

## THE WORK AND VALUE OF INTERNATIONAL BOUNDARY COMMISSIONS: THE CANADIAN/AMERICAN EXPERIENCE

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### INTRODUCTION

Extending westward across North America from the Atlantic to the Pacific coasts, and northward from Dixon Entrance to the Arctic Ocean, the boundary between Canada and the United States touches eight of Canada's provinces and territories, and thirteen American states. It embraces almost every kind of geographic and topographic feature. Geodetic lines, following parallels of latitude, meridians of longitude, watersheds and mountain tops, and the middle of rivers and lakes combine to form what has become known as the longest undefended border in the world. Although the 49<sup>th</sup> parallel symbolizes the entire boundary in popular language, it actually covers less than one-quarter of the total length of 8,891km.

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Yet this boundary was neither quickly nor easily established. It results from more than twenty treaties, conventions and other international arrangements involving Canada and the United States during the period from 1783 to 1925. At times, disputed boundary issues brought the two countries almost to the brink of war. Fortunately, the major territorial controversies were all settled peacefully by the early years of the past century. Today, the only remaining common boundary issues are the limits of offshore jurisdiction in those areas lying between the territorial sea and the outer limit of the continental shelf.

Water occupies 3,830km of the boundary, while 5,061km is on land of which 2,173km lie in forested areas. The angle, or turning point, between each pair of adjacent lines that define the land boundary is marked directly by a monument of concrete or other durable material. The interval between adjacent boundary monuments varies according to the terrain, the guiding principle being that each monument shall be visible from its nearest neighbour. Onshore reference marks provide a mathematical connection to turning points on the water boundary. In addition, a vista three metres in width on each side of the boundary is kept clear to the skyline through the forests to make the line more easily visible.

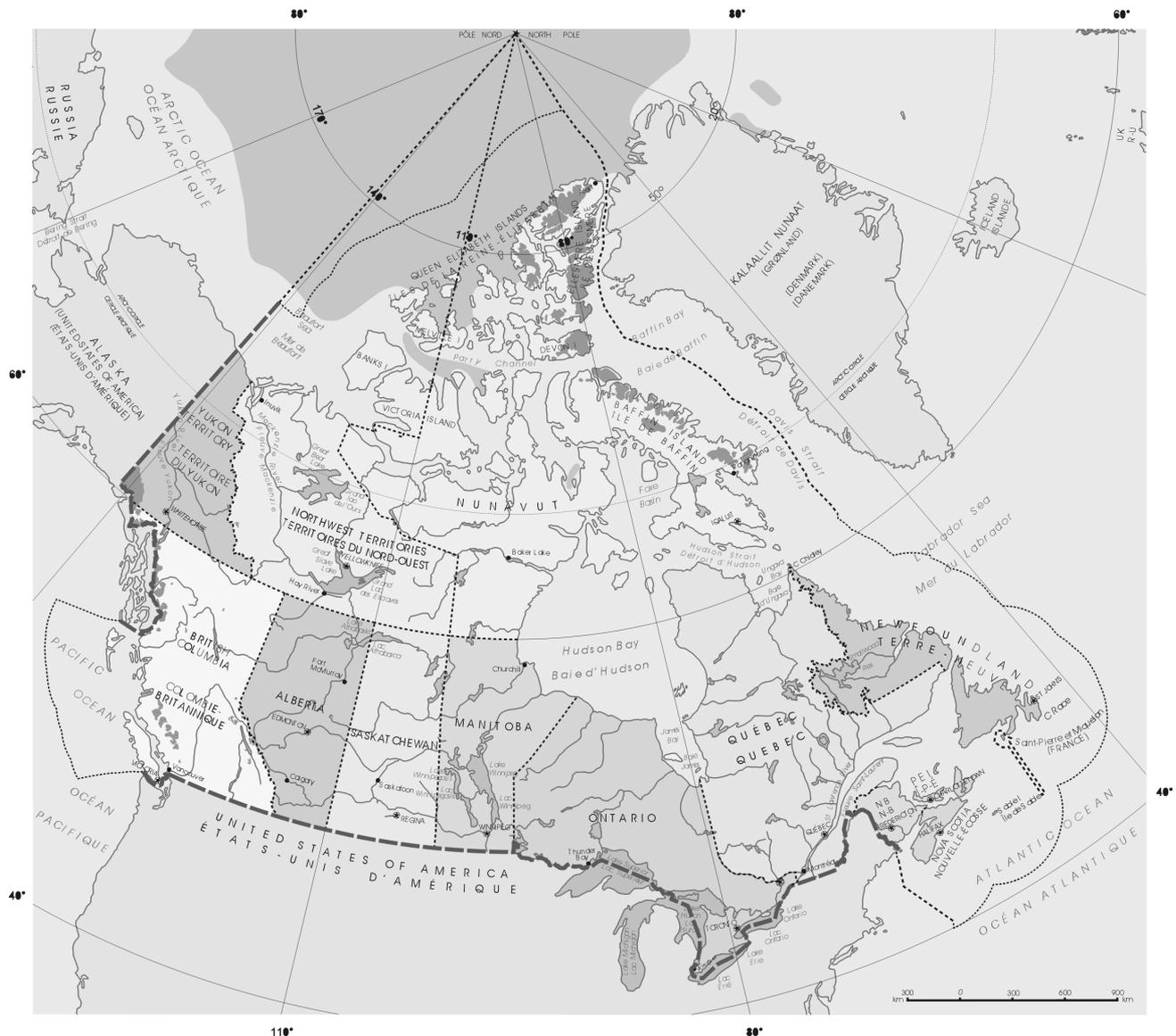
Given the boundary's geographical and political stability, and the harmonious trans-border relationships, a foreign observer might find it remarkable that there still exists a permanent international organisation whose sole concern is the physical maintenance of a line that separates two national sovereignties. This article will discuss the development of the Canada/United States International Boundary Commission, and describe its present structure and functions.

### AN OVERVIEW OF THE BOUNDARY

There are 8 sections to the boundary:

- 1 The Atlantic Ocean to the source of the St. Croix River.
- 2 The source of the St. Croix River to the St. Lawrence River.
- 3 The St. Lawrence River and the Great Lakes.
- 4 Lake Superior to the northwestern-most point of Lake of the Woods.
- 5 Northwestern-most point of Lake of the Woods to the Gulf of Georgia.
- 6 The 49<sup>th</sup> parallel to the Pacific Ocean.
- 7 Tongass Passage to Mount St. Elias.
- 8 Along the 141<sup>st</sup> Meridian from Mount St. Elias to the Arctic Ocean (or Beaufort Sea).

## The Canada – United States Border



## DEVELOPMENT OF THE BOUNDARY COMMISSION

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Under the *Jay Treaty* of 1794, Britain and the United States appointed a three-person commission to determine the identity and source of the St. Croix River, the watercourse designated by a 1783 treaty to separate what are now the southern portions of New Brunswick and Maine. The commissioners' decision, binding on both governments, is usually regarded as the first modern example of international adjudication. The St. Croix Commission, the first of a number of *ad hoc* joint commissions established to settle different sections of the Canada/United States boundary, is also unusual in that it was the only one to be composed of three members, instead of two. The present-day boundary commission can legitimately trace its pedigree to that 18<sup>th</sup> century ancestor.

Some of the *ad hoc* commissions, such as those appointed in the 19<sup>th</sup> century with respect to Passamaquoddy Bay, the St. Lawrence River and the Great Lakes, received authority to delimit the location of the international boundary by, for example, deciding the national ownership of islands in border areas. More commonly, however, a boundary commission's role was confined to demarcating on the ground the line already agreed on by both governments.

**By the Treaty of Washington, 24 February 1925, Canada and the United States created the two-person International Boundary Commission.**

A 1908 treaty established a commission to re-survey and re-demarcate the entire boundary from the Atlantic to the Pacific. By that time, much of the boundary had become overgrown by vegetation and many boundary monuments were destroyed, dislodged or damaged. Two years earlier, a bilateral convention provided for the appointment of a commission to complete the survey and demarcation of the Alaska boundary with British Columbia and Yukon. The 1908 commissioners did not finish their work until 1952, by which time the need to place the commission on a permanent footing had long been recognized. By the *Treaty of Washington*, 24 February 1925, Canada and the United States created the two-person International Boundary Commission that exists today. Article 4 of the treaty jointly empowers and directs the Commissioners to inspect the various sections of the boundary between Canada and the United States at such times as they shall deem necessary, and to,

*... repair all damaged monuments and buoys; to relocate and rebuild monuments which have been destroyed; to keep the boundary vistas open; to move boundary monuments to new sites and establish such monuments and buoys as they shall deem desirable; to maintain at all times an effective boundary line between [Canada and the United States]; as defined by the present treaty and treaties heretofore concluded, or hereafter to be concluded; and to determine the location of any point of the boundary line which may become necessary in the settlement of any question that may arise between the two governments.*

Article 4 also requires the Commissioners to submit to their respective governments an annual joint report of the field and office work they have undertaken during the reporting period. These reports are submitted to the Minister for Foreign Affairs in Ottawa and the Secretary of State in Washington. Each government agreed to pay the salaries and expenses of its own Commissioner and assistants, and to share equally with the other government the expenses incurred in maintaining the boundary.

A Canadian statute enacted in 1960, the International Boundary Commission Act, provides additional authority for maintaining the effective boundary line required by the 1925 treaty. Section 3 permits the Commissioners, their officers, employees and agents, to enter upon and pass over any land to survey the boundary, to build and repair monuments, and to clear away any trees or underbrush necessary to maintain a vista three metres in width from the boundary line. Section 5 prohibits the construction or placing of any building, structure or other work within three metres of the boundary, except with the permission of the Commission. Section 4 provides for the removal by the Commission of any unauthorised work placed after the date when the Act came into force, and Section 8 prescribes penalties for specified offences under the Act.

**ORGANISATIONAL STRUCTURE**

A bilateral treaty organisation, the Canada/United States International Boundary Commission maintains separate headquarters in Ottawa and Washington. The Canadian Commissioner reports directly to the Minister of Foreign Affairs, but the Canadian section of the Commission is an administrative part of the Department of Natural Resources, from which it receives its accommodation, human resources and budget. The Government of Canada appoints its Commissioner by order-in-council, although the incumbent is also a full-time permanent employee of the federal public service. The United States section of the Commission reports to, and is administered by, the Department of State. The President of the United States appoints the American Commissioner, which

means that the incumbent normally vacates office upon, or soon after, a change of presidential administration.

At their formal conferences, which take place at least twice a year, the Commissioners meet with senior officers to review the past season's operations and plan activities for the coming year. Those activities include one or more annual field visits by the Commissioners to inspect the work that their teams of field surveyors are undertaking. During their planning sessions, the Commissioners decide which of its two sections shall be responsible for undertaking fieldwork in a particular section of the boundary. Work is normally allocated in accordance with the Commission's 15-year field program, which establishes optimum maintenance periods based on such factors as vegetation cover and rate of growth, and the estimated need for monument repairs or replacement.

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A field party of one section of the Commission works alone on both sides of the border in the area to which it is assigned, without any requirement for participation, supervision or scrutiny by the other section. This reflects the confidence and trust existing between Canada and the United States. The two sections exchange survey data and office computations at the end of the season.

By arrangement with national customs and immigration authorities, the Commission's staff and their assistants are allowed to pass freely across the border with their vehicles, instruments and equipment during the course of boundary survey, maintenance operations or inspection. This privilege represents a somewhat unusual example of the reciprocal granting of extraterritorial power to foreign nationals. It is exercised with the utmost tact and integrity to avoid any action that might injure the sensitivities of property owners whose lands are entered upon or crossed during survey and related boundary work.

## **FUNCTIONS**

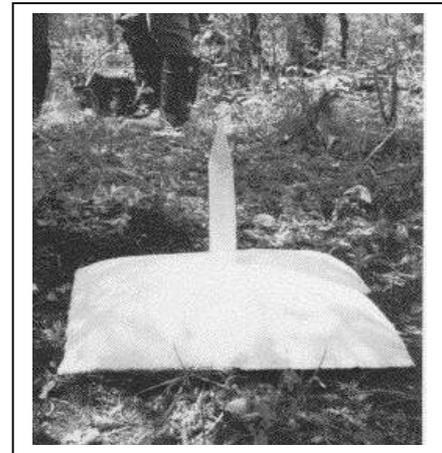
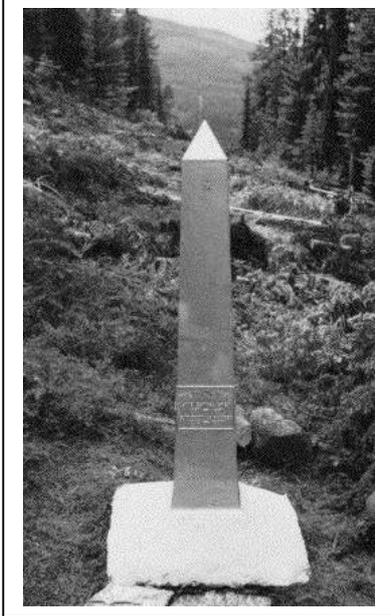
The Commission's tasks may be categorised as operational, regulatory, advisory, and custodial. Operational activities, consisting largely of boundary maintenance in accordance with the 15-year plan, also include occasional field visits to accommodate special or emergency situations. For example, police authorities which arrest a person suspected of illegally passing over or bringing contraband goods across a remote border location may seek the Commission's confirmation as to the country in which the person was apprehended. Field operations occupy the greater part of the Commission's work and consume a large part of its budget.

## **REGULATION**

For the further protection of the boundary and its vista, Canada and the United States have set apart, as a public reservation, certain lands immediately adjacent to the line. By presidential proclamations in 1908 and 1912, a strip of land 18 metres wide was reserved for this purpose. The governments of Canada and each of the border provinces have also officially set aside a similar reservation. It will be evident that these actions took effect only where public lands were available when the respective orders were made, which means that lands already alienated at that time are not affected by the reservations.

By virtue of the International Boundary Commission Act, the Commission regulates all construction that crosses or enters the boundary vista. A person wishing to construct, alter or enlarge a boundary structure or work must apply to the Commission under Section 5 of the Act. After appropriate consideration and any necessary field inspection, the Commissioners issue their joint decision

### Examples of Monuments



in writing. This decision is final and without appeal. Typical requests include the installation of water and sewer facilities. Other applications may come from utility companies for the construction of transmission lines or pipelines above or below the ground. Applications to erect fences along the boundary are not normally accepted. Although the Commissioners approve most routine requests, on condition that the proposed construction will not damage or endanger any boundary monuments, their approval does not relieve the applicant from seeking any necessary permission from other agencies that regulate trans-boundary movement.

During the early years of the 20<sup>th</sup> century when the boundary demarcation had deteriorated in some locations, certain persons, either deliberately or inadvertently, constructed buildings that straddled the border. Some of these buildings, or 'line houses' as they are called, served nefarious purposes, such as

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the provision of liquor from the Canadian side during the Prohibition era in the United States. Most line houses have since been removed, but those that remain are allowed to exist, provided they are not enlarged or altered without the Commission's permission. The Haskell Free Library and Opera House, opened in 1904, lies in both Quebec and Vermont. Patrons enter this elegant, two-story building from the United States and cross a line on the library's lower floor that marks the international boundary. Upstairs in the top two floors of the opera house, the audience sits mainly in the United States, though the front seats and the stage are in Canada. Other noteworthy line houses include the chapel at the International Peace Garden on the Manitoba-North Dakota boundary, and a stone building constructed as an American military storehouse in 1896 that stands on the road connecting Stewart, British Columbia and Hyder, Alaska.

## **BOUNDARY INTERPRETATION**

Under the 1925 treaty, the governments of Canada and the United States remain responsible for settling any boundary disputes that may arise. Yet the Commissioners themselves, with the approval of their respective governments, have on three occasions eliminated from the official boundary description certain anomalies that might otherwise have required diplomatic negotiation and formal bilateral agreement. In 1934 the Commissioners settled by agreement the ownership of Todd Island in the St. Croix River on the New Brunswick-Maine border, after their repeated attempts to locate the river's thalweg that forms the international boundary proved inconclusive.

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Their discovery in 1965 that an error in the original computation of a turning point in the Safa Islands group on the British Columbia-Alaska boundary had incorrectly located an unnamed islet enabled the Commissioners to place the feature in Canada, according to the treaty intention. In 1980 the Commissioners removed a previous, longstanding uncertainty by deciding that the "due West" treaty description of two boundary segments in Lake Ontario and Lake Erie meant a line that followed the geodetic parallel of latitude, not the geodesic connecting the segment's terminal turning points. In all three situations, the two governments regarded the Commissioners' decision as a binding interpretation of the boundary description, not as a transfer of territory that would have had constitutional implications for both countries.

Notwithstanding these instances of boundary interpretation, once the boundaries were established on the ground and monumented, the monuments in their original position govern the position of the boundary, regardless of any subsequent datum changes, or more precise determinations of parallels of latitude or meridians of longitude by new technology such as Global Positioning Systems (GPS) for example.

## **ADVICE**

The Commission's present jurisdiction is confined to the land and water boundaries defined by the 1925 treaty and its various predecessors. It does not apply to the still-unsettled offshore boundaries between Canada and the United States. These comprise the two portions of the Gulf of Maine boundary that the International Court of Justice was not required to determine in its 1984 decision, and also the boundaries in Juan de Fuca Strait, Dixon Entrance, and the Beaufort Sea. From time to time, one of the governments may request its own Commissioner to provide it with confidential research or advisory services relating to the offshore boundaries. In the event that the location of any such boundary becomes established or confirmed by bilateral agreement, the Commissioners might assume additional responsibilities, by virtue of Article 4 of the 1925 treaty, which extends their duties to treaties "*hereafter to be concluded.*"

**CUSTODY**

The Commission is the sole custodian of the reports and positional data that define the international boundary. This information is kept up to date and made readily available to public and private users. The boundary is portrayed on 255 maps and charts that represent official, conclusive cartographic evidence for legal purposes. Valuable material relating to the history and survey of the boundary may be found in the Commission's eight joint sectional reports, each of which covers a particular border area and is well illustrated with maps, photographs and diagrams. Monument locations are expressed in terms of their geographic co-ordinates (latitude and longitude) to the nearest 0.01 second of arc. These mathematical values, formerly computed on the 1927 North American Datum, have now been converted to the current, geocentric NAD1983. The co-ordinates of any additional or replaced boundary monuments, reference marks or survey control points are published, in the year of their installation, as part of the Commissioners' annual technical report to their governments.

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Increasingly, the Commission is seen as the authoritative source of all types of boundary information. Many inquiries relate to the position of particular monuments, of which the lack of knowledge might lead to misunderstanding and controversy, or perhaps litigation. Examples include requests from police, customs, other government officials, land surveyors and members of the public for maps and data showing the precise location of the boundary. The Commission is also a useful repository of manuscripts and documents that provide sources for historical and other research.

**RECENT DEVELOPMENTS*****Vista Grooming***

Beginning in the late 1970s, the Commission has experimented with methods of vista clearing that require less periodic maintenance and are also aesthetically pleasing. In a number of suitable locations, field officers have used bulldozers to clear the 6-metre vista, and seed its soil with grass and ferns that would prevent the re-appearance of trees and brush. Periodic mowing can easily control the growth of this new vegetation, thereby reducing operational costs.

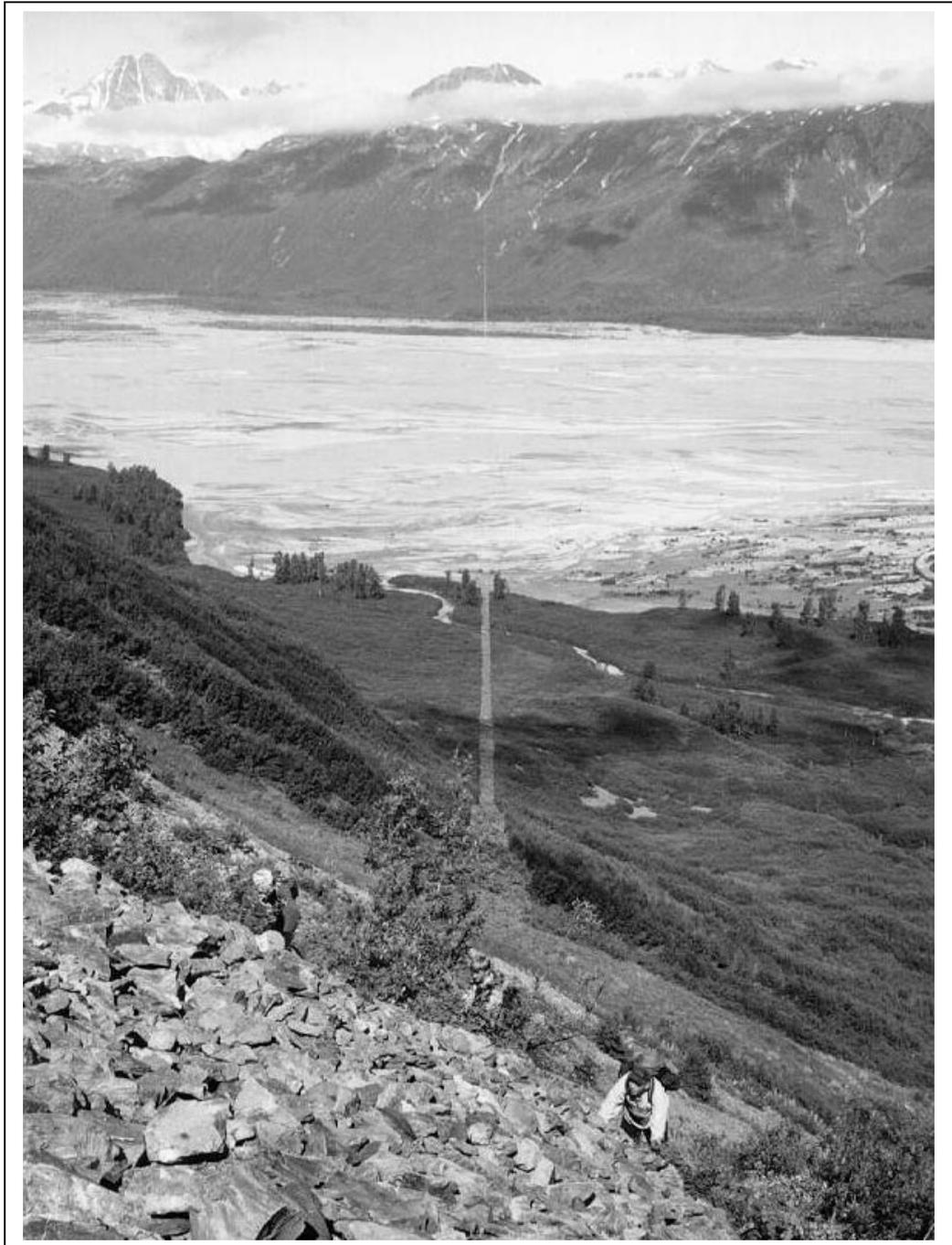
***Joint Border Posts***

Following several years of discussion, the Canadian and United States customs authorities, with the participation of the International Boundary Commission, agreed to construct a joint border facility, consisting of a single building situated on the boundary line at the Carson-Danville crossing on the British Columbia-Washington border. This new structure, opened in 1988, contains office accommodation for the customs personnel of both countries, provides the inspectors with greater security, and offers an improved service to the travelling public. Similar facilities have since been constructed at some other border crossings. To meet the Commission's requirements, the new buildings are constructed in a manner that preserves a line of sight between the nearest boundary monuments on each side of the building.

**CONCLUSION**

The work of the Canada/United States International Boundary Commission has changed significantly since the organisation was established by treaty over 90 years ago. Its primary task is to preserve a boundary that is defined unambiguously by law and is demarcated unmistakably on the ground. Yet the very success of the boundary may tempt some people into taking it for granted, and perhaps even to question its value. The estimated 200 million persons who cross the border each year demonstrate the frequency of contact between the two countries. Examples of amicable collaboration include the Roosevelt Campobello International Park in New Brunswick, and the Waterton and Glacier national parks that adjoin each other on the Alberta-Montana border.

## Vista Clearing – Alesk River, Alaska



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Yet, despite their friendly communication and cooperation, Canada and the United States remain two distinct jurisdictions, the physical limits of which must be recognised and ascertainable. In Robert Frost’s words, “*Good fences make good neighbours.*”

Territorial limits that are well defined and well cared for are a peaceful contribution to international harmony. It is no exaggeration to say that the work of the Commission can be likened to that of an insurance underwriter. The annual cost, or premium, of maintaining the boundary absorbs only a very small part of national expenditures. Failing to retain the policy could be disastrous.