Expedition (Sir D. Mawson 30 October 1930’ in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 120-123.

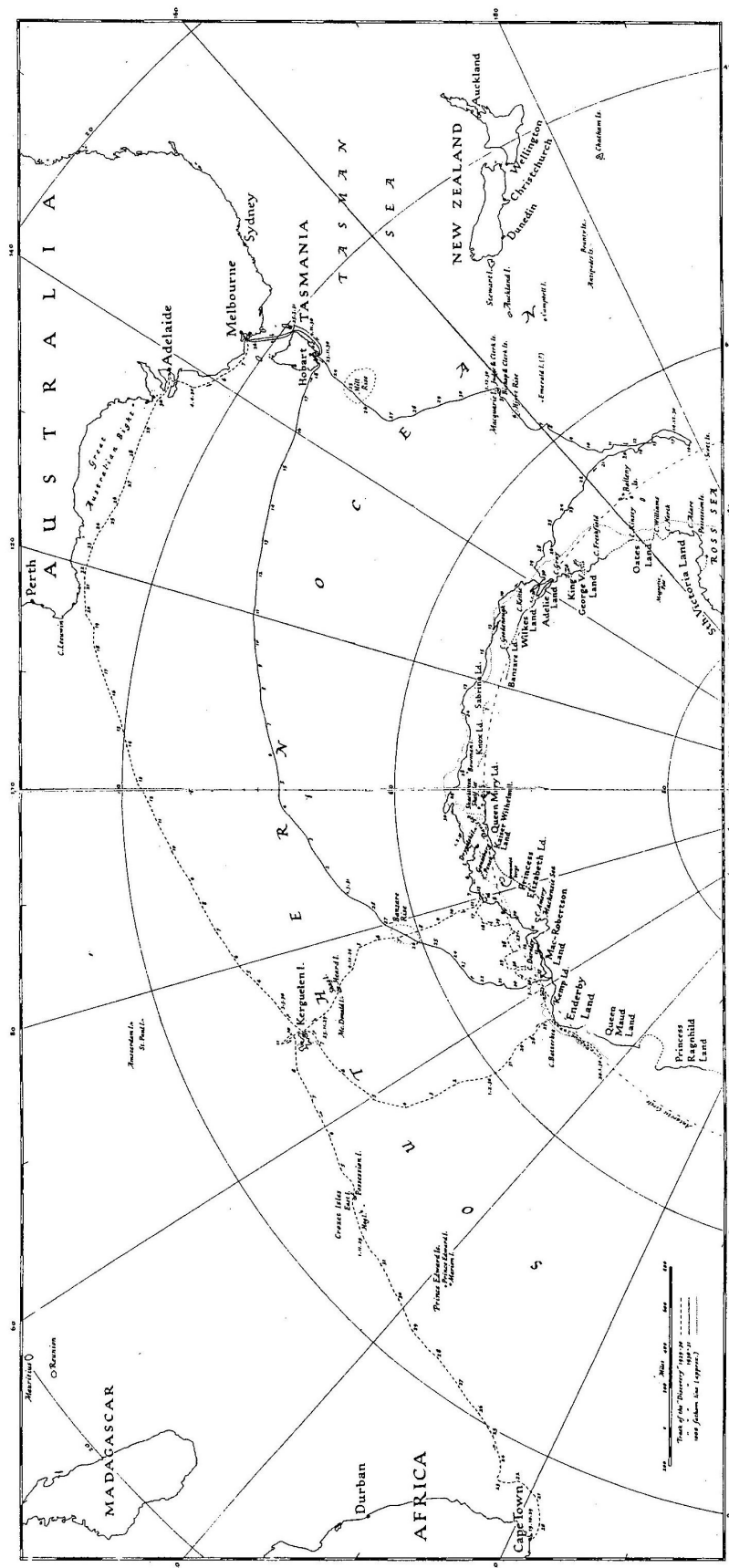
⁵⁰ D. Mawson, ‘The B.A.N.Z. Antarctic Research Expedition, 1929-1931, *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932) p. 115. (See appendix 2 for full details.)

⁵¹ D. Mawson, ‘The B.A.N.Z. Antarctic Research Expedition, 1929-1931, *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932) pp. 117, 126.

Proclamations claiming territory were made at Scullin Monolith on 13 February and at Cape Bruce on 18 February covering from Adélie Land to Mac-Robertson Land and extending the territory to 138° E.⁵² (Map 7 shows the route of the *Discovery* on both voyages.)

⁵² See appendix 2 for further detail.

Map 7 – The route of the *Discovery* on both BANZARE voyages



The route of the *Discovery* on both BANZARE voyages 1929-1931.
 Original source: D. Mawson 'The B.A.N.Z. Antarctic Research Expedition, 1929-30', *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932) pp. 101-126 (map) this version sourced from Price, *The Winning of Australia Antarctica*, p. 22.

With completion of the second stage of the process defined at the Imperial Conference, it was time for the third stage to be carried out. On 7 February 1933 an Order in Council placing certain territory in the Antarctic Seas under the authority of the Commonwealth of Australia was issued in Britain. Under the authority of His Majesty the King all the island and territories, other than Adélie Land, which are situated south of 60° S between the 160° E and 45° E, were to be placed under the authority of the Commonwealth of Australia when the appropriate acceptance legislation had been passed and proclaimed by the Governor-General.⁵³ The territorial limits set by this order differ from those set at the 1926 Imperial Conference. The northern limit of latitude 60°S had not been specified and was further north than any of the proclamations. This was to be of concern to the Norwegian whalers as it increased the area over which Australia claimed territory jurisdiction in terms of islands and fixed ice. After prolonged diplomatic negotiations between Britain and France the limits for Adélie Land had been set at 136°E and 142°E longitude. A copy of the order was forward to Norway and France on 14 February 1933.⁵⁴ The Order in Council established Australian Antarctic Territory and required an Act of Parliament before Australia could take control of the territory from Britain.

The Australian Antarctic Territory Acceptance Bill was introduced into the Federal Parliament in May 1933. The second reading was introduced by Attorney-General John Latham on 23 May 1933. In his introductory speech Latham first outlined the territory as “including the eastern part of Queen Maud Land, Enderby Land, Kemp Land, Mac-Robertson Land, Princess Elizabeth Land, Queen Mary Land, Knox Land, Banzare Land, Wilkes Land, King George V Land Wilkes Land and Oates Land.”⁵⁵ He also mentioned in relation to Mawson’s BANZARE that “in January, 1930, the Norwegian, Captain Riiser-Larsen, in the *Norvegia*, visited, shortly after the *Discovery*, the area west of Enderby Land, and gave it the name of Queen Maud’s

⁵³ AU7021933: ‘Order in Council placing certain territory in the Antarctic Seas under the Authority of the Commonwealth of Australia’ (14 February 1933), in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 142-143.

⁵⁴ Bush (ed.), *Antarctic and International Law*, Vol. 2, (AU14021933), p.143.

⁵⁵ Australian Antarctic Territory Acceptance Bill, *Commonwealth Parliamentary Debates* (House of Representatives) Vol. 139, 26 May, 1933, p. 1949.

Land.”⁵⁶ This statement was interpreted by the Norwegians to mean that Mawson had discovered Queen Maud’s Land before Riiser-Larsen. (This matter is discussed in detail in Chapter 5.) Latham went on to highlight the high level of whaling that was being carried out in the region and the need to regulate the industry before the stock of whales was greatly diminished or totally destroyed, however he also emphasised the actual and potential economic importance of the territory to Australia.⁵⁷ The debate on the Bill then continued with various speakers expressing the commercial value of whaling to Australia citing New Zealand’s gain from the Ross Dependency. The debate in the Australian Senate on 1 June 1933 was similar with a focus on whaling and the profit made by Norwegian whaling companies.⁵⁸

The Whaling resources in the Southern Ocean were much publicised in the press after the first BANZARE. Two large areas had been discovered. The first area was discovered by the Norwegian expeditions between Bouvet Island and Enderby Land.⁵⁹ A second area was discovered jointly by the Norwegians and the first BANZARE during the 1929-30 season.⁶⁰ A third area existed in the area south of Tasmania and New Zealand which was being whaled by whalers from a number of nations, some of whom were using Hobart as their base to avoid paying licence fees to New Zealand.⁶¹ Mawson, in an address to ANZAAS in 1935, emphasised the economic benefit of whaling to Australia which he said Australia and New Zealand had “not up to the present actively participated in.”⁶²

⁵⁶ Australian Antarctic Territory Acceptance Bill, *Commonwealth Parliamentary Debates* (House of Representatives) Vol. 139, 26 May, 1933, p. 1949.

⁵⁷ Australian Antarctic Territory Acceptance Bill, *Commonwealth Parliamentary Debates* (House of Representatives) Vol. 139, 26 May, 1933, pp. 1950-1952.

⁵⁸ Australian Antarctic Territory Acceptance Bill, *Commonwealth Parliamentary Debates* (Senate), 1 June, 1933, pp. 2017-2024.

⁵⁹ Swan, *Australia in the Antarctic*, p. 195.

⁶⁰ Swan, *Australia in the Antarctic*, p. 195.

⁶¹ A. H. Charteris, ‘Australasian Claims in Antarctica’, *Journal of Comparative Legislation and International Law*, 3rd Ser., Vol. 11, No. 4. (1929), p. 229.

⁶² D. Mawson, ‘The Unveiling of Antarctica’, *Report of the Melbourne (1935) meeting of the Australian and New Zealand Association for the Advancement of Science*, (reprint) (Melbourne, 1935) p. 35.

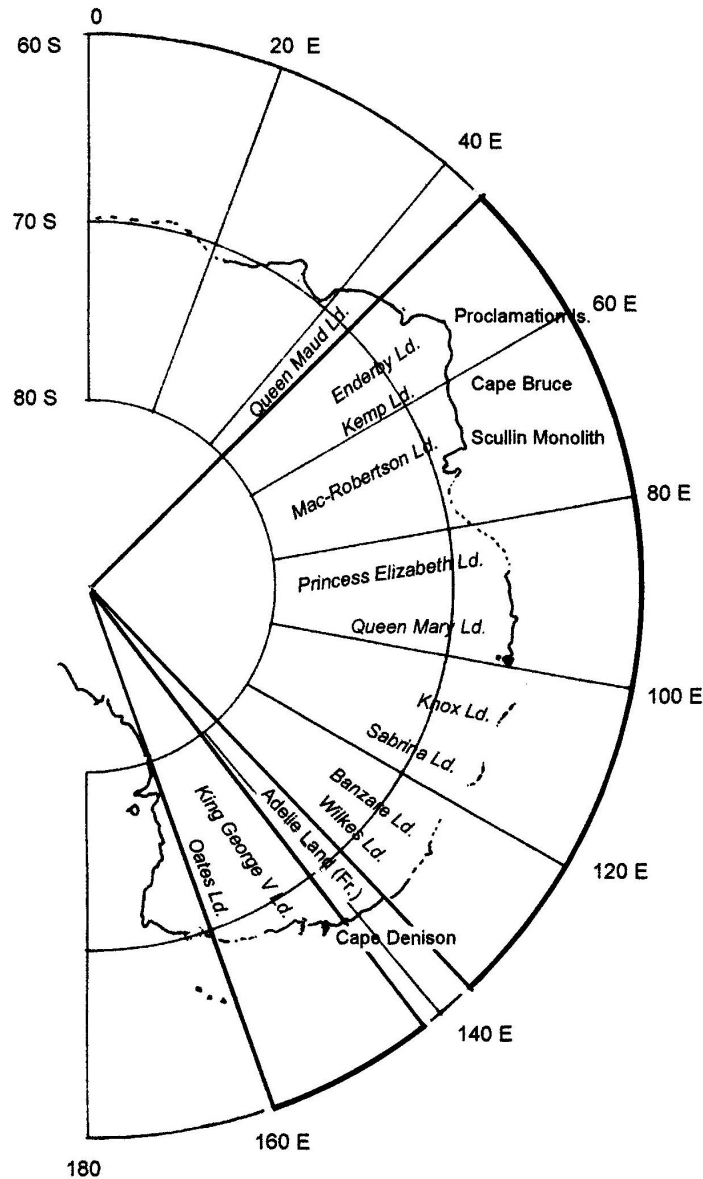
The Act received Royal Assent on 13 June 1933 giving Australia authority over “that part of the territory in the Antarctic seas which comprise all the islands and territories, other than Adélie Land, situated south of the 60th degree south latitude and lying between the 160th degree east longitude and the 45th degree east longitude.”⁶³ The Act did not, however, come into operation until 13 June 1938. Norway did not recognise Australian sovereignty until 15 January 1939, when they advised Britain that they recognised the boundaries of AAT.⁶⁴ This was after Britain had written to Norway on 11 November 1938 seeking recognition of these boundaries and expressing concern about Norwegian explorers not recognising British sovereignty over the territory between 1929 and 1937.⁶⁵ The Norwegian explorers, which were the subject of the 11 November letter, were members of Christensen’s sponsored expeditions, some of whom had sailed south before the first BANZARE had left Cape Town. (The extent of AAT is shown on map 8.)

⁶³ AU13061933: ‘Australian Antarctic Territory Acceptance Act 1933’ (13 June 1933) in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 146-149.

⁶⁴ AU14011939: ‘Norwegian Minister, London (E. Colban) to Foreign Secretary (Viscount Halifax) 14th January 1939’ in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 158-159.

⁶⁵ AU11111938: ‘Assistant Under Secretary of State for Foreign Affairs (Sir G. Mounsey) to Norwegian Minister, London (E. Colban) 11th November, 1938’ in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 155.

Map 8 – BANZARE discovered lands and Australian Antarctic Territory



Eastern Antarctica in 1931, showing the BANZARE discovered and named lands, the locations where Mawson made proclamations and the territories between 45° E and 136° E and between 142° E and 160° E that became Australian Antarctic Territory in 1933. The limits shown of Adélie Land were agreed to by the British and the French in 1938. Queen Maud Land, discovered by Riiser-Larsen in January 1930, is cut by the western limit of AAT.

Chapter 4 - The Norwegian Advance Halted

On 9 October 1929, ten days before the first BANZARE sailed from Cape Town, the third Christensen sponsored *Norvegia* expedition departed South Georgia for Eastern Antarctica via Bouvet Island with Riiser-Larsen as captain. Riiser-Larsen, without knowledge of the pending BANZARE, was on his way to explore Enderby Land for suitable sheltered harbours, map the coast and survey the area for whales.¹ After negotiating the pack ice and aided by aerial reconnaissance, the coast was sighted from the air on 7 December 1929. On 22 December, Riiser-Larsen and pilot Lützow-Holm landed the aircraft on the ice and hoisted the Norwegian flag on a skerry at 66°33'S, 50°40'E, adjacent to the Enderby Land shore and not far from Cape Ann.² They were first to step ashore in an area which had first been sighted by Biscoe 99 years before and over a month before Mawson reached this area. Riiser-Larsen, at this time was not aware that Norway, nearly a year before on 14 November 1928, had formally advised Britain that they would not occupy the territories listed in the summary of the 1926 Imperial Conference. The first he knew of this was provided by telegraphed advice from Christensen on 10 January, who first congratulated him on his discovery and then requested that "the aviators should refrain from occupying any more land east of 45°E or west of 15°W".³

Christensen, who had advised the Norwegian Foreign Office of his plan to explore the Antarctic coast between Enderby Land and Coats Land, was made aware that on 12 October 1929 the British Government had informed the Norwegian Government "that the *Discovery* would be carrying out operations in the sector between Enderby Land

¹ H. Riiser-Larsen, 'The "Norvegia" Antarctic Expedition of 1929-1930', *Geographical Review*, Vol. 20, No. 4. (Oct. 1930), p. 557.

² H. Riiser-Larsen, 'The "Norvegia" Antarctic Expedition of 1929-1930', *Geographical Review*, Vol. 20, No. 4. (Oct. 1930), p. 564. (Lützow-Holm arrived and left Cape Town on 7 October by ship)

³ L. Christensen, *Such is the Antarctic*, (J. M. G. Jayne translator), (London, 1935), p. 172. Christensen was advised on 14 February and 30 October 1929 that Norway would desist from occupying Imperial Conference designated areas designated by name only. (NW10111933: 'Recommendation of the Ministry of Foreign Affairs approved by royal decree authorising the "Thorshavn" expedition of 1933-34 to claim certain territory for Norway' (10 November 1933), in Bush (ed.), *Antarctic and International Law*, Vol. 3, p. 140.)

and the Ross Sea [as] the Australian Government intended to establish British sovereignty formally over this sector.”⁴ Christensen argues, however, that the flag had been planted south of the area seen by Biscoe and was therefore outside of Enderby Land which in Christensen’s view was between 58°E and 50°E and therefore Riiser-Larsen was justified in raising the flag.⁵ This was the first known intrusion into an area which the Imperial Conference had simply listed as Enderby Land without stating the longitudinal limits and raises the question as to what was shown on the maps of the time. As Biscoe had sighted what was to be called Enderby Land, first at 65°57’S, 47°20’E and again at 66° 25’S, 49° 17’ 45’’E and the details were published in *The Antarctic Manual*, it would have been surprising if Christensen had not been aware of this information.⁶ Riiser-Larsen had in fact landed close to the land seen by Biscoe. The maps of the day may not, however, have been correct as the map provide by the Norwegian Isachsen shows Enderby Land between 50°E and 58°E.⁷ A 1926 English map in Christensen’s possession showed “between Coats Land at 20°W and Kaiser Wilhelm Land at 90°E nothing but a little black mark at 50°E, called Enderby Land, and a little further down, a dotted and tentative line, called Kemp Land.”⁸ Much of this confusion arose from not publicly releasing the geographical limits defined by the Imperial Conference. (Map 9 illustrates the areas of Antarctica known to the Norwegians in 1927.)

⁴ Christensen, *Such is the Antarctic*, p. 161.

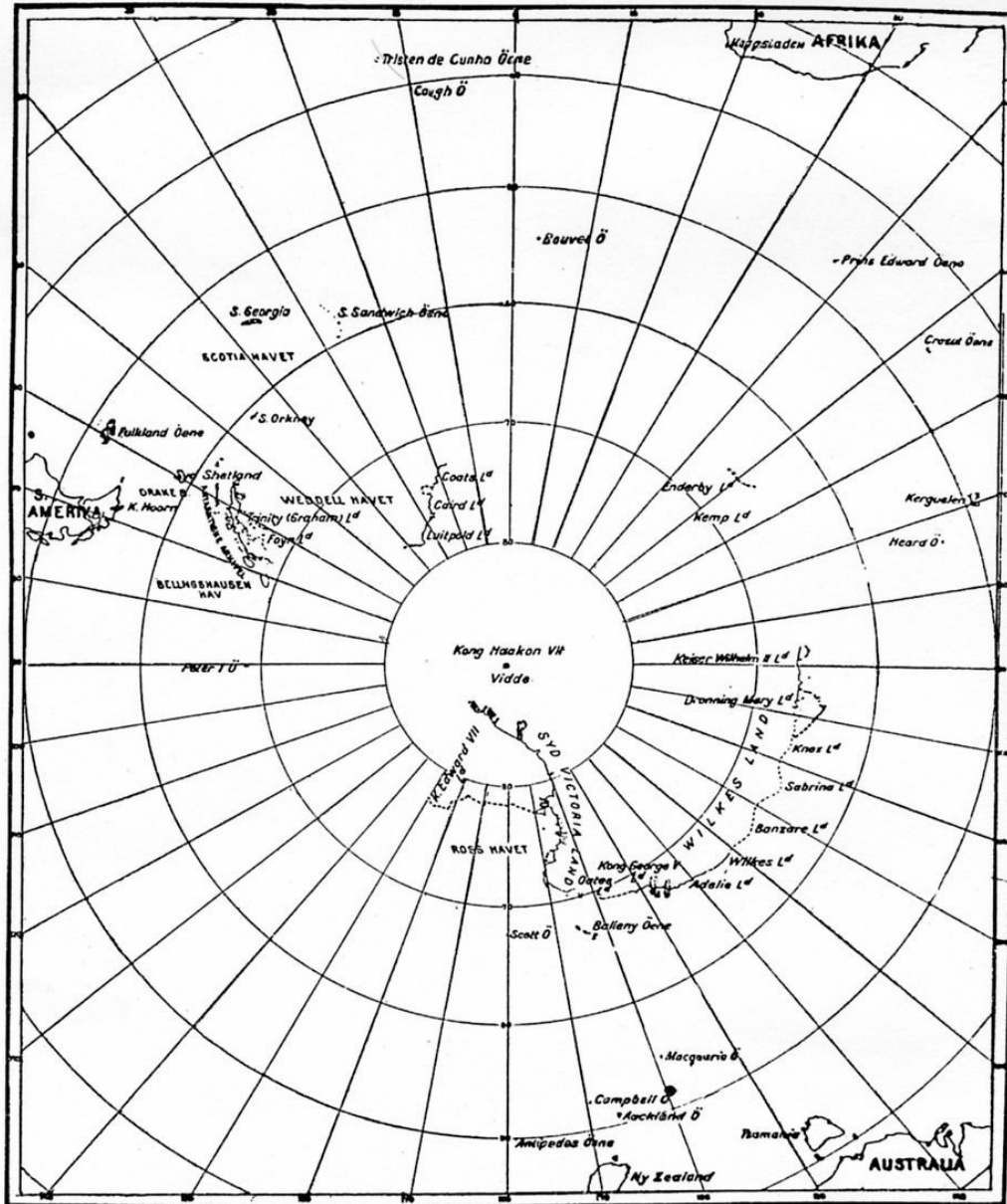
⁵ Christensen, *Such is the Antarctic*, p. 172.

⁶ J. Biscoe, ‘The Journal of John Biscoe’ in *The Antarctic Manual*, (G. Murray ed.) (London, 1901), p. 319. (The longitude of Biscoe’s first sighting of Antarctica was later amended by -2°)

⁷ G. Isachsen, ‘Norwegian Exploration in the Antarctic, 1930-31’, *The Geographical Review*, Vol. 80, No. 2 (Aug., 1932), p. 96.

⁸ Christensen, *Such is the Antarctic*, p. 203.

Map 9 – The Norwegian view of Antarctica in 1927



THE ANTARCTIC REGIONS 1927

The Norwegian view of Antarctica in 1927 (with post BANZARE named lands added between Knox Land and Adélie Land. (Source: L. Christensen, *My last expedition to the Antarctic 1936-1937*, (Oslo, 1938) p. 2.

On 20 January 1930, the British Government formally advised the Norwegian Government of their displeasure at this reported occupation in an area to which they “considered that they had an unimpeachable claim.”⁹ This claim by the British is not valid, as when Riiser-Larsen claimed the area on 22 December they only had a inchoate claim that was nearly a century old, which could have easily been overturned by Norway, or any other nation, until Mawson made his proclamation on 13 January 1930.

On 14 January the *Norvegia* met with the *Discovery* after which the *Norvegia* sailed west and on 15 January 1930 with the ship at 49° 30'E Riiser-Larsen, from an aircraft at 3000 feet, sighted and named Queen Maud Land to the south between 50°E and 46°E. More of this new land was sighted and mapped, again from the air, on 16 January 1930 when the ship was at 44°E.¹⁰ This was the first sighting of this area of Antarctica and Riiser-Larsen's map showed Queen Maud Land and the coast west of 50° E.¹¹ The question of whether Riiser-Larsen or Mawson first discovered this area of Antarctica was to become a source of disagreement between Norway, Britain and Australia, and is discussed in Chapter 5. According to Bogen, “in the course of four flights, on December 7th and 12th, 1929, and January 15th and 16th, 1930, Riiser-Larsen charted 370 nautical miles of curved coastline between 50°E and 43°E.”¹² This entire coastline was, according to the Norwegians, the coast of Queen Maud Land. After completing the charting the *Norvegia* sailed westward making many more discoveries for Norway and during the next season, according to Christensen “completed the circumnavigation of the South Polar Continent on January 29 1931.”¹³ *Norvegia* was the fourth ship to do this.

⁹ NW20011930: British memorandum to Norway concerning the activities of the “Norvegia” in the Australian Antarctic sector, (20 January 1930), in Bush (ed.), *Antarctic and International Law*, Vol. 3, p. 128.

¹⁰ H. Riiser-Larsen, ‘The “Norvegia” Antarctic Expedition of 1929-1930’, *Geographical Review*, Vol. 20, No. 4. (Oct. 1930), p. 566.

¹¹ See map 11 in chapter 5.

¹² H. S. I. Bogen, *Main Events in the History of Antarctic Exploration*, (Sandefjord, 1957), p. 20.

¹³ Christensen, *Such is the Antarctic*, p. 198.

During the 1930-31 southern summer season a number of Christensen's whaling vessels including the motor-tanker *Thorshavn* with Christensen and his wife aboard sighted and, hence by definition, discovered what they believed was new land between 75°E and 60°E. Between 12 January 1931 and 14 February 1931 some eight whaling vessels made ten sightings of the Antarctic coast. The newly discovered land, the area between 75°E and 60°E, was named Lars Christensen Land.¹⁴ These discoveries, named by the Norwegians, were renamed by Mawson on the second BANZARE, between the 9th and 19th of February. Mawson's action became an area of dissension within Norway and is discussed in Chapter 5.

It should be noted, that notwithstanding Mawson claiming from 47°E and 73°E on 13 January 1930, the land between 60°E and 86°E was outside the limits specified by the Imperial Conference and therefore without British inchoate title. Price deals with 'who saw what first and who named what first' in some detail.¹⁵ While the Norwegians discovered and named the areas, they did not, claim them. Indeed as Riiser-Larsen was the only Norwegian with authority to claim new territory, such action would have been null and void.¹⁶

Subsequent Christensen expeditions, however, continued to map, name and claim sections of Antarctica between 60°E and 86°E. The discovery of new land between 73°E and 80° 45'E was reported in *The Polar Times* in June 1935. The discovery, in the Enderby Quadrant, was made by Christensen's *Thorshavn* and named 'Ingrid Christensen's Land' after Christensen's wife. According to *The Polar Times*, "The latest discovery means the Norwegians have finally found the missing link between King Leopold's Land and Queen Astrid Land and Lars Christensen's Land."¹⁷ *The Polar Times* also reported that "The Antarctic expert Aagaard suggested that annexation was contemplated following the announcement ... that the Norwegian vessel Thorshavn had discovered new land in Antarctica, taken possession of it for

¹⁴ Christensen, *Such is the Antarctic*, p. 208. See appendix 1 for detail.

¹⁵ A. G. Price, *The Winning of Australian Antarctica*, (Sydney, 1962), pp. 166, 168-172.

¹⁶ NW10111933: 'Recommendation of the Ministry of Foreign Affairs approved by royal decree authorising the "Thorshavn" expedition of 1933-34 to claim certain territory for Norway' (10 November 1933), in Bush (ed.), *Antarctic and International Law*, Vol. 3, p. 140.

¹⁷ *The Polar Times*, American Polar Society, June 1935, p. 15.

Norway.”¹⁸ This was immediately rejected by the Norwegian Premier Mowinckel who was reported as saying “The Norwegian Government does not plan to annex all the lands between the eastern limit of Queen Maud’s Land and the western limit of Crown Princess Martha’s Land in the Antarctic.”¹⁹ On 23 November 1935, a further claim was made for Norway when Captain Klarius Mikkelsen claimed the Ingrid Christensen Coast in Princess Elizabeth Land.²⁰ (Map 10 shows the named areas)

In 1938 the British Government, in a letter to Norway regarding AAT boundaries, expressed their concern at the failure of certain Norwegian explorers who, without authority, made flights over and landings on AAT. This included Riiser-Larsen’s flight and landing in December 1929, flights made from the *Thorshavn* in January 1934, the incidents shown above, and a flight by Lars Christensen in January 1937, when a flag was dropped and a landing made.²¹ None of these activities were endorsed by the Norwegian Government, and were outside the authority granted to the expeditions, but these actions reflected the Norwegian whalers displeasure over claims made by others over territory they had, in fact, discovered and named.

Norway finally recognised Australian sovereignty on 15 January 1939 by advising Britain that they recognised the boundaries of AAT.²² This was the day after the Royal Decree establishing Norwegian Antarctic Territory between the Falkland Islands Dependency in the west and Australian Antarctic Territory in the east on 14 January 1939.²³ Norway, in claiming the territory did, not specify southern or northern limits in accordance with their rejection of the sector principle. Before Norway had recognised AAT they had, however, raised objections with the British Government on aspects of the claim.

¹⁸ *The Polar Times*, American Polar Society, June 1935, p. 15

¹⁹ *The Polar Times*, American Polar Society, June 1935, p. 15

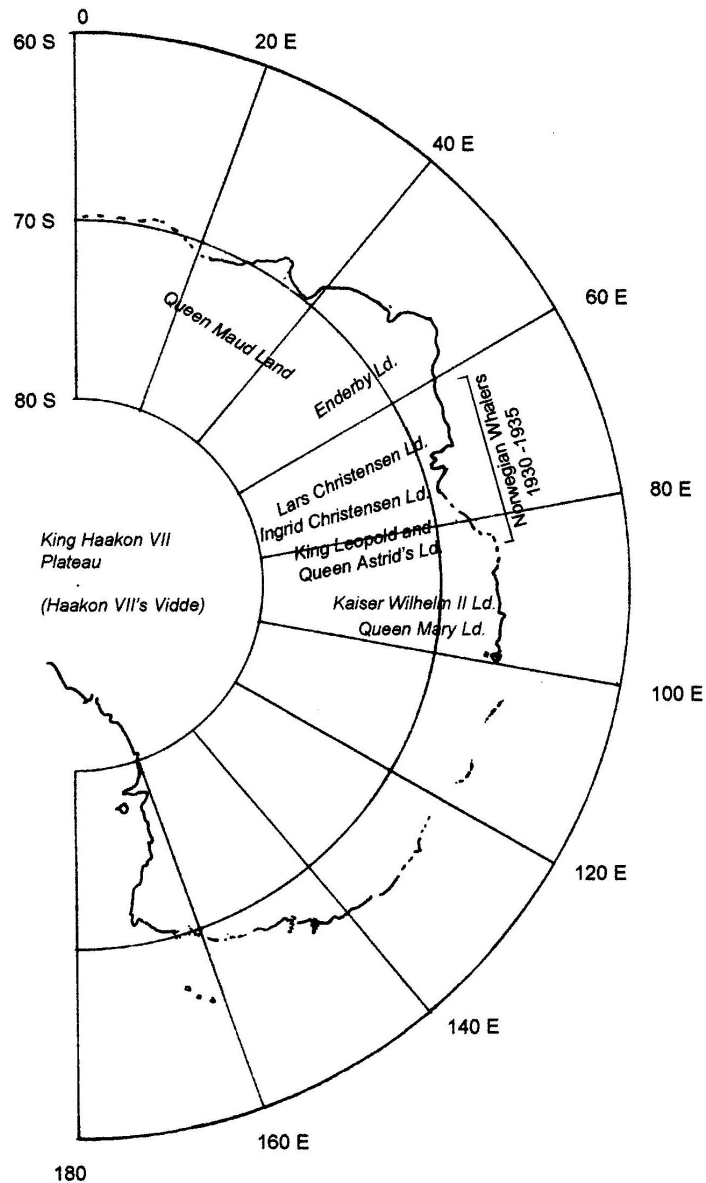
²⁰ *Territorial Claims in the Antarctic*, Great Britain, Foreign Office, Research Department, (London, 1945) p 156.

²¹ AU11111938: ‘Assistant Under Secretary of State for Foreign Affairs (Sir G. Mounsey) to Norwegian Minister, London (E. Colban) 11th November, 1938’ in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp.154-157.

²² AU14011939: ‘Norwegian Minister, London (E. Colban) to Foreign Secretary (Viscount Halifax) 14th January, 1939’ in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 158.

²³ NW14011939C: ‘Royal proclamation defining the area of Norwegian sovereignty in Antarctica’ (14 January 1939) in Bush (ed.), *Antarctic and International Law*, Vol. 3, p. 149.

Map 10 – Norwegian discoveries in the Australian Sector



Territories discovered and named by Norwegian whalers between Kemp Land and Kaiser Wilhelm II Land in the Australian sector of Eastern Antarctica between 1929 and 1935. (Data source: L. Christensen, *My last expedition to the Antarctic 1936-1937*, (Oslo, 1938) p. 1.)

Chapter 5 - The Norwegian View – Was it Fair-Play?

What was the Norwegian Government's reaction to the Order in Council establishing Australian Antarctic Territory? Did the Norwegians believe Australia had gained territory in the Antarctic fairly? Certainly the view expressed by the Norwegian historians Aagaard and Bogen was, as Price reported, not favourable.¹ A copy of the Order in Council dated 7 February 1933 was communicated to Norway on 14 February 1933.² The Norwegian Government responded over a year later on 26 February 1934 to British Foreign Office.³ This was well after the Act accepting the territory had passed both houses of the Commonwealth Federal Parliament. The Norwegian reply stopped short of an outright objection on the basis that AAT included a substantial part of the Norwegian discovered and mapped Queen Maud's Land and the polar plateau, Haakon VII's Vidde, named and claimed by Amundsen in 1911.⁴

The concern over the polar plateau had been raised previously in regard to the Ross Sea Dependency and resulted in Norway reserving their right to the South Polar Plateau and other areas as discussed in Chapter 2. The Norwegian reply expressed the Government's view that "the fact that part of Haakon VII's Vidde has been included in the area claimed as British territory might cause some reservation similar to that made by Norway in the exchange of notes with Great Britain in 1925-27 with regard to the Ross Dependency."⁵ In effect, Norway indicated that they may reserve their right to claim this area of AAT as they had in the Ross Dependency.

The Norwegian letter also raised questions with regard to the position of the western border of AAT, which was now placed so as to include a substantial part of Queen

¹ A. G. Price, *The Winning of Australian Antarctica*, (Sydney, 1962) pp. 164-165.

² W. M. Bush (ed.), *Antarctica and International Law*, Vol. 2, (London, 1982) (AU07021933), p. 143.

³ AU26011934: 'Memorandum communicated by the Norwegian Minister to the Foreign Office (26 January 1934)', in Bush (ed.), *Antarctica and International Law*, Vol. 2, pp. 149-150.

⁴ Bush (ed.), *Antarctica and International Law*, Vol. 2, (AU26011934), p. 150.

⁵ AU26011934: 'Memorandum communicated by the Norwegian Minister to the Foreign Office (26 January 1934)', in Bush (ed.), *Antarctica and International Law*, Vol. 2, pp. 149-150.

Maud's Land that had been discovered and mapped by Norwegians. The border with Enderby Land was now at 45° E instead of 50° E as shown on the Norwegian maps. This, according to Mawson, was because "evidence now to hand supports the view that Biscoe did first sight the Antarctic Continent near about the 45th meridian of east longitude the claim for the extension of Enderby Land as far west as the 45th meridian is principally based upon Biscoe's observations."⁶

The western boundary of AAT had been set at 45°E by the Imperial Conference in 1926 but as the limits of Enderby Land were not published, the Norwegians were unaware of this. Their maps showed the western limit of Enderby Land at about 50°E and Riiser-Larsen had landed in this area on 22 December 1929 when the *Discovery* was at 73°E. As, when the *Norvegia* was 120 km south of its 22 December position on the morning of 15 January 1930, land could be seen from the deck to the whole quadrant from east to the south, it is possible that Riiser-Larsen could have seen further south from the aircraft than was claimed.⁷ Riiser-Larsen only claimed to have sighted and named Queen Maud to the south between 50°E and 46°E from an aircraft on 15 January 1930.⁸ In addition to the map problem, according to Price it was believed Mawson had sighted this area before Riiser-Larsen.⁹ (Map 11 shows details of Riiser-Larsen's flights.)

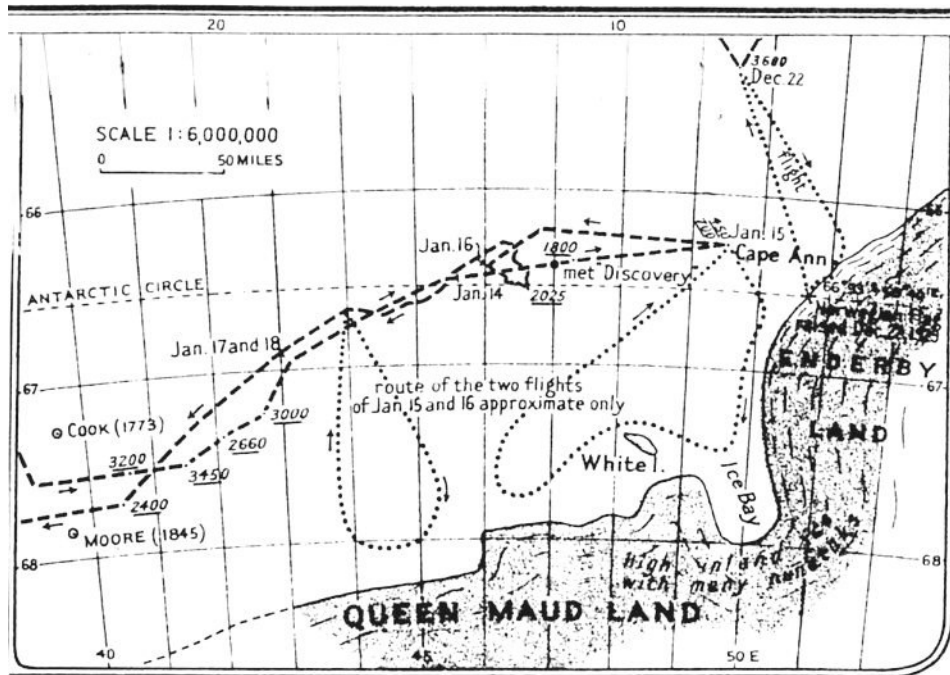
⁶ D. Mawson, 'Some Historical Feature of the Discovery of Enderby Land and Kemp Land', *The Geographical Journal*, Vol. 86, No. 6. (Dec., 1935), p. 528. (Biscoe's journal specifies his first sighting at 47° 20' E. This was subsequently amended by 1° 20' eastwards to 46° E, on charts issued in 1833. Later corrections were made to add 2° eastwards to all the longitudes in Biscoe's journal. Cumpston argues the actual position of his first sighting of the continent was 46° 20' E. (J. Cumpston, 'The Antarctic Landfalls of John Biscoe, 1831', *The Geographical Journal*, Vol. 129, No. 2. (Jun., 1963), pp. 175- 184.

⁷ L. Christensen, *Such is the Antarctic* (E. M. G. Jayne translator), (London, 1935), p. 176.

⁸ H. Riiser-Larsen, 'The "Norvegia" Antarctic Expedition of 1929-1930', *Geographical Review*, Vol. 20, No. 4. (Oct. 1930), p. 566 and map.

⁹ Price, *The Winning of Australian Antarctica*, p. 166.

Map 11 – Riiser-Larsen's flights off Queen Maud Land



Riiser-Larsen's flight details are shown for 22 December 1929, 15 January 1930 and 16 January 1930 when Queen Maud Land was discovered and the route of *Norvegia*. Note the boundary between Queen Maud Land and Enderby Land at 50° E. (source: H. Riiser-Larsen, 'The "Norvegia" Antarctic Expedition of 1929-1930', *Geographical Review*, Vol. 20, No. 4. (Oct., 1930), p. 574)

The concern raised by the Norwegian Government over this matter was voiced by Aagaard after Latham's speech in the Australian parliamentary debate over the Acceptance Act on 26 May 1933. According to Aagaard, Latham said "that Riiser-Larsen had visited the western area [of AAT] after the BANZARE and named Queen Maud Land".¹⁰ Aagaard added "This was not true and misleading."¹¹ Price takes up the argument in some detail, finally admitting "that the Norwegians hold the prize for first exploration of the coastline west of 45°E."¹² With respect to 45°E being the

¹⁰ B. Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), (Oslo, 1934), p. 892.

¹¹ Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), p. 892.

¹² Price, *The Winning of Australian Antarctica*, p. 166.

boundary Christensen said “I can understand that the experts may argue the question as to whether 48° or 50° E is the boundary-line, but not the 45th degree.”¹³ Mawson justified this as being close to where Biscoe first sighted the Antarctic Continent, as stated above.

The Norwegian Government was also concerned about the future of their whaling industry now that nearly two thirds of the continent was under foreign (British and French) sovereignty.¹⁴ Given the concession and licensing arrangements they had experienced in the Ross Dependency and FID and the possibility that Britain or Australia may favour their own whalers, this was a valid concern; a concern that was enhanced by the seaward limit being set at 60° S, well north of the coast and summer sea-ice. This concern, according to Price, was because “the Norwegians were more aggrieved over the whaling position than over Australian territorial claims.”¹⁵

The final concern of the Norwegian Government was regarding clarification of the naming of certain areas, for instance Lars Christensen’s Land. This related to the renaming of features of the coast and visible hinterland between 60°E and 75°E which had been sighted and named by Norwegian whalers in January and February 1931. This occurred before *Discovery* returned on the second voyage later in February 1931 when the features were renamed by Mawson.¹⁶ This resulted in Bogen referring to Mawson as belonging “to the zealous sect of Anabaptists.”¹⁷ Bogen was not the first to criticise Mawson for this activity. Hobbs had something similar to say following the AAE when he wrote “following British tradition Mawson erased from his map every name given by Wilkes except Knox Land.”¹⁸ Price devotes some pages on renaming or naming by Mawson and the difficulties facing cartographers in this

¹³ Christensen, *Such is the Antarctic*, p. 220.

¹⁴ AU26011934: ‘Memorandum communicated by the Norwegian Minister to the Foreign Office (26 January 1934)’, in Bush (ed.), *Antarctica and International Law*, Vol. 2, p. 150.

¹⁵ Price, *The Winning of Australian Antarctica*, p. 166.

¹⁶ Christensen, *Such is the Antarctic*, pp. 211-212

¹⁷ H. S. I. Bogen, *Main Events in the History of Antarctic Exploration*, (Sandefjord, 1957), p. 67.

¹⁸ W. H. Hobbs, ‘Wilkes Land Rediscovered’, *The Geographical Review*, Vol. 22, No. 4. (Oct., 1932), p. 646.

regard and the selection of names to satisfy all sides.¹⁹ It is a matter of national pride that names bestowed by the first discoverer of a feature remain as proof they were there first. Given that the Norwegians were in an area where maps of the period showed no coast or occupied territory, it is only fair that the names bestowed by them remain. (Mawson had only seen Mac-Robertson Land from an aircraft on BANZARE voyage 1.) Despite the Norwegian concern, Mawson did, however, make concessions in this regard and some of the Norwegian names remain. These include Lars Christensen Land, that is now Lars Christensen Coast and King Leopold and Queen Astrid's Land, that is now King Leopold and Queen Astrid Coast. Mawson also named features after Norwegians such as Mount Riiser-Larsen and the Bjarne Aagaard Islands.²⁰

The action that offended the Norwegians the most was the statement made to the press in Cape Town on 10 October 1929 prior to the departure of Mawson on the *Discovery* on the first BANZARE voyage. This, as noted already, occurred just after the *Norvegia* had departed on its third voyage. Mawson was reported as saying, in addition to the function of the *Discovery* voyage, that the Norwegian relationship with the British Commonwealth had led the latter "to accept Norwegian ownership of Bouvet Island" and that Norway was anxious to "appropriate further Antarctic territories south of the mid-Atlantic."²¹ Furthermore, he added in relation to the scientific nature of both the *Norvegia* and *Discovery* voyages that "collaboration among scientists is usual in all truly scientific endeavours...[and that as the Norwegians] have made no such attempt to discuss with us such matter suggests that they are not deeply interested in science."²² Commenting on Mawson's interview, Aagaard said he had "verbally attacked the *Norvegia* expedition."²³ On 10 October 1929 the London *Daily News* wrote an editorial which Aagaard interpreted as saying "the Norwegian goal is not to do something famous or scientific they are only greedy and we hope they will not succeed. Norwegians have no legal and moral right to get

¹⁹ Price, *The Winning of Australian Antarctica*, p. 86.

²⁰ Price, *The Winning of Australian Antarctica*, pp. 182-195.

²¹ Bogen, *Main Events in the History of Antarctic Exploration*, p. 71.

²² Bogen, *Main Events in the History of Antarctic Exploration*, p. 71

²³ B. Aagaard, *Fangst of Forskning I Sydishavet*, (V.2), (Oslo, 1930), p. 604.

more Antarctic land in south of the mid-Atlantic as this is traditionally British.”²⁴ This resulted in a protest from Norway and repudiation by Britain with Mawson being requested to “refrain [from] saying anything controversial ... regarding the Norwegian activities in the Antarctic.”²⁵

The concerns raised by the Norwegian Government cover a number of aspects regarding the Australian claim to Antarctic territory and the borders of that territory. The most serious concern was the inclusion of territory discovered, named and claimed by Norwegians. They were particularly incensed by references to Mawson sighting Queen Maud Land before Riiser-Larsen. Mawson also came under attack for renaming areas previously named by Norwegian whalers although he may not have been aware of this at the time. The Norwegian Government did not, however, raise the matter of Mawson’s comments to newspapers in Cape Town which so incensed the Norwegian public according to Aagaard and Bogen. The Norwegian Government, according to the Aagaard, sought advice from the Norwegian Svalbard Ice and Sea Council on the Australian claim and its effect on whaling, in February 1933. They were advised Australia could only stop other nations from whaling within the 3 mile territorial limit; however, there were concerns about the legality of a sector being claimed by Australia.²⁶ Christensen commented on this when he wrote, “it is maintained by Norwegian international experts that the Australian claim is not in accordance with international law.”²⁷ These comments suggest there were uncertainties on the legality of Australia’s claim to AAT.

²⁴ B. Aagaard, *Fangst of Forskning I Sydishavet*, (V.2), (Oslo, 1930), p. 698. (See Bogen, *Main Events in the History of Antarctic Exploration*, p. 71 for a complete translation)

²⁵ Price, *The Winning of Australian Antarctica*, p. 27.

²⁶ B. Aagaard, *Fangst of Forskning I Sydishavet*, (V.3), (Oslo, 1934), p. 890.

²⁷ Christensen, *Such is the Antarctic*, p. 219

Chapter 6 - International Law and Rights to Territory

A key component in establishing whether or not Australian Antarctic Territory was gained or won fairly relates to two activities associated with legality of territorial claims. The first is the process used to establish sovereignty of AAT. The second relates to the validity of Norway's claim to Bouvet Island and the 'fairness' of the British 'deal'. As many of the British claims were based on discovery alone it is necessary to establish the requirements, under international law, to gain full title to new territory.

International Law

The process for acquiring territory is given within the rules (statutes) of international law. Based on ancient Roman law, their interpretation has developed in accordance with the precedence set by notable legal decisions. On this basis, the belief that discovery alone provided legal title to territory was overturned by Queen Elizabeth I of England in the sixteenth century when the requirement for subsequent continuous settlement was added to the requirements to gain legal title.¹ In more recent times the process has often required three stages. The first being discovery; the second occupation; and the third permanent settlement. Within each of these stages certain criteria must be met to determine the outcome.

As Lawrence wrote, "discovery was gradually deposed from the all-important position it once occupied; in modern times, few if any, authorities would be prepared

¹ Queen Elizabeth I effectively added the requirement of continuous settlement following discovery in order to gain legal title, when she said in a reply to the ambassador of Philip II of Spain that "she did not understand why either her subjects or those of any other European Power should be debarred from traffick in the Indies: that she did not acknowledge the Spaniards to have any title by donation of the Bishop of Rome, so she knew no right they had to any places other than those they were actual possession of; for their having touched only here and there upon a Coast, and given names to a few rivers and capes, were such insignificant things as could in no ways entitle them to property (*proprietas*) further than in the parts where they actually settled and continued to inhabit." (Camdeni Annales, Anno 1580, cited in T. Twist, *Law of Nations: considered as Independent Political communities*, Vol. 1, (London, 1891), p.173.

to say that a good title to territory could be based by a state upon the bare fact that its navigators were first to find the lands in question.”² Discovery provides, however, an inchoate title which according to Oppenheim “acts as a temporary bar to occupation by another State within such a period as is reasonably sufficient for effectively occupying the discovered territory.”³ Discovery then, aids the process towards gaining sovereignty of a territory and, while it does not give title, it strengthens a claim for title which is based solely on occupancy.⁴ Until 3 January 1923 the British Dominion Office held the view that “the discovery of previously unknown territory conferred an absolute title upon the state by whom the discovery was made.”⁵ Britain used this argument to claim King Edward VII Land and other locations when challenged by Norway, as discussed in chapter 2.

Occupation, the second requirement, includes taking possession by making a formal claim and annexation of the territory and only applies to territory not previously held by another state.⁶ This is traditionally carried out by reading a formal proclamation and hoisting or displaying the national flag to take physical possession of the territory.⁷ Such an act is a requirement to gaining legal title to the territory. This was confirmed by Lord Stowell who said “in newly discovered land where title is meant to be established for the first time, some act of possession is usually done and proclaimed as notification of the fact.”⁸ The act of possession must be made by an officer authorised to do so by the highest order of the state, such as the crown or the supreme government, to be valid.⁹ If annexation is carried out by an unauthorised officer of the state/crown then according to Lawrence it would “be null and void

² T. J. Lawrence, *The Principles of International Law*, (7th ed.) (London, 1923), p. 147.

³ Oppenheim : ‘International Law’, Vol. I, p. 278 as cited in T. W. Balch, ‘The Arctic and Antarctic Regions and the Law of Nations’, *The American Journal of International Law*, Vol. 4, No. 2. (Apr., 1910), p. 273.

⁴ Lawrence, *The Principles of International Law*, pp. 148-149.

⁵ AU31121931: ‘Assistant Secretary, Dominions Office (Hugh Nimmo Tait) to Law Officer of the Crown (31st December, 1931), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 133.

⁶ Lawrence, *The Principles of International Law*, pp. 148-149.

⁷ As a states territory includes the air above it, this act may be made from an aircraft over the territory.

⁸ Lord Stowell , *The Fama* as cited in J. Westlake, *International Laws Part I, Peace*, (Cambridge, 1910), p. 102

⁹ Lawrence, *The Principles of International Law*, p. 149.

unless ratified by the state.”¹⁰ Lawrence added that “a private person cannot perform even an inchoate annexation.”¹¹ This view is counter to that of de Martens who wrote, “the occupation by private individuals must be sanctioned by the government to whose advantage it has been accomplished.”¹² These two points referring to private individuals, as opposed to officers of the state/crown, are significant when looking at the action of nationals claiming territory. For instance, the action by C.A. Larsen, a whaling captain, in claiming Føyn Island for Norway would be null and void unless he had authority to do so. James Clark Ross, a naval officer who had not been given the appropriate authority by the Admiralty, in claiming Victoria Land for Queen Victoria, would have provided Britain with only an inchoate title that required ratification by the British Government to be valid.¹³ Formal ratification and annexation by the state in some form is desirable. However, to complete the process, effective settlement is required: “that is to say, the actual establishment of a civilized administration, civilized inhabitants upon the territory in question and their continuous presence therein.”¹⁴

The above process to achieve legal title to new territory is essentially the same as that proposed at the 1926 Imperial Conference except for the last requirement, permanent settlement. As annexation and settlement are both required to give sovereign rights, then according to Lawrence “this consideration alone...[was] sufficient to dispose [of] all claims to sovereignty over the newly discovered poles.”¹⁵ The British Foreign Office did not agree with this proposition.

¹⁰ Lawrence, *The Principles of International Law*, p. 149.

¹¹ Lawrence, *The Principles of International Law*, p. 150.

¹² de Martens : *Traité de Droit International*, tr by Alfred Léo: Vol. I, p. 463 as cited in T. W. Balch, ‘The Arctic and Antarctic Regions and the Law of Nations’, *The American Journal of International Law*, Vol. 4, No. 2. (Apr., 1910), p. 271..

¹³ Bush notes with respect to James Clark Ross that “the final instructions to Ross from the Admiralty give him no authority to take possession of territory (Ross vol. 1 pp xxii-xxvii)” Bush (ed.), *Antarctic and International Law*, Vol. 3 (NZ27011841) p. 34. This implies that the claim to Victoria Land was invalid unless ratified by the British Government.

¹⁴ Lawrence, *The Principles of International Law*, p. 150.

¹⁵ Lawrence, *The Principles of International Law*, p. 151.

The British Foreign Office (BFO) conceded that, while the completion of occupation by continuous settlement in the case of Antarctica can not be met, virtual settlement can be demonstrated by the degree of control over the territory. According to the BFO this can be achieved by “legislation governing activities within the territory such as the requirement for licences to undertake whaling and other activities within its borders, to visit on some occasions, to appoint magistrates (who may be resident elsewhere) to deal with the commission of crimes therein and generally to exercise sovereign functions so far as the material conditions of the territory call for the exercise of these functions.”¹⁶ This interpretation was first put forward at the 1930 Imperial Conference when considering the validity of Antarctic claims in relation to AAT.¹⁷ The Greenland Case, where Denmark, without settlement in the area “had in fact clearly displayed sufficient authority to provide a valid claim of sovereignty over the whole of Greenland” provided the legal precedent for it to be applied.¹⁸ This case was welcomed by the British as it enabled inchoate titles based on discovery and formal annexation to be completed with legislation and not by permanent settlement. This view is not shared by the United States Government which does not recognise existing Antarctic claims.

Territorial Waters and Shelf Ice

The status of the limit of territorial waters off ice-bound coasts was examined by the 1926 Imperial Conference Committee of British Policy in the Antarctic. Their conclusion was that, while the three mile limit to territorial waters was usually measured from *terra firma*, a special case could be made with respect to ice-barriers which they considered could be taken as “permanent extensions of the land proper.”¹⁹ This decision was made initially in relation to the limit of territorial waters for the

¹⁶ *Territorial Claims in the Antarctic*, Great Britain, Foreign Office, Research Department, (London, 1945) p. 137, para 516.

¹⁷ AU05011930B: ‘Report of the Committee on Polar Questions to the Imperial Conference 1930 (30 October 1930), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 123.

¹⁸ See Appendix 3.

¹⁹ AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 103, para. 31.

control of whaling off the Ross Barrier. On this basis floating shelf-ice or ice barriers, as opposed to sea ice, should be treated as land.²⁰

Australian Antarctic Territorial Claims for Sovereignty

Australasian Antarctic Expedition (AAE)

During the Australian Antarctic Expedition 1911-14 proclamations were made at Cape Denison by Mawson and in Queen Mary Land by Wild as stated in Chapter 3. Were these proclamations valid? Mawson reported that the Union Jack was hoisted at five other localities; one in Queen Mary Land and four in the claimed area of King George Land/Adélie Land.

The proclamation made by Mawson covered just the “neighbouring lands” without specifying any geographical limits and is therefore open to speculation as to what it really covered. Mawson in 1934 indicated that it was intended to cover an enlarged Adélie Land with King George V Land included.²¹ Wild’s proclamation was just for the “land” which would have been sufficient to claim the general area which was to become Queen Mary Land, the limits to which were determined later.²² Claims were also made by sledging parties. However, as the expedition was neither authorised nor forbidden to make claims, were these valid?²³ Were members of the expedition private persons or unauthorised officers? If the former, then in accordance with rules stated above, the claims would have been null and void. However as the British Crown gave approval for the territories to named, it can be argued that this implied Regal recognition of the territory and hence ratification.

²⁰ *Territorial Claims in the Antarctic*, Great Britain, Foreign Office, Research Department, (London, 1945) p. 173.

²¹ AU031912: ‘Report of Dr. Douglas Mawson taking possession of land at Cape Denison’ (March 1912) in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 94.

²² AU25121912: ‘Report of Frank Wild taking possession of land at Possession Rocks, Queen Mary Land, 25 December 1912’, in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 96.

²³ AU08071911: ‘Colonial Office Letter to Dr. Douglas Mawson concerning authority to claim territory’ (8 July 1911) in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 92.

British Australian New Zealand Antarctic Research Expeditions (BANZARE)

Mawson was given a Royal Commission to take possession of the following areas:

(i) The outlying part of Coates Land, (ii) Enderby Land, (iii) Kemp Land, (iv) Queen Mary Land, (v) The area which lies to the west of Adélie Land and which by its discovery by the Australian Antarctic Expedition in 1912 was denominated Wilkes Land, (vi) King George V. Land and (vii) Oates Land.²⁴ However, it also included “such territories now unknown as may be discovered in the course of the aforesaid expedition” thus covering any area beyond that specified by the Imperial Conference.²⁵ Therefore his authority covered the coastal territories with an inchoate title by virtue of discovery and those to be discovered by an authorised officer, but it did not specify that they were to be claimed south to the Pole.²⁶

As shown in Chapter 3, the proclamations covered from 47° E to 73° E, south of 65° S on the first voyage. On the second voyage they covered from 60° E to 160° E and from 66° S to the South Pole in the east and from 64° S to the South Pole in the west. We thus have sectors claimed with varying northern boundaries. The area claimed by proclamation differs from the February 1933 Order in Council which specifies a sector between 45° E and 160° E and south of 60° S. This raises two questions; first the legality of a sector terminating at the pole and second the validity of issuing an Order in Council for an area larger than proclaimed. According to Bush, regarding the last point, this is valid if subsequently ratified, which Mawson’s claim to the South Pole was, even though his commission only specified the coastal regions.

²⁴ AU25071929: ‘Royal Commission in favour of Sir Douglas Mawson to take possession of certain Antarctic Territory’ (25 July 1929), in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 116-117.

²⁵ AU25071929: ‘Royal Commission in favour of Sir Douglas Mawson to take possession of certain Antarctic Territory’ (25 July 1929), in Bush (ed.), *Antarctic and International Law*, Vol. 2, pp. 116-117.

²⁶ According to Bush “Mawson’s claim to territory to the South Pole and not simply over the coastal regions mentioned in his commission ... [were] considered to be ratifiable.” (Bush (ed.), *Antarctic and International Law*, Vol. 3, (NW23041928), p 120.

Sectors had been claimed before by the British for both the FID and the Ross Dependency. The 'sector principle' had its origin in the northern hemisphere, initially in Alaska and then in Canada, where it was used to "claim any land that may exist, either known or unknown, within a triangle formed by two meridians of longitude starting from the eastern and western boundaries of territory already held by the Power concerned and continuing until they meet at the Pole."²⁷ In the north the principle worked because no land mass extends to the North Pole; it is surrounded by water. If this principle was applied in the southern hemisphere, Australia could only claim a sector of between about 100°E and 160°E, while Chile and Argentina could claim most of what is the FID. Because the Antarctic continent is solid land the principle can be questioned, as even if the coast strip is claimed, any power can access the hinterland and claim it.

The hinterland of AAT was largely unexplored. The only exploration inland was carried out during the AAE to about 70° 30' S in King George V land and 67° S in Queen Mary Land. While the British justified Ross Dependency sector on the basis that parts of it had been explored to the South Pole, the sector claims for AAT and FID to Pole are questionable as they were not explored to the Pole. As Bush notes "Australia was later anxious to avoid throwing doubt on Australian title to territory within the sector by authorising explorers to take possession of it."²⁸ Norway, which opposes the sector principle in both the Arctic and Antarctic, does not specify the northern or southern limits of its Antarctic territory.

The second concern relates to the validity of moving the western boundary from the proclaimed 47° E to 45° E. This was changed by Mawson after the proclamation had been made according to Mawson, because "evidence now to hand supports the view that Biscoe did first sight the Antarctic Continent near about the 45th meridian of east

²⁷ AU121931: 'British paper on the sector principle' (December 1931), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 128

²⁸ Bush (ed.), *Antarctic and International Law*, Vol. 2, (AU29071932), p. 142.

longitude ... [and the] ...coast was entirely a British discovery.”²⁹ However regardless of why the changes were made, were they legal? As a proclamation is a required step towards gaining legal title, the stated limits both in the proclamation and annexation documents should correspond. As both the FID and Ross Dependency were annexed without formal proclamations covering their whole areas, this may not be a consideration. In fact, in reply to queries concerning AAT by the Dominion Office of the Law, Officers of the Crown advised that “the precedents afforded by the Falkland Islands and the Ross Sea Dependencies should be followed.”³⁰

Based on the above discussion the process by which Antarctic territory was claimed and ceded to Australia was partly in accordance with international law, that is, occupation was carried out by BANZARE and this was ratified by the Order in Council in 1933. However, the requirement for permanent settlement was not met to give clear title. The British Crown Law Officers argued, as Antarctica was a special case, this was not necessary to gain sovereignty and that legislation applying laws to cover the territory was sufficient and cited FID and the Ross Dependency as precedents.³¹ The United States Government rejected this and does not recognise the claim (or the claims of any other nations). It is noted that France followed the same process as Britain and, like Australia, now has a permanent settlement/base in Antarctica. However, the decision made by the Permanent Court of Justice in The Hague regarding the Eastern Greenland case on 5 July 1933 validated the view of the Crown Law Officers that legislation covering a territory was sufficient to provide a valid claim and is discussed in appendix 3.

²⁹ D. Mawson, ‘Some Historical Feature of the Discovery of Enderby Land and Kemp Land’, *The Geographical Journal*, Vol. 86, No. 6. (Dec.,1935), p. 528. Mawson’s report regarding the proclamation adds, “in taking possession of the part of Enderby Land within sight, we included also the extension to the west which Biscoe had discovered and reported to exist.” (Bush, *Antarctic and International Law*, Vol. 2, (AU13011930), p. 119.)

³⁰ AU29071932: ‘Law Officers of the Crown to Dominions Office, 29th July, 1932’ in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 141.

³¹ AU29071932: ‘Law Officers of the Crown to Dominions Office, 29th July, 1932’ in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 141

Norwegian claim to Bouvet Island and the Legality of British objection

Bouvet Island was claimed by Captain H. Horvedt of Christensen's *Norvegia* on 1 December 1927.³² Captain Horvedt had authority from the Norwegian Government to claim any "land which had not previously in due form been occupied by any other Government."³³ This formal claim was valid providing the Island had not been previously occupied or any earlier claims ratified. The British rejected the Norwegian claim and argued they had a valid title as it had been occupied by Captain Norris of the *Sprightly* on 16 December 1825. Was Norris authorised by the British Crown to claim territory on their behalf? If not, then the claim would be invalid, unless ratified, or null and void if he was a private person based on Lawrence's interpretation given above.

The Norwegian Government, in a detailed note of 23 April 1928 citing many legal precedents and opinions, rejected the British claim of sovereignty over Bouvet.³⁴ They argued in part that "if it were established that Captain Norris in 1825 took possession of Liverpool Island (Bouvet Island) for Great Britain, this cannot be considered as conveying a valid British title to the island. It is a universally recognised maxim of international law that a state in order to acquire sovereignty over unoccupied territory must in fact take possession of such territory, and that the possession must be effective, a purely formal act being not sufficient."³⁵ They argued further that it was "at variance with British practice to base a claim of sovereignty on informal acts of occupation made by unauthorised persons unless such occupation has

³² Bouvet Is was discovered by the Frenchman Jean-Baptiste- Charles Bouvet de Lozier on 1 January 1739 see Appendix 1 for details.

³³ NW23041928: 'Norwegian Minister, London (Benjamin Vogt) to British Foreign Secretary (Sir A. Chamberlain) April 23rd , 1928', in Bush (ed.), *Antarctic and International Law*, Vol. 3, pp. 116-121.

³⁴ NW23041928: 'Norwegian Minister, London (Benjamin Vogt) to British Foreign Secretary (Sir A. Chamberlain) April 23rd , 1928', in Bush (ed.), *Antarctic and International Law*, Vol. 3, pp. 116-121

³⁵ NW23041928: 'Norwegian Minister, London (Benjamin Vogt) to British Foreign Secretary (Sir A. Chamberlain) April 23rd , 1928', in Bush (ed.), *Antarctic and International Law*, Vol. 3, p. 117.

afterward been confirmed or ratified by the Government.”³⁶ The latter statement implies Norris had either no authority or the British had failed to ratify. Both in fact were correct as there was no evidence of authorisation being given or ratification. On 17 January 1928 the British Government granted a sole concession to a Norwegian whaling firm, Johan Rasmussen and Co., to occupy both Bouvet and Thompson Islands for ten years.³⁷ While they claimed this was an indication of sovereignty, as shown elsewhere in this paper, they had been prepared to do this before establishing sovereignty over the FID and Ross Dependency. In fact, in 1926 they were prepared to issue a whaling licence to Lars Christensen to operate between the eastern boundary of the Ross Dependency and the western boundary of FID on the basis that it would “constitute a useful assertion of authority in this region”.³⁸ This was in the Pacific sector over which they had no valid basis for a claim at that time.

Based on the above argument, and in accordance with the rules of international law, the British no longer had an inchoate claim to Bouvet Island. Norris’s claim had not been ratified and, as the British Foreign Office legal adviser had concluded, the British claim to the island was weak.³⁹ Norway’s claim to the island was legal and any agreement not to claim any of the territories specified at the Imperial Conference was not necessary on this account. Had Norway known of the Foreign Office legal advice, would they have traded Bouvet Island for the right to claim territory within the region specified by the Imperial Conference? Possibly not, given the history of their relationship with Britain discussed in earlier chapters.

This chapter has argued, based on interpretations of international law as given by authors of the period, and the decision of the International Court regarding the

³⁶ NW23041928: ‘Norwegian Minister, London (Benjamin Vogt) to British Foreign Secretary (Sir A. Chamberlain) April 23rd, 1928’, in Bush (ed.), *Antarctic and International Law*, Vol. 3, p. 118.

³⁷ *Territorial Claims in the Antarctic*, Great Britain, Foreign Office, Research Department, (London, 1945), p. 119, para. 446.

³⁸ AU19111926: ‘Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic’ (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 103.

³⁹ Bush (ed.), *Antarctic and International Law*, Vol. 3, (NW23041928), p. 119.

Eastern Greenland case, that AAT was acquired legally. The process devised at the 1926 Imperial conference was in accordance with the law at that time. However, the chapter raises questions regarding the validity of Australia claiming a sector all the way to the South Pole and the legality of Britain's claims to the Antarctic territory included within the Falkland Islands Dependencies. The chapter has clarified the validity of proclamations made from aircraft and the relationship of fixed ice or shelf-ice and the three mile seaward territorial limit. The chapter had also established that Britain's claim to Bouvet Island was weak and Norway's claim was legal.

Chapter 7 - Conclusion

While Mawson said Australia ‘might fairly claim’ a section of the Antarctic in 1919, was Australian Antarctica won fairly? In order to answer this question it is necessary to examine the actions and processes by which Australia acquired the territory for fairness, as defined in the introduction. To do this objectively the motives to win and acquire Antarctic territory, along with the context in which the contest for territory was occurring, must be taken into account. At the start of the contest for territory Britain was a major colonial power while Norway was recently separated from the union with Sweden. Britain and Norway were whaling rivals. Norway had the larger whaling fleet and was heavily reliant on whaling as a major source of national income. Britain still determined Australia’s foreign policy so while there were Australian motives for territory these were exceeded by the British desire to expand the Empire by dominating Antarctica. These motives played a major role in the contest for territory; Britain to increase the Empire and control whaling, Australia for the economic benefits to be derived from whaling and Norway to whale freely for economic survival.

The first example of Britain’s desire to dominate Antarctica was discussed in Chapter 2, with the annexation of the Antarctic Peninsular and associated islands such as South Georgia, the South Sandwich and others to create the Falkland Island Dependencies (FID) under the authority of the Governor of the Falkland Islands in 1906. This was done to control whaling and gain income from whaling concessions and was directed initially at the Norwegians, whose inexperienced diplomatic service had unwittingly precipitated the action. This was the first sector claimed in Antarctica, a sector which included areas discovered or claimed by nationals other than the British. Norway queried the British action in terms of international precedence but did not object. While the legality of the annexation is questionable was the territory gained fairly? As this was a unilateral claim by Britain, still a dominant colonial power which believed it had the right to do so, ‘it was action conforming to the generally accepted ideas of what was fair or acceptable in

competition' at that time. As there were no protests from other nations, the action was acceptable and the territory was gained fairly.

Britain again displayed its expansion motive when they annexed Antarctic territory to create the Ross Dependency in 1923 under New Zealand administration. This too was precipitated by a Norwegian inquiry about whaling, this time in the Ross Sea. With more experience, the Norwegian Foreign Office, after it realised the Dependency was a sector terminating at the South Pole, raised objections based on prior claims by Amundsen and Prestrud. These objections were rejected by Britain, claiming an indisputable right to the whole territory based on prior discovery. Norway, with more confidence, reserved its right to the territories discovered and claimed by Prestrud and Amundsen. Britain's claim to the whole of this area, without recognition of the Norwegian claims, was seen by Norway as an injustice and therefore unfair. Prior to Britain's formal annexation of the territory a whaling licence was granted to C. A. Larsen. While this was seen by Britain as an act of authority over the area it was an illegal act as this was still 'no-mans land.'¹ This then was an unfair action.

Britain's actions in the FID and Ross Dependency in claiming territory and controlling whaling, even in the seas off territory they had not yet claimed, illustrates the context in which the Norwegians were driven to seek territory free of British control and show why they were "incensed by the extension of British jurisdiction over territory and whaling."² Britain's actions were seen by the Norwegians as biased toward British interests and as an injustice and therefore unfair. The British actions were, however, triggered by Norway's inexperience in foreign relations and their subservience to the power Britain held over whaling concessions.

In this context Norway landed on and claimed Bouvet Island in December 1927. This was the first Norwegian territory beyond the Arctic. The action in claiming the territory and defending their right showed a stronger, more forceful Norwegian

¹ J. G. Hayes, *Antarctica: A treatise on the Southern Continent*, (London, 1928), p. 360.

² A. G. Price, *The Winning of Australian Antarctic*, (Sydney, 1962) p. 15.

Foreign Service. Although Britain argued they had an inchoate title to the island, Norway's claim to the island was valid under International Law. Despite this, Norway, after Britain agreed to waive their claim to the island, agreed not to occupy the territory listed in the 1926 Imperial Conference summary. Was this fair? As both Governments agreed to the trade, even though Norway was unaware the British knew their own claim to the island was weak, the trade was fair. However, it can be argued that Norway only agreed because they were still subservient to Britain, even though this precluded them from the contest for this territory. Norway could still have claimed any unlisted territory. There is no evidence to indicate the Norwegian Government was aware of this, although the activities of Christensen and his whalers in the area east of Kemp Land between 1931 and 1937 suggests they were, even though their activities were not condoned by their Government as the area had already been claimed for Australia.

Following Britain's success at claiming two large sectors of Antarctica for the Empire and motivated by the desire for Antarctic dominance, a third claim was planned. This was the area of Eastern Antarctica that had been discovered by Biscoe and Kemp in the 1830s east to and including that which had been discovered and named by Mawson during the AAE. In order to claim this large area without alerting other powers of their intent, a process was developed in collaboration with Australia and New Zealand at the 1926 Imperial Conference in London. The process, as discussed in chapter 3, included features specifically designed to counter any action by foreign powers who when faced with "measures which would exclude them from any share in Antarctic regions would probably object strongly and take the ground that international laws afforded no justification for annexation of all the undiscovered land throughout a vast and unexplored area."³ To avoid such action, the areas to be claimed were listed by name only, as providing their geographical limits would alert other powers to the size of the claim. Maps of the day only showed areas such as Enderby Land and Kemp Land as small, ill-defined sections of coast. Without the

³ AU19111926: 'Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic' (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, (London, 1982), p. 101.

geographical limits being stated, the adjoining areas over which Britain had no prior claim based on discovery, would be less apparent to other powers.

The failure to include the geographical limits was a deliberate action to withhold information from other powers, principally the Norwegians and possibly the USA. Was this fair? While not dishonest, it was biased in favour of the British and was therefore unfair. The degree of confusion caused by this one single act is demonstrated by its effect on Christensen's Norwegian expeditions, as discussed in Chapter 4, that led the Norwegians to chart and name territory which according to their maps was not included in the public listing.

Actions to circumvent part two of the process, by using private citizens, is illustrated by the attempted recruitment of a whaling and sealing company by Casey to assist in claiming sovereignty as a part of their licence conditions. This was after the Norwegian presence in the Antarctic became a threat. This action is questionable but would it have been fair had it proceeded? Given that the British did not hold even inchoate title to large sectors of the area to be claimed, a licence to whale in those areas was not required. Similarly the issue of a licence to Christensen to whale in the Pacific sector, east of the Ross Dependency, was not required as it would only have been issued on the basis that it "would constitute a useful assertion of authority in this region."⁴ Britain had no authority over the area, but was purporting to have. This was dishonest and not legitimate and, therefore, unfair as Britain had no authority to issue a licence in order to establish a territorial claim to the Pacific sector. The issue of licences as a statement of authority over an area for which even an inchoate title, based on discovery existed, was, according to Hayes, illegal and therefore both dishonest and not legitimate and hence unfair.⁵

⁴ AU19111926: 'Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic' (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 103.

⁵ Hayes, *Antarctica: A treatise on the Southern Continent*, p. 360.

Stage two of the process was undertaken by the BANZARE voyages and Mawson. The voyages as shown, were not caused, as alleged by Price, by the ‘quest for scientific knowledge,’ but the desire of the British Government to include the whole of Antarctica within the British Empire. While the voyages were promoted in the name of science, they sailed with the principal purpose of thwarting Norwegian designs for what Australia believed was its Antarctic territory. This occurred even though the Norwegian interest for territory was not south of Australia, but well to the west and south of Madagascar. Also, they had already been precluded from claiming Enderby Land and Kemp Land. Mawson followed his sailing orders and, in accordance with the Royal authority bestowed upon him, claimed territory from 160° E to 47° E. With the exception of Mawson exceeding his authority and claiming territory to the South Pole and two specific incidents, discussed further below, this stage of the process was performed fairly; that is justly, properly and legitimately.⁶

The specific incidents were Mawson’s statements to the press in Cape Town and his exaggerated statement to Riiser-Larsen during their meeting on *Discovery*. The Cape Town statement greatly offended the Norwegian people and was biased and not impartial and therefore not fair. The statement to Riiser-Larsen that “we had mapped in coast approximately from about 73 E. longitude to present position, that we had been right along Kemp-Enderby Land coast” was not correct. It was designed, according to Price, “to give the impression that the Norwegians could achieve little of importance to the east.”⁷ Mawson’s action in this case was improper and not fair. As these incidents are not directly related to the process by which Australian Antarctica was won, they do not reflect on the fairness of that process. Stage three of the process was completed by the Order in Council and Australian Antarctic Territory Acceptance Act. Both of these were impartial, legitimate and fair.

⁶ Mawson’s claims beyond the areas stated in his authority were legalised when ratified by the Order in Council in 1933.

⁷ Sir D. Mawson, *Mawson’s Antarctic Diaries*, F. Jacka and E. Jacka (eds.) (Sydney, 1988) p. 317. Price, *The Winning of Australian Antarctic*, p. 74.

However, following the Order in Council, Norway raised points of concern with the British Government that almost amounted to an objection.⁸ These were discussed in chapter 5. The inclusion of the Polar plateau (Haakon VII's Vidde) within AAT was seen as unfair as failure to recognise Norway's claim to this area was unjust. The inclusion of part of Queen Maud Land was, likewise, unjust and unfair, particularly as the inclusion can be attributed to the unfair decision by the Imperial Conference to omit the geographical limits of Enderby Land from Conference summary. Both these concerns of Norway relate directly to the territory Australia won. The concerns over naming, Mawson's first sighting of Mac-Robertson Land and claims by Latham that Mawson had discovered Queen Maud's Land, while valid, were not a reflection on how Australian Antarctica was won, but an issue with individuals.

As the Imperial Conference Committee on British Policy in the Antarctica was concerned that "In the face of foreign protest and objection it might become impossible to pursue the British policy of acquiring the Antarctic region," the process followed was different to those used to establish the FID and the Ross Dependency.⁹ As shown in Chapter 6 the process used to acquire the territory was within the requirements of International Law at that time. The final requirement of permanent settlement was set aside in the judgment of July 1933 by Permanent Court of International Justice in The Hague concerning Danish and Norwegian claims to East Greenland. This judgement provided some legality to the British claim to Antarctic territory to establish the FID and the Ross Dependency.

This thesis has shown, principally through the use of official primary documents, that Australian Antarctica was acquired directly as a result of Britain's desire to include the whole of Antarctica in the Empire. It has shown that process by which this was to be achieved was developed to fend off potential challengers and that it was legal. It found that the process was unfair in only one major aspect, in that it failed to publicly

⁸ Aagaard had raised many of these points in a newspaper interview in Oslo in 1933 (cited in Price, *The Winning of Australian Antarctica*, pp. 164-165.)

⁹ AU19111926: 'Report of the Committee appointed by the Imperial Conference, 1926 to consider British policy in the Antarctic' (19 November 1926), in Bush (ed.), *Antarctic and International Law*, Vol. 2, p. 101.

specify the geographical limits of the territory of interest. Taking this into account and the legality and fairness of the remainder of the process, its implementation and the views expressed by the Norwegian Government, Australian Antarctica was acquired fairly. But was it won fairly?

To win anything there must be a contest with at least one other contestant. After Norway agreed not to contest Britain for the territory listed by the Imperial Conference, the only hint of a contest was Riiser-Larsen's formal and legal claim of territory for the Norwegian Crown (Queen Maud Land) within the British determined boundaries of Enderby Land, a claim repudiated by the Norwegian Government. The only remaining contest was not with another power, but with the Antarctic elements, the weather and ice. In this sense Australia won the territory but in the context of Price's *The Winning of Australian Antarctica* there was no contest to be won, fairly or not. The territory was simply acquired. On this basis the final word will rest with Aagaard, Norway's nationalistic historian, who wrote.

No other nation had so many interests in Antarctica as Norway. But no other nation has neglected their rights in the same way. We lost our rights long ago to land discovered by C. A. Larsen in West Antarctica in 1893. We did nothing after Bull raised the flag at Cape Adare nor did we claim the South Shetlands or South Orkneys when we had a chance to do so, all this and even more land we could have taken possession of when we started whaling down south, that is now a British possession, because we failed to do something about it. If that was not enough, in 1928 we promised Great Britain we would not take any more land in certain areas around the South Pole when other nations could legally do so. That is why we lost our right to Enderby Land, King Leopold Land, Lars Christensen Land and part of Droning Maud Land....We should have stood up and spoken our minds and no longer let our foreign policies be dictated by Norway's concerns for other nations.¹⁰

¹⁰ B. Aagaard, *Fangst og Forskning i Sydishavet*, (V.3), (Oslo, 1934), pp. 902, 904

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Appendix 1 – Chronology

Date	Events
1593/14Aug.	<p>John Davis, as part of an English naval expedition, discovered the Falkland Islands.</p> <p>R. K. Headland, <i>Chronological List Antarctic Expeditions and Related Historical Events</i>. (Cambridge, 1989) p. 58.</p>
1739/01Jan.	<p>Bouvet Island was discovered by the French Commander J. B. L. Bouvet.</p> <p>H. S. I. Bogen, <i>Main Events in the History of Antarctic Exploration</i>, (Sandefjord, 1957) p. 56.</p>
1775/17Jan.	<p>Captain James Cook landed and took possession of South Georgia for King George III.</p> <p>Headland, <i>Chronological List Antarctic Expeditions and Related Historical Events</i> p. 76.</p>
1819/16Oct.	<p>Captain Smith sighted the South Shetland Islands and sent the first mate ashore to hoist the English flag and take possession of the Island for Great Britain.</p> <p>Bogen, <i>Main Events in the History of Antarctic Exploration</i>. p.9.</p>
1825/16Dec.	<p>Bouvet Island was rediscovered and named Liverpool Island and occupied for England in <i>optima forma</i> by George Norris (<i>Sprightly</i>).</p> <p>Headland, <i>Chronological List Antarctic Expeditions and Related Historical Events</i>. p. 133.</p>
1831/24Feb.	<p>John Biscoe (<i>Tula</i>) and George Avery (<i>Lively</i>), who were sent by Enderby Brothers to look for new sealing grounds, saw ‘the appearance of land’ to the south. On 28 February 1831, when at 66°S, 47°20’E, they sighted the main part of the Antarctic Continent for the first time.</p> <p>J. Biscoe “The Journal of John Biscoe” in <i>The Antarctic Manual</i> Murray, G.(ed.) (London, 1901) p.319.</p>

- 1833/26Dec. Peter Kemp (*Magnet*), who was sent by Bennett and Sons to find new sealing grounds, sighted Antarctic land to the south. On 27 December 1833, he sighted land again just “west of 60°E [and] closing fast to the east of Biscoe’s discoveries”.
- A. Gurney, *Below the Convergence: Voyages toward Antarctica 1699-1839*, (New York, 1997), pp.261-265.
- 1838-39 John Balleny (*Eliza Scott*) and Thomas Freeman (*Sabrina*) who were sent by the Enderby Brothers to look for new sealing or whaling grounds, discovered the Balleny Islands on 9 February 1839. Sailing westward they sighted land to the south in the evening of 2 March when close to 64°58’S, 121°08’E. On the following day, there was still ‘the appearance of land’ behind the ice.¹ This was to become known as Sabrina Land but was proved by Mawson to be non-existent from the positions given by Balleny. It was, therefore, not a valid continental sighting on which to base a territorial claim.
1. Eliza Scott (C. Enderby), ‘Discoveries in the Antarctic Ocean in February 1839’ *Journal of the Royal Geographical Society of London*, Vol. 9. (1839) p. 525.
- 1840/22Jan. Dumont d’Urville took possession of Adélie Land and on 31 January, discovered Côte Claries (131°E, 64°S) a few hours after Wilkes.
- K. J. Bertrand, *Americans in Antarctica 1775-1948*, (New York, 1971) p. 184.
- 1839-40 Charles Wilkes left Sydney in late November 1839 in command of *Vincennes* and three other vessels. The first sighting of what appeared to be land was made on 16 January 1840 when in the vicinity of 157°E. Another sighting was made on 19 January at 66° 22’S, 154° 34’E when ‘land was very distinctly seen both to the south-southeast and to the southwest which appeared to be up to 3000 feet high’. This was named Cape Hudson.¹ On 30 January land was again sighted from a bay at 140° 17’E, 66° 43’S. Wilkes named the bay Piner’s Bay. The land that was seen rising from the bay to 3000 feet beyond the rocks and ice barrier at the head of the bay he named ‘the Antarctic Continent.’²

Sailing westward, Wilkes sighted land from 137° 51' E on 1 February, and at other locations until they reached an area now known as Vincennes Bay on 13 February at 106° 40'E. Between 1 February and 17 February the expedition had seen and named North's High Land, Totten's High Land, Budd's High Land and Knox's High Land.³ Wilkes had seen, or claimed to have seen, more of the Eastern Antarctic coast between 160°E and 98°E than any other explorers before him.⁴

1. Bertrand, *Americans in Antarctica 1775-1948*, p. 173.

2. H. R. Mill, *The Siege of the South Pole*, (London, 1905), p. 236

3. Bertrand, *Americans in Antarctica 1775-1948*, p. 183.

4. Wilkes sightings were made under mirage or looming conditions not uncommon in Antarctica and were therefore much further south than shown on the charts he produced. The first sighting on 16 January was probably the Balleny Islands. His sightings were initially discounted by Ross, Mawson and others. (Mill, *The Siege of the South Pole*, p. 229.)

1839-43 James Clark Ross (HMS *Erebus*) and Crozier (HMS *Terror*) were sent south by the British Admiralty to undertake terrestrial magnetic measurements. On 5 January 1841, they reached the pack ice and by 9 January had sailed through it to the Ross Sea. Sailing towards the south magnetic pole, they sighted land on 11 January. Ross then went on to discover islands, chart about 900km of new coastline, name Victoria Land and claim it for Britain on Possession Island.¹ According to Bush, he had no authority from the Admiralty to claim territory.²

1. Headland, *Chronological List Antarctic Expeditions and Related Historical Events*, p. 151.

2. W. M. Bush (ed.), *Antarctica and International Law*, Vol. 3, (London, 1982), (NZ27011841) p. 34.

1886/10Jun. The Australian Antarctic Exploration Committee was formed.
Headland, *Chronological List Antarctic Expeditions and Related Historical Events* p. 210.

1892/25Feb. The Falkland Islands and dependencies are declared a Crown Colony.
Headland, *Chronological List Antarctic Expeditions and Related Historical Events* p. 214.

1892/04Dec. C. A. Larsen (*Jason*), on a Norwegian whaling expedition, landed on Seymour Island where he raised the Norwegian flag and found the first fossils in Antarctica. He discovered the Føyn Coast and penetrated the Weddell Sea to 64°40'S, 56°30'W where he reported appearance of land to the west.

J. N. Tønnessen, A. O. Johnsen, A. *The History of Modern Whaling*, (London, 1982) p. 150.

1893-94 C. A. Larson (*Jason*), with 2 other Norwegian sealers and whalers (*Castor*, *Hertha*) visited the South Shetland Islands. Larsen discovered the King Oscar II Coast, Robertson Island and penetrated the Weddell Sea coast of the Antarctic Peninsular to 68°10'S. He was the first to use skis in Antarctica. In 1896 Larsen enquired about leasing South Georgia as a site for a whaling station from the Royal Geographical Society, London.

Headland, *Chronological List Antarctic Expeditions and Related Historical Events* p. 216.

1893-95 The first Norwegians landed in the Ross Sea area of the Antarctic. They were H. J. Bull, who wanted to revive Antarctic whaling, and C.E. Borchgrevink. Both had lived in Australia. Svend Føyn provided the whaler *Antarctic*, with L. Kristensen as captain, for the expedition. They sighted Cape Adare on 16 January 1895 and on the 18th landed on Possession Island.¹ Finding no whales, they returned to Cape Adare and made what was claimed to be the first landing on the Antarctic continent on 24 January 1895.² As Ross had not landed on Victoria Land they were the first to do so and erected a pole carrying a box on which was painted the Norwegian colours.¹

1. Tønnessen, Johnsen, *The History of Modern Whaling*, p.153.

2. Mill, *The Siege of the South Pole*, (London, 1905), p. 382.

- 1901-03 The German South Polar Expedition, led by Erich von Drygalski (*Gauss*), first sighted land on 21 February 1902 at 66°S, 89° 45'E. The *Gauss* became ice bound near this location and the expedition wintered in the Antarctic. They sledged, using dogs, across the sea ice to various locations and named an extinct volcano Gaussberg. The newly discovered coast was named Kaiser Wilhelm II Land. They were the first to winter in what was to become Australian Antarctic Territory and within 310 km of where Mawson's western party, under Wild, wintered in 1911-1913.
- E. von Drygalski, *The Southern Ice-Continent: The German South Polar Expedition aboard the Gauss 1901-1903*, Raraty, M. M. Translator (Bluntisham, 1989) pp. 133, 139, 248.
- 1901-04 The British National Antarctic Expedition led by Robert Falcon Scott (*Discovery*) and accompanied by Ernest Shackleton, arrived at Cape Adare on 3 January 1902. They then sailed south into the Ross Sea and discovered land stretching north-eastwards from 155°W to 150°W that Scott named King Edward VII Land. Two winters were spent aboard *Discovery*. During the second summer a party sledged west onto the plateau, which on 30 November 1903, reached 77° 59'S, 146° 33'E in what was to become the eastern end of Australian Antarctic Territory.
- Mill, *The Siege of the South Pole*, (London, 1905), pp. 411,416.
- 1904-05 The Compañia Argentina de Pesca of Buenos Aires under the management of C. A. Larsen established the first Antarctic whaling station in South Georgia. This was the first Norwegian whaling in Antarctica albeit, with an Argentinean company.
- Headland *Chronological List Antarctic Expeditions and Related Historical Events* p.233.
- 1905/25Nov. Norway became independent of Sweden.
- N. Davies, *Europe: a History*, (London, 1997) p. 738

- 1906/23 Feb. 'Norwegian note to United Kingdom enquiring about sovereignty of territories between longitudes 35°W and latitudes 40°S and 65°S'.
UK23021906: in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 239-240.
- 1907-09 The British Antarctic Expedition led by Ernest Shackleton (*Nimrod*) wintered on Ross Island. On 16 January 1909 the Australians, Mawson and Edgeworth David, reached the South Magnetic Pole and raised the flag for the British Empire. Shackleton, with others, went south to within 190km of the South Pole at 88° 23'S, 162°E on 9 January 1909. Low on food and weak they set off back to the ship.
S. Martin, A. *History of Antarctica*, (Sydney, 1996).
- 1908/21July British Letters Patent was issued providing for the government of the Falkland Islands Dependencies and consolidating earlier territorial claims to South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands and the territory known as Graham Land and placing them under the Governor of the Falkland Islands as dependencies of that colony.
UK21071908: 'Letters Patent providing for the Government of the Falkland Island Dependencies' in Bush (ed.), *Antarctica and International Law*, Vol. 3, pp. 251-252.
- 1910/25 Mar. A British and Norwegian sealing voyage visited Heard Island under a three year sealing option granted by the Colonial Office and hoisted the British flag.
Headland, *Chronological List Antarctic Expeditions and Related Historical Events* p. 247.
- 1910-12 The Norwegian Antarctic Expedition led by Roald Amundsen (*Fram*) wintered in 'Framheim' on the Ross Ice shelf at the Bay of Whales. Amundsen, with four companions, left Framheim, on 19 October 1911 for the South Pole. On the way they discovered a mountain range which was later named Queen Maud's Range. By 8 December 1911 the party was on the polar plateau and further south than Shackleton had reached on 9 January 1909. On 14 December they reached the South

Pole, raised the Norwegian flag and named the plateau after King Haakon VII of Norway.¹ While Amundsen was travelling south to the pole, Prestrud, who had been left in charge at the winter base, undertook exploration of Edward VII Land as instructed by Amundsen and on 8 December “on one of the summits which later on was christened ‘Scott’s Nunatakker’ *the Norwegian flag was hoisted and I took possession of the land in the name of His Majesty the King.*”²

1. R. Amundsen, *The South Pole*, Vol. 2, (St. Lucia, 1912), pp. 1, 80, 122-123.

2. Amundsen, *The South Pole*, Vol. 2, p. 259. (The words in italics were omitted from the original English translation. (NW08121911: ‘Account a of claim for Norway of King Edward VII Land by commander Prestrud,’ (8 December 1911), in Bush (ed.), *Antarctica and International Law*, Vol. 3, p.110).

- 1910-13 The British Antarctic Expedition (*Terra Nova*), led by Robert Falcon
1912/17Jan. Scott, wintered at Cape Evans on Ross Island and reached the South Pole after Amundsen on 17 January 1912. Scott and four companions perished on the return journey.

Headland, *Chronological List Antarctic Expeditions and Related Historical Events* p. 249.

- 1911-14 The Australasian Antarctic Expedition (AAE) led by Dr. Douglas Mawson, discovered, named and claimed King George V Land and Queen Mary Land for the Empire and Australia. The AAE established bases on Macquarie Island, the main base at Cape Denison and a western base, under Frank Wild, on the Shackleton Ice Shelf. The western base was at 95°E and within 310 km east of Gaussberg in Kaiser Wilhelm II Land, named by the German Expedition in 1902. The coastal seas between the two AAE bases were surveyed by Captain Davis (*Aurora*) and it was established that many of the sightings of land made by Wilkes in 1840 were erroneous, as no continental coast could be seen, or existed, in the positions shown on Wilkes’ maps. Balleny’s 1839 sighting of the ‘appearance of land’ at 120°E in 1839 was also found to be non-existent. The expedition, however, proved d’Urville’s 1840 sightings. The expedition made inland journeys from

both bases. As well as the proclamations made at both bases claiming territory for Britain and the Empire, the union jack was hoisted at five other locations.

D. Mawson, 'Australasian Antarctic Expedition, 1911-1914', *The Geographical Journal*, Vol. 44, No. 3. (Sept., 1914), pp. 265-267.

Territorial Claims in the Antarctic, Great Britain, Foreign Office, Research Department, (London, 1945), pp. 156, 161.

- 1917/Mar. The British Letters Patent of 28 March 1908, establishing the Falkland Islands Dependencies, was amended after representation from Argentina and Chile. The amendment clarified the extent of Antarctic mainland and islands included in the Dependencies. It now covered all the islands and territories between 20°W and 50°W and south of 50°S and between 50°W and 80°W and south of 58°S.

Headland, *Chronological List Antarctic Expeditions and Related Historical Events* p. 263.

- 1922/June C. A. Larsen and M. Konow, trading as Rosshavet Whaling Company of Sandefjord, applied to the British for a whaling licence in the Ross Sea.

A. S. Helm and H. J. Miller, *Antarctica*, (Wellington, 1964) p. 26.

- 1923/30July The Ross Dependency was established by British Order in Council placing the sector between 160°E -150°W under the authority of the Governor-General of New Zealand. Regulations relating to whaling and territorial waters were promulgated on 14 November 1923.

Headland, *Chronological List Antarctic Expeditions and Related Historical Events*, p. 271.

- 1924/2 April The French Government issued a decree consolidating earlier French claims to Iles Crozet, Iles Kerguelen, Ile Saint Paul, Ile Amsterdam and Terre Adélie and placing them under the Governor-General of Madagascar as Dependencies of Madagascar.

Headland, *Chronological List Antarctic Expeditions and Related Historical Events*, p. 272.

- 1926 The Imperial Conference in London formulated British Policy in the Antarctic and established the process by which territory was to be claimed in Eastern Antarctic and placed under the Authority of the Commonwealth of Australia.
- AU1111926: 'Summary of proceedings concerning the Antarctic of the Imperial Conference, 1926' (November 1926), in Bush, (ed.), *Antarctica and International Law*, Vol. 2, p. 107.
- 1927-28 The first Norwegian expedition sponsored by Lars Christensen.
- 1927/1Dec. H. Mosby and H. Horntvedt (*Norvegia*) surveyed Bouvet Island (Bouvetøya) and claimed it for Norway on 1 December 1927.
- Bogen, *Main Events in the History of Antarctic Exploration*, p. 7.
- 1928/23Jan. Bouvet Island was annexed by Norwegian Royal Proclamation.
- Headland, *Chronological List Antarctic Expeditions and Related Historical Events*, p. 279.
- 1928/11Nov. Britain waives claim to Bouvet Island and Norway agrees not to occupy the Antarctic territory listed in the summary of the 1926 Imperial Conference.
- NW19111928: 'Parliamentary questions and answer announcing the waiver of British claims to Bouvet Island in favour of Norway' in Bush (ed.), *Antarctica and International Law*, Vol. 3, p. 122.
- 1928-29 The second Norwegian (Christensen) expedition.
- 1929/02Feb. O. Olstad, N. Larsen (*Norvegia*) landed on and claimed Peter I Island for Norway.
- Headland, *Chronological List Antarctic Expeditions and Related Historical Events*, p. 282.
- 1929-30 The third Norwegian (Christensen) expedition.
- 1929/22Dec. H. Riiser-Larsen (*Norvegia*), raised the Norwegian flag on a skerry at 66° 33'S, 50° 40'E, just off Enderby Land and near Cape Anne. After meeting Mawson on the *Discovery* near Cape Ann, Riiser-Larsen

discovered Queen Maud Land and roughly charted from air the Crown Prince Olav coast and the Crown Princess Martha Coast.

H. Riiser-Larsen, 'The "Norvegia" Antarctic Expedition of 1929 – 1930', *Geographical Review*, Vol. 20, No. 4. (Oct. 1930), p. 565.

- 1929-30 The first BANZARE voyage (Sir D. Mawson *Discovery*).
The expedition first saw the appearance of snow covered land on 26 December 1929 at 66° 57'S, 71° 57'E. The next sighting was on 31 December from an aircraft at 66° 10'S, 65° 10'E. This was followed by another on 31 December. On 13 January 1930, Mawson hoisted the British flag on Proclamation Island, off the Enderby Land coast, and claimed the newly discovered territory between 47°E and 73°E for Great Britain. The proclamation included Enderby Land, Kemp Land and the newly discovered Mac-Robertson Land.

D. Mawson, "The Antarctic Cruise of the *Discovery* 1929-1930," *Geographical Review*, Vol. 20, No. 4. (Oct., 1930), pp 544-550.

- 1930-31 The second BANZARE voyage (Sir D. Mawson, *Discovery*).
The expedition visited Cape Denison, in King George V Land, where the first proclamation was made on 5 January 1931 for King George V Land. Sailing west, they discovered the Banzare Coast from air, and the Sabrina Coast, west of Balleny's 1839 position. The expedition made the first sighting of Princess Elizabeth Land on 9 February 1931, from an aircraft at 66° 29'S, 76° 15'E, and 'roughly' charted Mackenzie Bay from the air. Mawson landed at Scullin Monolith, Cape Bruce and Proclamation Island. Formal proclamations annexing territory for King George V were read at five points.

Headland, *Chronological List Antarctic Expeditions and Related Historical Events*, p. 286.

- 1930/27Feb. Bouvet Island, Peter 1 Island and Queen Maud Land (45° E - 20° W) are placed under Norwegian sovereignty as dependencies.
NW27021930B: 'Law no. 3.of 27 February 1930 as amended concerning Bouvet Island, Peter Island and Queen Maud Land' 'in Bush, (ed.), *Antarctica and International Law*, Vol. 3, p. 131.
- 1931/12Jan. to Discoveries made by Christensen's Norwegian whalers:
25Jan. 12 January 1931, A. Brunvoll (*Seksern*) sketched land between 66° 34'E and 64°E and saw what became Klarius Mikkelsen and Gustav Bull Mountains.
19 January, R. Bjerkö (*Bouvet II*) sighted the same land and on the 20th this land was again seen by C. Sjøvold (*Bouvet III*) as far west as 62°E.
24 January, Sjøvold (*Bouvet III*) at 68°S, 74°E, sighted, in an easterly direction, two high volcanic peaks. They were seen again by him on 25 January.
G. Isachsen, 'Norwegian Explorations in the Antarctic, 1930-1931', *The Geographical Review*, Vol. 22, No. 1. (Jan., 1932), pp. 94-96.
L. Christensen, *Such is the Antarctic*, (Jayne, E. M. G. translator) (London, 1935) p.205- 207.
- 1931/13Feb. The Norwegian whaler Klarius Mikkelsen (*Torlyn*), discovered and
- 14 Feb. named Thorshavn Bay at 68° 30'S, 70-71°E. This was later renamed by Mawson as Mackenzie Bay. During the day they sighted high land now called Bjerkö Head. At midday on the 14th they reached 68°S, 68° 10'E and saw the high mountains seen by Sjøvold on 24 January. A large glacier was also seen that Aagaard suggested should be named Brunvoll's Glacier.
Christensen, *Such is the Antarctic*, pp. 208-209.
- 1931/01May. Peter 1 Island annexed by Norwegian Royal Proclamation.
Headland , *Chronological List Antarctic Expeditions and Related Historical Events*, p. 289.

- 1933/07Feb. Australian Antarctic Territory established by British Order in Council.
Headland , *Chronological List Antarctic Expeditions and Related Historical Events*,
p. 291
- 1933/13June. Australian Antarctic Territory Acceptance Act given Royal Assent.
Headland , *Chronological List Antarctic Expeditions and Related Historical Events*,
p. 291
- 1933-34 The third Norwegian expedition using *Thorshavn*, (Lars Christensen
and Klarius Mikkelsen).
Christensen made flights over the Lars Christensen Coast and Mac-
Robertson Land between 17 and 18 January 1934 discovering Princess
Ingrid Land when the aircraft was at 66° 40'S, 86° 45'E.
Christensen, *Such is the Antarctic*, pp. 260-261.
- 1934-35 Klarius Mikkelsen (*Thorshavn*) discovered and landed on Ingrid
1935/20Feb. Christensen Land (in Princess Elizabeth Land) and hoisted the
Norwegian flag at 68° 29'S, 78° 50'E on 20 February 1935.
(Mikkelsen's wife Caroline landed also and was probably the first
woman to set foot on the Antarctic mainland.) About 275 nautical miles
of new coastline was seen along with the Vestfold Hills (where the
Australian base Davis is located). Bogen, *Main Events in the History of
Antarctic Exploration*, p. 85.
- 1936-37 The fifth Norwegian expedition using *Thorshavn* (Lars Christensen and
Klarius Mikkelsen).
The Antarctic coastline was photographed from the air between West
Ice Shelf, Wilhelm II Land and Proclamation Island in Enderby Land.
They landed at the Scullin Monolith and discovered Prince Harald
Coast (Prins Harald Kyst) from the air and claimed it for Norway on 4
Feb 1937. The expedition photographed large sections of the Antarctic

from the aircraft using the Scullin Monolith as a way-point.

Bogen, *Main Events in the History of Antarctic Exploration*, p. 89, Headland, *Chronological List Antarctic Expeditions and Related Historical Events*, p. 297.

- 1939/14Jan. Norwegian Royal decree issued, annexing Dronning Maud Land as ‘That portion of the mainland coast of Antarctic mainland which stretches from the boundary of the Falkland Islands Dependencies in the west (Coats Land boundary) to the boundary of Australian Antarctic Territory in the east (45° East) with the territory lying inside this shore and the adjacent waters’.

Headland, *Chronological List Antarctic Expeditions and Related Historical Events*, p. 300.

- 1939/14Jan. The Norwegian Government formally recognised the boundaries of the Australian Antarctic Territory as defined in British Order in Council of 7 February 1933.

AU14011939: ‘Norwegian Minister, London (E. Colban) to Foreign Secretary (Viscount Halifax) 14th January, 1939’, in Bush, W. M. (ed.), *Antarctica and International Law*, Vol. 2, (London, 1982), pp.158-159

Appendix 2 - Mawson's Proclamations and the discovered territory on which they were based.

This Appendix adds detail not given in Chapters 3 and 6 of the Thesis regarding proclamations and the territory on which they were based.

AAE

The expedition formally claimed King George Land in March 1912 at Cape Denison.¹ No territorial limits were specified, however Mawson noted it was for “the Land to the east and west.”² The western party under Wild ‘took possession of the land’ on 25 December 1912 at Possession Rocks in Queen Mary Land.³ Mawson reported that the Union Jack was hoisted at five other localities one in Queen Mary Land and four in the claimed area of King George Land/Adélie Land.⁴

BANZARE

Voyage 1 proclamations

Sailing as instructed, the expedition made the following proclamations:

The first proclamation was made on 13 January 1930 when Mawson claimed “the full sovereignty of the territory of Enderby Land, Kemp Land, MacRobertson Land together with off-lying Islands as located in our charts constituting a sector between Longitudes 47 degrees East and 73 degrees east of Greenwich and South of Latitude 65 degrees south” for Great Britain from Proclamation Island.⁵ This proclamation was repeated by an aerial drop on 25 January 1930.⁶ The claim was

¹ *Territorial Claims in the Antarctic*, Great Britain, Foreign Office, Research Department, (London, 1945), pp. 156, 160.

² AU031912: ‘Report of Dr. Douglas Mawson taking possession of land at Cape Denison, March 1912, in W. M. Bush (ed.), *Antarctica and International Law*, Vol. 2, (London, 1982), p. 94.

³ AU25121912: ‘Report of Frank Wild taking possess of land at Possession Rocks, Queen Mary Land, 25 December 1912, in Bush (ed.), *Antarctica and International Law*, Vol. 2, p. 95.

⁴ *Territorial Claims in the Antarctic*, Great Britain, Foreign Office, Research Department, p. 161.

⁵ AU13011930: ‘Proclamation read on Proclamation Island’ (31 January 1930), in Bush (ed.), *Antarctica and International Law*, Vol. 2, p. 118.

⁶ Sir D. Mawson, *Mawson's Antarctic Diaries*, F. Jacka and E. Jacka (eds.) (Sydney, 1988), p. 325.

based on the following observations of new land based on Mawson (1932)⁷ and where they differ in detail from Mawson (1930)⁸ or his diaries, this will be noted.

On 26 December 1929 at 66° 57'S, 71° 57'E "in the early evening hours, ... [a] mirage brought above the south-western horizon what appeared to be undulating surface of snow-covered land. This was first noted at about 7.20 p.m. and continued in sight for some hours."⁹ In Mawson (1930) the date is given as December 29, the ships position as 66° 10'S, 65° 10'E and the description as "away to the southwest were projecting black tips of what were apparently several small islands."¹⁰

Mawson's dairy gives the same date and position as Mawson (1932) but a different description of what was seen.¹¹ Mawson wrote on 5 January 1930 "It was not clearly demonstrated that the vision seen on evening of December 26th was land ice slopes with some whiter snowy patches – it was miraged up in the evening and down in the morning."¹² The various dates and descriptions were used by Aagaard and Bogen to dispute the accuracy of this first sighting.¹³

On 31 December 1929 at 66° 10'S, 65° 10'E from an aircraft at 5000 feet, Campbell and Douglas reported that beyond a wide belt of solid floe with icebergs and a belt of open water to the south "undulating rising ice slopes which appeared to be ice-covered land [was seen]. To the south west in the far distance they observed some black objects in the midst of belts of grounded bergs. These were believed to be rocky islets surround by bergs aground."¹⁴ (This differs slightly from Mawson's diary and Mawson (1930). Mawson (1930) gives the date as 29 December 1929.)

⁷ D. Mawson, 'The Antarctic Cruise of the "Discovery," 1929-1930', *Geographical Review*, Vol. 20, No. 4. (Oct., 1930), pp. 535-554.

⁸ D. Mawson, 'The B.A.N.Z. Antarctic Research Expedition, 1929-1931', *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932), pp. 101-126

⁹ D. Mawson, 'The B.A.N.Z. Antarctic Research Expedition, 1929-1931', *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932), p. 124. (The date shown in on this page is 1930, it should read 1929.)

¹⁰ D. Mawson, 'The Antarctic Cruise of the "Discovery," 1929-1930', *Geographical Review*, Vol. 20, No. 4. (Oct., 1930), p. 544.

¹¹ Mawson, *Mawson's Antarctic Diaries*, p. 293.

¹² Mawson, *Mawson's Antarctic Diaries*, p. 307.

¹³ Price, *The Winning of Australian Antarctica*, p. 59.

¹⁴ D. Mawson, 'The B.A.N.Z. Antarctic Research Expedition, 1929-1931', *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932), p. 124.

On 5 January, from an aircraft at 4000 feet and at about 61° E, to the “east, west and south high covered ice-covered land [was seen] extending to the horizon ... [and] ... seventy or eighty miles to the west we could see dark peaks looming through the distant haze.”¹⁵

On 12 January Kemp Land was sighted to the south, extending between S. 23°E and N. 84° W.¹⁶

Voyage 2 Proclamations.

The first proclamation of the second voyage was made at Cape Denison King George V Land on 5 January 1931 and covered King George V land (no limits stated) “and its extension under the name of Oates Land situated between 142 and 160 degrees East between 66 degrees South and the South Pole.”¹⁷ A number of islands were also included.

The second was at Scullin Monolith, Mac-Roberston Land on 13 February 1931. This proclamation covered “Territory which we have discovered and explored amounting in all to a Sector of the Antarctic Continent extending continuously from Adélie Land Westwards to MacRoberston Land being that part of the Antarctic mainland and offlying Islands [etc] between 103 degrees East and 60 degrees East and South of Latitude 64 degrees as far as the South Pole.”¹⁸

The third proclamation was at Cape Bruce, Mac-Robertson Land, on 18 February 1931. This proclamation covered the “Territory which we have discovered and explored extending continuously from Adélie Land westwards to MacRobertson

¹⁵ D. Mawson, ‘The Antarctic Cruise of the “Discovery,” 1929-1930’, *Geographical Review*, Vol. 20, No. 4. (Oct., 1930), p. 546.

¹⁶ D. Mawson, ‘The B.A.N.Z. Antarctic Research Expedition, 1929-1931’, *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932), p. 125.

¹⁷ AU5011931: ‘Proclamation read at Cape Denison, King George V Land’ (5 January, 1931) in Bush (ed.), *Antarctica and International Law*, Vol. 2, p. 123.

¹⁸ AU13021931: ‘Proclamation read at Scullin Monolith, Mac-Robertson Land (13 February 1931)’, in Bush (ed.), *Antarctica and International Law*, Vol. 2, p. 124.

Land being that part of the Antarctic Mainland and offlying islandssituated between meridia 138° and 60° East of Greenwich and south of Latitude 64° and as far south as the South Pole.”¹⁹ This proclamation was made not on the basis of seeing connected land- falls between 138°E and 60°E but on the basis of echo soundings showing a continuous continental shelf.²⁰

The last two proclamations were based on the sighting of new land shown below and charting of the eastern extremity of Mac-Robertson Land.

On 9 February 1931 the first sighting of Princess Elizabeth Land in the region of 66° 29’S and 76° 15’E was made from an aircraft at 5700 feet, “where at a great distance from us there was a definite appearance of elevated ice-covered land” in a south to south-easterly direction.²¹ Mawson noted “this land “was very far distant to the south, and there was at the time considerable doubt as to how much of this was land and how much shelf-ice, perhaps miraged up to appear of greater height.”²²

¹⁹ AU18021931: ‘Proclamation read at Cape Bruce, Mac-Robertson Land (18 February 1931)’, in Bush (ed.), *Antarctica and International Law*, Vol. 2, p. 125.

²⁰ Bush (ed.), *Antarctica and International Law*, Vol. 2, (AU18021931), p. 126.

²¹ D. Mawson, ‘The B.A.N.Z. Antarctic Research Expedition, 1929-1931’, *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932), p. 126

²² D. Mawson, ‘The B.A.N.Z. Antarctic Research Expedition, 1929-1931’, *The Geographical Journal*, Vol. 80, No. 2 (Aug., 1932), p. 126

Appendix 3 - The Eastern Greenland Case

The Eastern Greenland case, heard by the Permanent Court of International Justice in The Hague between 1931 and 1933, is significant in that the judgement, according to Nussbaum, “contributed important views to the doctrine of acquisition of sovereignty through occupation.”¹ The importance of judgement relates to the issue of ‘settlement’ as a condition of maintaining sovereignty.

Greenland was discovered about 900 CE. The first European settlements were established in 985 under the leadership of Erik the Red, an outlawed Norwegian from Iceland.² The settlements were on the west and south coasts. The two settlements became tributaries of the King of Norway during the thirteenth century. In 1380 CE the kingdoms of Norway and Denmark were united under the same crown until the Treaty of Kiel (1814) when Norway was ceded to Sweden. The Norwegian possessions, Greenland, Faeroes and Iceland remained with Denmark. The original European settlements had disappeared by 1500 CE.

In 1920 Danish sovereignty over the whole of Greenland was recognised by Britain, France, Italy and Japan.³ This was not accepted by Norway. The Norwegians were concerned the Danish state monopoly, designed to protect the native Greenlandic culture which had been in force on the west and south coast, would be extended and policed on the east coast and would severely restrict traditional Norwegian trapping and fishing activities if left unchallenged.⁴ Denmark and Norway started a process of establishing rights to the eastern territories. Norway established a telegraph station in 1922 and erected many buildings and trappers huts. The Norwegian government, concerned about access to fishing and hunting areas, announced its intention to occupy the east coast between 71° 30’N and 75° 40’N by Royal

¹ A. Nussbaum, *A Concise History of the Law of Nations*, (New York, 1954), p. 270.

² E. Roesdahl, *The Vikings*, (S. M. Margeson, and K. Williams translators) (London, 1991), p.271.

³ The Geographical Journal, ‘The Legal Status of Eastern Greenland’, *The Geographical Journal*, Vol. 82, No. 2, (Aug., 1933) p. 152.

⁴ The Geographical Journal, ‘The Legal Status of Eastern Greenland’, *The Geographical Journal*, Vol. 82, No. 2, (Aug., 1933) p. 152.

Resolution on 10 July 1931, on the basis that Denmark did not have sovereignty over the whole of Greenland.⁵ The new Land was called 'Erik the Red's Land. The Danish Government rejected Norway's claim and referred the matter to the Permanent Court of International Justice on 11 July 1931.

The court, in the judgement handed down on 5 July 1933, concluded that since 1814 "Denmark had satisfied the two requisites for the creation of a right of sovereignty to be derived from continued display of authority namely the intention and will to act as sovereign, and some actual exercise or display of such authority."⁶ This conclusion was reached on the basis that since 1814 the whole east coast had been explored by Danish expeditions. Denmark had controlled trading and had placed prohibitions on entry to the country to protect the indigenous population and Danish concessions had been issued to establish trading stations. The control had been by legislation and decrees issued on the basis that Denmark had authority to do so. Denmark had clearly displayed sufficient authority to provide a valid claim of sovereignty over the whole of Greenland and this was supported by the absence of any other claim, by another nation, of sovereignty over Greenland.

The Geographical Journal said "the judgement is a document of the highest importance to Great Britain, with her large arctic and antarctic territories that cannot be closely settled or administered."⁷

⁵ F. Skartein, 'Erik the Red's Land: the land that never was', *Polar research*, 25(2), (2006), pp. 173-179.

⁶ C. C. Hyde, 'The Case Concerning the Legal status of Eastern Greenland', *The American Journal of International Law*, Vol. 27, No. 4. (Oct., 1931), pp. 735-736.

⁷ The Geographical Journal, 'The Legal Status of Eastern Greenland', *The Geographical Journal*, Vol. 82, No. 2, (Aug., 1933) p. 151..

