

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: European and Soviet Affairs
Directorate, NSC: Records
Folder Title: Soviet Union: Maritime (3)
Box: RAC Box 18

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

DEPARTMENT OF THE TREASURY

OFFICE OF REVENUE SHARING

WASHINGTON, D.C. 20226

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE \$300.

compasses an area of two thousand square miles. As with other islands in the Arctic Ocean, accessibility is limited by thick fog and sea ice. Impenetrable ice floes block access even to its southern shore for at least ten months of each year.

Four nations have asserted interests over this island — the United States, the Soviet Union, the United Kingdom, and Canada. The superiority of the claim by the United States can best be understood when placed in the perspective of arctic history and international law.

Early recorded explorations into the Arctic did not intend to lay formal claim to, and take effective occupation of, arctic territory. Without these elements sovereignty will not arise over discovered land. The Greek navigator Pytheas of Massilia made the first recorded voyage into the Arctic Ocean in the fourth century, B.C.E., but was turned back by fog and ice.³ The next recorded voyage into the Arctic of any significance was by a Norse chief named Ottar who sailed into the White Sea, after passing the Kola Peninsula.⁴

By the sixteenth century, England and other maritime nations sought better trade routes to the Orient than the long and arduous routes around the Cape of Good Hope and Cape Horn. In the year 1553 English merchants organized voyages to China by the Northeast Passage across the top of Europe and Asia.⁵ In 1594 the Dutch navigator Willem Barents sailed into the Kara Sea.⁶

A Cossack trader named Simon Dezhnev sailed eastward from the Kolyma River in the summer of 1648. The natives of eastern Siberia told him of a "large country" lying to the north of Chukchi and Alaska. He was the first white man to hear of this land called Beringia.⁷

In 1763, another Cossack named Andreyev heard of this land and traveled to the Medvezhi Ostrova to find it. He claimed to have seen a large land to the East from that island location. However, six years later three Russian surveyors named Leontev, Lesev, and Pushkarov confirmed that there was no land that could be seen from such location.⁸ Mirages of islands are not uncommon in the Arctic. This factor, added to the difficulty of obtaining star readings for location determinations in arctic fog, have often made land sightings unreliable.

Baron Ferdinand Petrovich von Wrangell, a lieutenant in the Imperial Russian Navy, also heard the tale of the land's existence from the Chukchi chiefs of Siberia. Between 1820 and 1824 he commanded several expeditions in search of the island but he never saw it, let alone land on or occupy it.⁹ In April of 1824, at the end of his last arctic expedition, Wrangell wrote:

[W]ith a painful feeling of the impossibility of overcoming the obstacles which nature opposed to us, our last hope vanished of discovering the land which we believed to exist. We saw ourselves compelled to renounce the object for which we had been striving through three years of hardships and danger.¹⁰

Despite this failure, Wrangell gained worldwide fame as an arctic explorer. He later became Governor of Russian America. Yet he was never to land upon the island that would bear his name in his honour.

During the mid-nineteenth century, England, still looking for a short-cut to the Orient, attempted to find a Northwest Passage. In 1845 Sir John Franklin left England with a company of 129 to travel over the top of America to Petropavlovsk, Kamachatka. By September, 1846, the expedition's ships had become locked in an ice pack twelve miles from King William Island.

On 11 June 1847 Sir John Franklin died. On 22 April 1848 the ships *Erebus* and *Terror* were deserted and what was left of their crew started on a hopeless march to safety. No one survived.¹¹

By 1848 the Royal Geographical Society became concerned over the ships' disappearance and the British Admiralty agreed to its request to organize a search. The United States and Canada also organized searches for the missing ships.

On 6 August 1849, Captain Henry Kellett, R.N., of H.M.S. *Herald*, one of the Franklin search vessels, arrived at a small island west of Cape Lisburne. Upon landing, Kellett took possession and named the island *Herald* after his ship. He hoisted the Union Jack and claimed the island on behalf of Queen Victoria.

Kellett sighted a large land mass beyond *Herald* Island to the west which he called *Plover* in honor of another Franklin relief expedition ship. Whereas no land mass existed at the position noted by Kellett on navigation charts, it may have been a mirage rather than Wrangell Island. In any event, no further landing or exploration was made.

Six years later, on 13 August 1855 Captain John Rogers, in his flagship the U.S.S. *Vincennes*, reached the position ascribed to *Plover* Island, also known as Kellett Land on the Admiralty charts.¹³ When there was no land to be seen from the clear horizons, the charts by the Depot of Charts and Instruments of the U.S. Navy were changed accordingly. It should be noted that the Russian author Shvede gives credit to the American, Rogers, for discovering Wrangell Island¹⁴ on that Congressionally authorized voyage.¹⁵

The United States' legal rights in the northwest of the North American Continent have a foundation in the

Treaty of Adams-de Onus of 22 February 1821 which ceded Spanish rights in Oregon Country to the U.S.¹⁶ The United States' claims to northern parts of the Oregon Country (now southern Alaska) are based, in part, upon voyages of discovery and annexation by Don Juan Francisco de la Bodega y Quadra and Don Ignacio Arteiga for the Spanish Government between 1775-1779.¹⁷

H.I.M. Tsar Aleksandr Pavlovich of Russia issued a ukase in 1821 banning "transaction of Commerce, and the pursuit of whaling and fishing or any other industry . . . all along the North West Coast of America from the Bering Sea to the 51st parallel."¹⁸ This coast was part of the area ceded to the United States by Spain in 1821. The Tsar's ukase prompted U.S. President Monroe, in his message to Congress on 2 December 1823, to proclaim the Monroe Doctrine. A compromise was reached on 11 January 1825. The United States government ceded the coast of America north of the 54°40' parallel to the Imperial Russian Government as part of a Treaty of Navigation and Fisheries of the Northwest Coast.¹⁹

As will be seen, this accord was superseded by the Seward-de Stoechl Treaty in 1867 which ceded Russian America to the United States. The 1825 treaty has no bearing on sovereignty over Wrangell Island which was undiscovered at the time.

By the middle of the nineteenth century, Russian interests in expansion beyond the Asian mainland waned just as American interest in expanding to the West increased. The loss of the Crimean War illustrated the vulnerability of the Russian Empire at its extremities.

The Russian government, fearing that its American colony was no longer defensible and recognizing its economic liability, sold the North American lands to the United States for 7.2 million dollars on 20 June 1867.²⁰ This convention between the governments of Russia and the United States ended all Russian claims to sovereignty east of the demarcation line.

On 18 October 1867 the Tsarist double eagle flag was lowered over Novoarkhangelsk, the capital of Russian-America, and the Stars and Stripes was hoisted over the renamed city of Sitka. Alaska was now a possession of the United States.²¹

The Office of the Solicitor, U.S. Department of State, determined after a review of the documents leading up to and including the Seward-de Stoechl Treaty "that the Emperor of all the Russias ceded to the United States certain territories, and that the United States on its part entered into no commitment which could be interpreted as an understanding not to press claims to any land west of the particular line above described."²² Therefore,

there can be no inference that the United States ceded sovereignty to any as yet undiscovered island to the west of the Diomed Islands.

During this period the American whaling industry expanded into arctic waters. On 14 August 1867 Captain Thomas Long of New London, Connecticut, sailed his whaling bark *Nile* along a trek some thirty miles north of the route navigated by U.S.S. *Vincennes* some twelve years earlier. A seaman named Thomas sighted land (Cape Thomas) to the northeast from the ship's mast-head. Captain Long named this territory "Wrangell's Land" as an appropriate tribute to the memory of the Russian explorer who spent three consecutive years above the 69th parallel.²³ Long also was the first to sight the identifying volcano of more than 2000 feet in height on Wrangell Island. He sailed past the southern shore and returned to the port of Honolulu. Between 1868 and 1869 the news of the American discovery of "Wrangell's Land" spread worldwide. Geographical Societies in the United States and Europe honored Captain Long for his discovery.²⁴

Other American whalers — the captains Raynor of the *Reindeer*, Philips of the *Monticello*, and Bliver of the *Nautilus* also confirmed the sighting of the large land mass discovered by Thomas Long. They spread their belief that Wrangell was not an island but a frozen continent similar to that at the South Pole, a speculation that prompted the New York *Herald* to outfit an expedition in 1879, led by Naval Lieutenant George Washington De Long, to Wrangell Island and then the North Pole.²⁵ De Long and his ship, the *Jeannette*, formerly called the *Pandora*, never made it. The *Jeannette* became locked in ice floes and drifted westward past Wrangell Island where it was crushed and sunk in the summer of 1881.

Fearing for the fate of De Long, the U.S. Congress in early 1881 authorized one hundred and seventy-five thousand dollars for a search. The *Jeannette* relief ships, the U.S. Revenue Marine Steamer, the *Thomas Corwin* and the U.S.S. *John Rogers* entered the Bering Sea in the summer of 1881. Commanding officer of the *Corwin* was Captain Calvin Leighton Hooper.

Hooper at the time commanded the Bering Sea Patrol of the U.S. Revenue Marine, which made him the *de facto* Governor of Alaska. During the spring of 1877, jurisdiction of the District of Alaska was transferred from the Department of War to the Treasury Department. Treasury in turn placed Alaska under the charge of the U.S. Revenue Marine from that year until 1884.²⁶ Hooper clearly had authority at that time to discover and claim sovereignty over land on behalf of the United States.²⁷ The *Corwin* also carried aboard a complement of scientists. These included the world renowned naturalist, John Muir, who was later to found the Sierra Club.

The *Corwin* landed on Herald Island in hopes of finding the *Jeannette* or its crew. Unsuccessful in the rescue attempt, Hooper valiantly forced his ship through heavy ice floes to Wrangell Island to the west.²⁸

On 12 August 1881, Hooper, Muir, and their party of six made the first recorded landing by man upon Wrangell Island. Edward W. Nelson, a member of the landing party later noted,

The result of our examination of the Island, so far as we saw, gave not the slightest evidence of its ever having been visited by man before. All subsequent examinations of Wrangell Island by those who have visited it later appear to establish the fact that the landing party from the *Corwin* contained the first men to set foot on this island.²⁹

Landing at the mouth of the Clark River on the eastern side of the island, Hooper and his fellow officers raised the American flag and took possession of Wrangell Island in the name of the United States. While Hooper and Muir explored the island, other party members erected a rock cairn and deposited documents recording the significant event. William Reynolds, a member of the party, recalled:

I had the flag and with the Captain's permission waved it and took possession of the new land in the name of liberty and of the Government of the United States of America. I planted the flag on a bluff a little to the northwest of our landing place and left it there together with a record of our visit.³⁰

Hooper called the island "New Columbia." He explained,

It was believed that as the island had become, by our act of landing upon it, a part of the United States, by selecting a name of national character, no disrespect would be shown to the memory or offense given to the friends of the gallant officer whose name it bore, and that the name given would be adopted by all nations.³¹

The name "New Columbia" never replaced Wrangell, however.

Captain Hooper told Captain L. C. Owens of the American whaler *Belvedere* of his plan to annex Wrangell Island to the United States prior to landing there. The *Belvedere* became the second ship to land at Wrangell on 19 August 1881. "As soon as we got ashore we saw the signal planned by Lieutenant Reynolds, a small American ensign fastened to a slender piece of driftwood, driven into the soil," confirmed a *Belvedere* crew member.³²

On 26 August 1881 a party from the *Rogers*, the other relief ship, landed on Wrangell Island. They completed an official survey for the U.S. Government on 13 September of the same year. One crew expedition proceeded overland to the mountains, where a general view of land and water could be obtained. Another

group found the cairn left by the *Corwin*, and deposited copies of the documents contained therein, taking the originals for the Navy's report. The crew of the U.S.S. *Rogers* also raised the American flag over Wrangell Island.³³ The crew determined that its new U.S. possession was not a continent but a large island.

Major E. W. Clark, the Chief of the United States Revenue Marine Service, informed the U.S. Coast and Geological Survey in 1881 of the annexation of Wrangell Island to the United States. The U.S.C. & G.S. of the U.S. Treasury Department determined that Wrangell Island should be included in the District of Alaska.³⁴

Between the years 1881 and 1910 Wrangell Island was visited exclusively by Americans. These were mostly whalers and walrus and seal hunters. On 8 September 1889 the U.S.S. *Thetis* went to Wrangell Island while cruising the Arctic Ocean, "showing the American flag."³⁵ In the year 1910 Captain Louis Lane sailed the ship *Adler* of Nome, Alaska, to Wrangell Island with a motion picture company from Hollywood, which filmed a polar bear hunt.

For a period of twenty-nine years following Hooper's claim, U.S. and Russian publications recognized United States sovereignty over Wrangell. U.S. Geological Survey Bulletins No. 169 in 1900, No. 187 in 1902, and Nos. 274 and 299 in 1906 included Wrangell Island as part of the U.S. Russian Naval Maps and Encyclopedia at the turn of the century also show the same designation.

In 1910 the Imperial Russian government, interested in compiling hydrographic charts to facilitate shipping routes from Kolyma to Vladivostok, commissioned two steel ice-breaking ships, the *Vaigatch* and *Taimyr*. On 16 September 1911 the *Vaigatch* anchored in a cove off Blossom Point at the southwest corner of Wrangell Island while taking shelter from a gale from the northeast.³⁶ Its captain sent a landing party ashore on 15 September via whaleboat and motor launch to establish the correct astronomical position by celestial observation. The landing party found a coal deposit and erected a ten meter structure to establish the astronomical position of the landing place before leaving.

The Russians then circumnavigated the island, but unfortunately at a distance too far to contribute to the definite outlining of the coast.³⁷ This was the only visit that the Russians ever made to the Wrangell Island before 1924, nor did they ever make any claim to the island during their stay.

In 1911 Dr. Rollin Harris, an American oceanographer, again raised interest in the possibility of an as-yet-undiscovered arctic continent. He hypothe-

sized the existence of "Harris Land" to explain tidal movements in the Arctic Ocean.

In 1913 the National Geographic Society planned to finance an expedition to the Arctic to find this new land. Sir Robert Borden, Prime Minister of Canada, asked and received permission to finance the expedition for fear that Americans might make new discoveries north of Canada for the United States.³⁸

Vilhjalmur Stefansson, a Canadian who had grown up on the plains of North Dakota, was chosen to lead the expedition. The Canadian government directed Stefansson that "any new or partly unknown lands which the expedition would touch would be observed, position fixed, and the British flag would be planted on these lands."³⁹

Stefansson's flagship was the whaler *Karluk* under the mastery of Captain Robert A. Bartlett. Bartlett was a U.S. citizen who had commanded the ship *Roosevelt* for the Peary and Henson expedition to the North Pole during the years 1905 to 1909. The *Karluk* suffered the tragic fate of other vessels and became caught in arctic ice, drifted west along the north coast of Alaska, and eventually sank. For two months the survivors walked south across the polar ice cap, arriving at Wrangell



Figure 1. "Mugpi" — Mrs. Ruth Ipalook, daughter of "Auntie" Kiruk, Eskimo seamstress on the *Karluk*. Mrs. Ipalook now lives near Barrow, Alaska. She and William McKinlay, a Scottish schoolmaster who served on the Canadian Arctic Expedition of 1913-18 as magnetician and meteorologist, are the only living survivors of the disaster.

Island on 12 March 1914. Two members of the ship's crew, John Munro and Robert Templeman, raised the Canadian flag over Wrangell Island in celebration of Dominion Day, 1 July 1914.

Of course, Wrangell Island had already been formally claimed by the United States, and the previous establishment of U.S. sovereignty served to cut off subsequent rival claims. Furthermore, Great Britain had transferred jurisdiction of her rights to islands in the Arctic Ocean to the Canadian Government in 1880.⁴⁰ Therefore, whatever pretention to sovereignty Great Britain might have had to Herald and Wrangell Islands by virtue of the voyage of the H.M.S. *Herald* in 1849, or the landing on Wrangell in 1914, now belonged to Canada.

The shipwrecked members of the *Karluk* also recognized the prior discovery of Wrangell Island. Bartlett later wrote that "we passed Hooper cairn, which was built by a party from the U.S. Revenue cutter *Corwin* in August, 1881. The cairn, as I could see, was still intact."⁴¹

Captain Bartlett and an Eskimo crew member, Kakatovik, walked across the ice pack to summon help. Upon Bartlett's reaching Alaska, Captain William E. Reynolds, U.S.R.C.S., immediately ordered a rescue attempt. On 7 September 1914 the American ship *King and Wing* picked up the happy survivors on Wrangell Island (Figure 1). Not knowing that the *Karluk* survivors had already been rescued, the *Thomas Corwin* landed at Wrangell a few days later. The same ship that thirty-three years earlier had carried Hooper to claim the island, re-established the flying of the U.S. flag over Wrangell Island.

After the *Karluk* survivors were transferred to the U.S. Revenue Cutter *Bear*, they were transported to the ship's home port of Unalaska where the port commander, William Reynolds (who in 1881 had landed on Wrangell with Hooper) told Bartlett that the island was indeed part of Alaska.

On 13 November 1916 a challenge to U.S. sovereignty over Wrangell Island came from a different source. The Imperial Russian Embassy in Washington presented a memorandum to the U.S. Department of State regarding Russia's claim to lands in the Arctic. It claimed that Wrangell Island, Alaska, was one of the islands which "form an extension Northward of the Continental tableland of Siberia."⁴² This argument, like that of the sphere of influence, continuity, or sector theory to the Pole has no validity in international law.⁴³ Before this claim could again be pressed the Imperial Russian Government was overthrown by the Bolsheviks. World events were to continue to play a major part in the issue of sovereignty over Wrangell.

On 7 July 1918 Allied Commanders, and an army that included Japanese troops, assumed protection of the city of Vladivostok. The threat of the Japanese taking an imperialistic hold in eastern Siberia caused concern, just as the expansion of power by the Bolsheviks had done formerly. In 1920 Stefansson became worried that the Japanese government, in their desire to control eastern Siberia, might try to take Wrangell Island. He observed, "I felt certain that within a year or two they would realize the coming importance of Wrangell Island and would occupy it."

Great Britain, Japan, and the United States were allied against the Bolsheviks. However, if the Japanese (future Pacific rivals to the United States) were to occupy Wrangell Island, it would be difficult to oust them in favor of the Bolsheviks. Therefore, Stefansson met in Ann Arbor, Michigan, with Allen Crawford, a Canadian, and Sir Auckland Geddes, British Ambassador to the U.S., for the United Kingdom to plan an expedition to secure Wrangell Island and also to promote their own economic interests.

Crawford led a party that included four Americans on the American ship *Silver Wave*. When they landed on Wrangell Island on 15 September 1921 the crew raised the Stars and Stripes over the island under Captain Jack Hammer's direction. On 16 September 1921 Crawford raised the Union Jack over Wrangell "in the name of the King and the Empire" as a continuation of Stefansson's "right to the island already established by the Stefansson Canadian Arctic Expedition of 1913-18 and the shipwreck of the *Karluk*."⁴⁵ He did not tell anyone aboard the *Silver Wave* that he had raised the British flag over the island.

In 1922 it became a *cause célèbre* in the British and American press that Stefansson and company had "claimed" Wrangell Island, Alaska, as part of the United Kingdom. Anglo-American relations became strained over an island in which Great Britain had shown no interest since the discovery of Herald Island in 1849.

The Crawford party landed with provisions for only six months, saying they planned to sustain themselves with hunting. Stefansson's relief mission in 1922 was blocked by ice floes. When Harold Noice arrived aboard the relief ship *Donaldson* on 20 August 1923 only an Eskimo seamstress named Ada Blackjack survived of the original group. A new party led by Charles Wells of Uniontown, Pennsylvania, continued settlement of the island.

When Stefansson realized in 1924 that the Canadian government would not back a sovereignty claim as to *dominium directum* rights he sold his title and his *dominium utile* interests in Wrangell Island to the

Lomen Brothers company of Nome, Alaska (Figures 2(a) and 2(b)). On 13 May 1924 Secretary of State Charles Evans Hughes declared that the Lomen Brothers were the owners of the island (Figure 3). On 18 June of that year, the British Colonial Secretary stated in a confidential dispatch: "The United States Government is thought to have a strong, if not indisputable, claim to the Island."^{45a}

On 20 August 1924 the Soviet gunboat *Red October* landed on Wrangell Island, armed with a six-pound cannon and a company of Soviet infantry. The Soviets took Wells by force and the other thirteen Americans on the island and told them they were being taken to Alaska. Instead they were forcibly taken to Vladivostok.⁴⁶ The Soviet officials confiscated all the pelts which the trappers had accumulated during the twelve bitter months on the island.⁴⁷ Following intervention by the U.S. Consul at Harbin, Manchuria, the Soviets released the twelve Americans still living. The

STEFANSSON ARCTIC EXPLORATION & DEVELOPMENT COMPANY, LTD., a corporation of the Province of British Columbia, for a valuable consideration by it had and received, the receipt of which is hereby acknowledged, and of the consent and agreement of Lomen Brothers, hereinafter set forth, hereby sells, assigns and conveys to CHARLES J. WELLS, ARDY WELLS, RALPH WELLS and ARTHUR J. WELLS, citizens of the United States, residing at Nome, Alaska, and there doing business under the firm name and style of WELLS BROTHERS,

ALL its right, title and interest in and to the goods, wares, merchandise, supplies, traps and equipment which said corporation has on Wrangell Island, located in the Polar Sea about three hundred miles northwest of Point Hope, Alaska,

TOGETHER with all its rights in camps and other improvements erected and made thereon and in and to the furs, ivory and other property accumulated by its agents and employees upon said Wrangell Island,

TOGETHER with the possessory rights which it has in said island by reason of having actually taken possession thereof on September 6th, 1921 and of having since maintained thereon a permanent colony, which island was theretofore unoccupied,

TOGETHER with all benefits and rights which said corporation has under its contract with Allen R. Crawford and his associates for the establishment of said colony and under its contract with Charles Wells and others co-operating with him for the augmenting and maintaining of said colony and carrying on the operations and activities of said corporation on said Wrangell Island.

In consideration of the aforesaid assignment, Lomen Brothers covenant and agree from time to time to

transport supplies to the said colonists on said Wrangell Island and afford them an opportunity to pass to and fro between said island and the Alaskan mainland and to assume the position and obligation of said corporation in and under said contracts above referred to and protect and save it harmless therefrom.

IN WITNESS WHEREOF said Stefansson Arctic Exploration & Development Company, Ltd. and Lomen Brothers have caused this instrument to be duly executed this 15th day of April, 1924.

STEFANSSON ARCTIC EXPLORATION
& DEVELOPMENT COMPANY, LTD.

BY

Attest:

John A. ...
Secretary

Vilhelmur Stefansson
President.

Witness:

David J. ... (S.S.)
Joseph Lomen (S.S.)
Harry Lomen (S.S.)
August J. ... (S.S.)

Figures 2(a) and 2(b). Certificate of sale of his interest in Wrangell Island by Vilhjalmur Stefansson to the Lomen Brothers of Nome, Alaska, 1 April 1924.

Bolsheviks claimed that Wells had died of pneumonia. His diary was never found.

A year later the Soviets proclaimed Wrangell Island as their territory. But in 1930 the U.S. Department of the Interior publication entitled *Boundaries, Areas, Geographic Centers and Altitudes of the United States and the Several States* expressly included Wrangell Island as an American possession. Since that time no abandonment by the U.S. of its rightful sovereignty has occurred, nor under international law could such abandonment occur following a deprivation of sovereignty by force.

Besides the abducting of Americans on Wrangell Island, the Russians violated federally promulgated Alaskan law that prohibits the exercise of foreign jurisdiction. The Alaskan Organic Act of 1884 adopted Oregon law, which in turn had adopted the Iowa Territory prohibitions against foreign governmental interference with American sovereignty.⁴⁸

In 1973 the State Department reissued the *Hackworth Digest of International Law* which explained, "The United States has not relinquished its claim to Wrangell Island." In the centennial year of the American landing on Wrangell, the United States gov-

ernment's position has not changed. Captain Hooper formally claimed Wrangell Island on 12 August 1881 and the U.S. established effective occupation until the Soviet invasion.

ERRATA

Page 2, *passim*: Rodgers
Page 8, note 24: 1868

NOTES

- ¹ The island has also been spelled Wrangel and Vrangell. The U.S. Board of Geographic names, by resolution named 29 July 1901 determined that Wrangell Island, Alaska, in the Arctic Ocean should be spelled with two l's. The island was named in tribute to Ferdinand Petrovich von Wrangell who spelled his own name with two l's when he wrote in the Roman alphabet.
- ² Dermot Cole, "Now We're Losing Wrangell Island." *Fairbanks Daily News Miner*, 1 October 1977.
- ³ David Mountfield, *A History of Polar Exploration* (New York: The Dial Press, 1974), pp. 15-16, 19-20.
- ⁴ *Ibid.*, p. 23.
- ⁵ *Ibid.*, pp. 27, 33.
- ⁶ *Ibid.*, pp. 33-39.
- ⁷ Leonid Vasilevich Gromov, *Oskolok Drevnei Beringi* (Moskva: Gos izd-vo geogr. lit-ry, 1960).
- ⁸ *Ibid.*
- ⁹ Lieutenant Baron Ferdinand Petrovich von Wrangell, I.R.N., *Narrative of an Expedition to the Polar Sea in the Years 1820-1823*, ed. Major Sir Edward Sabine, R.A. (London: James Madden and Co., 1840) pp. 342-359.
- ¹⁰ "Wrangell Island," *The Geographical Journal*, Vol. 62, No. 6, (December, 1923), p. 441.
- ¹¹ Leopold McClintock, *The Voyage of the Fox: Discovery of the Fate of Franklin* (London: J. Murry, 1908).
- ¹² Bertold C. Seaman, *Narrative of the Voyage of the Herald during 1845-51*, (London: Reeve & Co., 1853), pp. 115-116.
- ¹³ Wilhelm Heine, *Di Expedition in die Seen von China, Japan and Ochotsk under Commodore Colin Reingold und Commodore John Rodgers, in auftrage der Regierung der Jahren 1853 bis 1856* (Leipzig: H. Constenoble, 1858-59).
- ¹⁴ Evgeni Evgenievich Shevde "Ostrov Vrangelya" *Morskoi sbornik* God 76, No. 9 (Sept., 1923) pp. i-xiv.
- ¹⁵ 31 August 1852 (10 Stat. L. 100).
- ¹⁶ 8 Stat. L. 252.
- ¹⁷ Francisco Antonio Mourelle, *Journal of a Voyage in 1775* (London, 1781).

- ¹⁸ John J. Underwood, *Alaska: An Empire in the Making* (New York: Dodd, Mead, 1913) p. 265. It should be noted that Prof. William R. Hunt of the University of Alaska, in his book, *Alaska: A Bicentennial History* (New York: W. W. Norton & Company, Inc. and Nashville: American Association for State and Local History, 1976), p. 30, erred in ascribing the ukase to "Alexander II" (Tsar Aleksandr Nikolaevich of Russia).
- ¹⁹ 8 Stat. L. 302. For background information concerning counter-claims of sovereignty to the Oregon Country read Thomas Falconer, *Oregon Questions; or a Statement of the British Claims to the Government of the United States of America*, 2nd Ed. (London: Samuel Clark, 1845), and Travers Twiss, *The Oregon Question Examined* (London: Longman, Brown, Green and Longman, 1846).
- ²⁰ 15 Stat. L. 539.
- ²¹ The name Alaska was gradually established for this region by local use while the Russians officially designated it Russian America. The name Alaska was proposed for official acceptance by W. H. Seward, Hon. Charles Sumner, and Maj. General H. W. Halleck after the U. S. Government took possession of the region.
- ²² Bretton G. Sciaroni, *The U.S. Claim to Wrangell Island*, Contract Study (No. 1722-620057) prepared for the U.S. Department of State on February 4, 1976, p. 30. Also see, F. M. Anderson, "Memorandum" (November 25, 1924), M. S. Department of State, file 861.0144/75 and S. Wittemore Boggs "Delimitation of Seaward Areas under National Jurisdiction," *American Journal of International Law*, 45, No. 2 (April, 1951), p. 240, fn 2.
- ²³ Captain Thomas Long, "Arctic Land Discoveries," *The Pacific Commercial Advertiser* (Honolulu), 9 November 1867.
- ²⁴ "A Polar Continent: Reported Discovery of a Polar Continent in the Arctic Ocean," *New York Times* (7 December 1867); William W. Wherldens, "The New Arctic Continent or Wrangell's Land" (Chicago: American Association for the Advancement of Science, August 1868); K. M. Baer, "Nesholho slov po povodu novothritoy Vrangelyevshoy zemly", *Izvesti Russhovo Geograficheshovo Obsthestva*, (1968), V4, N7, pp. 333-349.
- ²⁵ J. E. Nourse, *American Exploration in the Ice Zones*, (Boston: D. Lothrop and Company), pp. 365-66 and David Mountfield, *A History of Polar Exploration* (New York: Dial Press, 1974), pp. 123-124.
- ²⁶ Formal letters of 17 and 24 March 1877 between Secretary of War George W. McCrary and Secretary of Treasury, John Sherman. National Archives, files of the Adjutant General (Microcopy MGGG, reel No. 358).
- ²⁷ International law has also recognized the status of private individuals to claim sovereignty on behalf of their country. A fortiori Hooper in his official capacity had no less authority regarding Wrangell Island than in his validly ordered claim of Wake Island on behalf of the United States in 1898, while in transit after the Spanish American War as a member of U.S. Pacific forces.
- ²⁸ Muir, *The Cruise of the Corwin*, pp. 140-158; Hooper, *Cruise of the Corwin*, 1881, pp. 53-54.
- ²⁹ Nelson, *Congressional Record, Senate*, 22 March 1922, p. 4261, col. 2.
- ³⁰ William Reynolds, *Congressional Record, Senate*, 25 March 1922, p. 4538, col. 2. Also included under these papers sent from the Secretary of Treasury Andrew W. Mellon to Secretary of State Charles Evans Hughes, 13 April 1922, M. S. Department of State, file 861.0144/7.
- ³¹ Hooper, *Cruise of the Corwin*, 1881, p. 70.
- ³² "Wrangell Land: A Description of the Island by a Visitor" *San Francisco Chronicle* (16 August 1882), p. 3.
- ³³ Nelson, *Congressional Record, Senate*, 22 March 1922, p. 4261, col., stated the "Rogers partly took possession of the island by right of [Captain Long's] discovery, and that was within a space of a few weeks [of the *Corwin* party taking possession for the United States Government]."
- ³⁴ In 1900 the U.S. Geological Survey, at the direction of Henry Gannett, issued U.S. Geological Survey Bulletin No. 169 which included Wrangell Island of the Arctic as part of Alaska. Gannett is known as the father of American map making, and was the Chief Geographer of the U.S.G.S., having started in 1882.
- ³⁵ Jean Denuce "les expeditions polaires depuis 1800," Bulletin de la Societe Royale de Geographie D'Anvers (Anvers: J. Van Hille-De Bocher, 1911), p. 336. Also see: Charles Herbert Stockton, "The Arctic Cruise of the USS *Thetis* in the summer and autumn of 1889," *National Geographic Magazine* (1890), v. 2, No. 3, p. 194; and D. W. Knox, Captain, U.S.N. (Ret.), letter to Lt. Comdr. F. W. Mead, U.S.N. (Ret.) dated 31 October 1933.
- ³⁶ Blossom Point was named by Lt. R. M. Berry, U.S.N. in 1881 after H.M.S. *Blossom*.
- ³⁷ L. M. Starokadomskiy, *Charting the Russian Northern Sea Route: The Arctic Ocean Hydrophic Expedition 1909-1919*; ed. and trans. William Barr, (Montreal: Arctic Institute of North America and McGill-Queen's University Press, 1976) pp. 60-64; Nikolai Nikolaevich Alekseev, "Ostrov Vrangelya," *Bulletin of the Far Eastern Branch of the Academy of Sciences of the U.S.S.R.* (Vladivostok: 1932) No. 3-4, p. 83; L. V. Gromov, *Ostrov Vrangelya* (Magadan: 1961) p. 24; Vilhjalmur Stefansson, "The Russian Visit to Wrangel Island," appendix 9, *The Adventure of Wrangel Island*, op. cit., pp. 393-394.
- ³⁸ Vilhjalmur Stefansson, *The Adventure of Wrangel Island*, pp. 50-51.
- ³⁹ Order-in-Council, approved 22 February 1913.
- ⁴⁰ Gordon W. Smith, "The Transfer of Arctic Territories from Great Britain to Canada in 1880, and some related matters, as seen in official correspondence," *Arctic*, March, 1961, Vol. 14, No. 1, pp. 53-73.
- ⁴¹ Bartlett, *The Last Voyage of the Karluk*, op. cit., p. 173.
- ⁴² The note of 13 November 1916 stated in part:
Le Gouvernement IMPERIAL profite de cette occasion pour faire ressortir qu'il considère aussi comme faisant partie intégrante de l'Empire les îles Henriette, Jeannette, Bennett, Herald et Oujedinemia, qui forment avec les îles Nouvelle Sibérie, Wrangell et autres situées près la côte asiatique de l'Empire, une extension vers le nord de la plate forme continentale de la Sibérie.

Le Gouvernement IMPERIAL n'a pas jugé nécessaire de joindre à la présente notification les îles Novaia Zemlia, Kologouev, Kolgouev, Waigatch et autres de moindres dimensions situées près la côte européenne de l'Empire, étant donné que leur appartenance aux territoires de l'Empire se trouve depuis des siècles universellement reconnue.

Wrangell Island, Contract Study No. 1722-620057 prepared for the U.S. Department of State on February 4, 1976, p. 15.

⁴³ It should be noted that unsupported claims advanced by the Imperial Russian Government in the above note were rejected by the United States in 1902, as part of the "Whaling and Sealing Claims Against Russia." Herbert H. D. Peirce, *Foreign Relations of the United States, 1902*, Appendix I, (Washington: GPO, 1903), pp. 18 and 107. Fedor Fedorovich Martens, the legal counsel for the Imperial Russian Ministry of Foreign Affairs, rejected the notion that Russian sovereignty extended northward into the Arctic. He contended that the marginal seas north of the Russian mainland were *Mare Liberum* from the judicial point of view. F. F. Martens, "Du territoire de l'état", *Traite de droit international*, trans. Alfred Leo, (Paris: 1883) v. 1, pp. 495-496.

⁴⁴ Stefansson, *The Adventure of Wrangel Island*, op. cit. p. 95.

⁴⁵ *Ibid.*, pp. 128-131.

^{45a} Colonial Secretary to Governor General: confidential dispatch No. 537. Cited in Bretton G. Sciaroni, *The U.S. Claim to*

⁴⁶ Affidavit of 22 March 1977 by Hilda Koonuknowrunk Weber, one of the American prisoners.

⁴⁷ *Japan Advertiser*, 27 January 1925.

⁴⁸ On 7 May 1884 the U.S. Congress passed "An Act providing a Civil Government for Alaska", c. 53, 23 *Stat. at Large* 24. That act adopted Oregon law providing it does not conflict with other provisions of Alaskan law. This Act extended to Alaska "An Act Adopting the Statutes and Laws of the Territory of Iowa and the Common Law." *Oregon Acts and Laws Passed by the House of Representatives at a Meeting Held in Oregon City, August, 1845* (New York: N. A. Plemister Company, 1921) p. 16. It should be remembered that the Act of 12 August 1845 became part of the laws of the Territory of Oregon through "An Act to Establish the Territorial Government of Oregon", of 14 August 1848, c. 177, 9 *Stat. at Large* 323 (known as the Oregon Organic Act. Laws of the Territory of Iowa, passed at the Extra Session of the Legislative Assembly, begun and held in the City of Burlington: J. H. M. Kenny, 1840, and Des Moines: Historical Department of Iowa, 1902) c. 85.

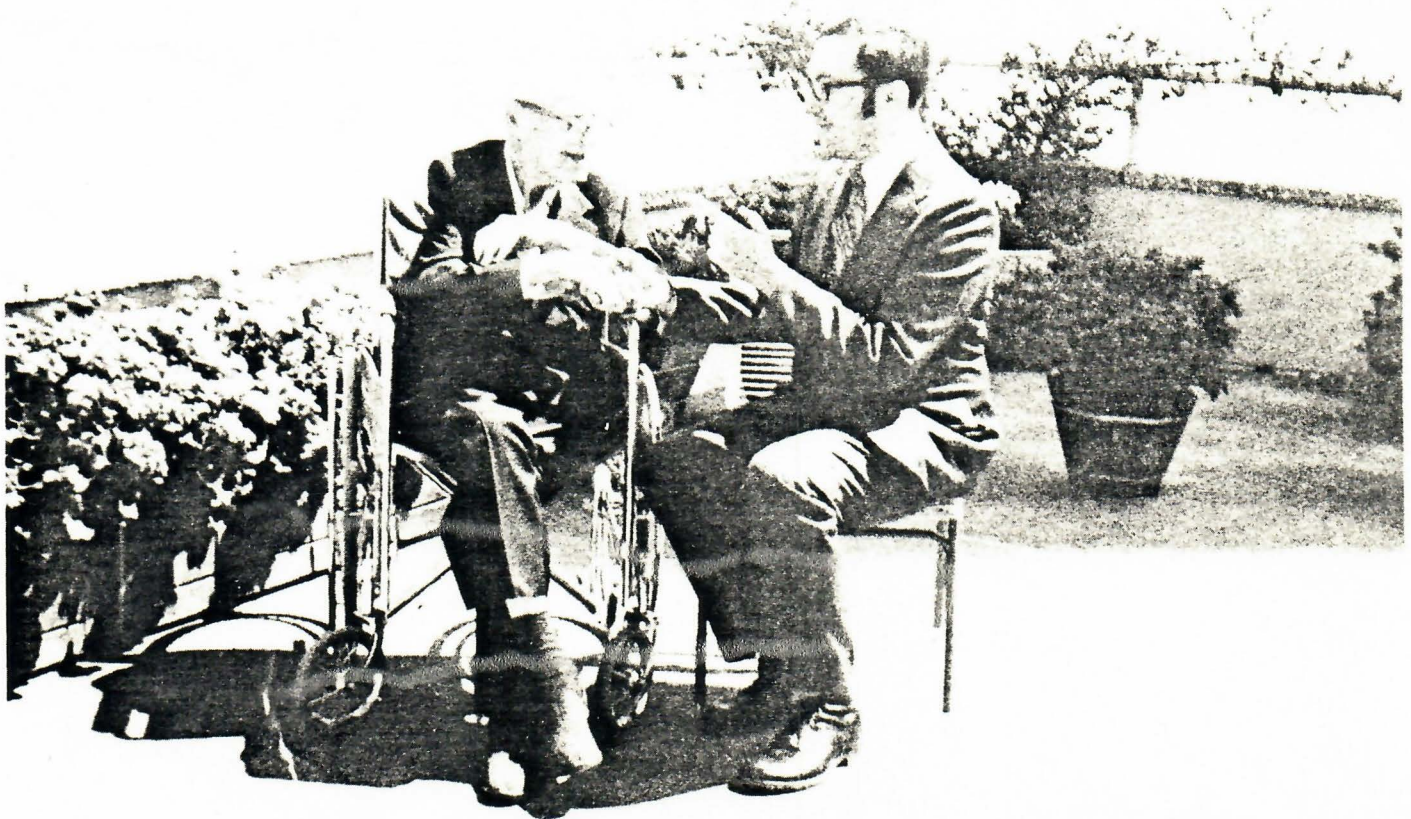


Figure 3. Mark Jerome Seidenberg with Ralph Lomen. Taken in Seattle, Washington, in June 1976.

Jack Anderson

U.S. must not forget Wrangel Island

WASHINGTON — President Reagan has been accused of returning to the Teddy Roosevelt era of gunboat diplomacy by luring two of Moammar Khadafi's planes to their doom in the Gulf of Sidra. He has even been faulted for pushing a little guy around — calling to mind the old Groucho Marx line "Hey, you big bully, stop picking on that little bully!"

The president should be advised, meanwhile, that there is a spot where America has been pushed around. He could stir the red blood of all patriotic Americans by unfurling the banner "Remember Wrangel Island."

It's an issue made to order for Ronald Reagan. By recognized rules of international land claims, Wrangel Island belongs to the United States. It was discovered by an American, and the first permanent settlement was established by Americans. Yet the Russians — during the administration of Reagan's favorite president, Calvin Coolidge — sent a gunboat to take the island and kick the American settlers out.

From time to time, some weebegone soul has cried out for the United States to reclaim the island. It sits in icebound splendor far above the Arctic Circle, inhabited mainly by polar bears, Arctic foxes, seals, lemmings — and a few frostbitten Soviet scientists.

The island's strategic value is undeniable: It's only 83 miles from the Siberian mainland, even closer to the Soviet Union than communist Cuba is to Florida. It would make a dandy site to install some bewhiskered demagogue to assail and annoy the Soviet Union from across the ice.

One of the strengths of Wrangel Island as a confrontational issue is the near-hopeless confusion that surrounds it. Authorities can't even agree on its size. The Columbia Encyclopedia gives it 1,740 square miles; the World Book 2,300, and the State Department, in a typical straddle, says 2,000. At any rate, it seems to be substantially bigger than Rhode Island, so it's not to be sneezed at.

The island was named for a Russian explorer, Baron Ferdinand Petrovich von Wrangel, who guessed that it might be out there somewhere beneath the ice. It was first sighted by an unidentified British sailor in 1849, and was named in Wrangel's honor by an American whaling captain in 1867.

But the actual, undisputed legal discovery — landing, that is — was accomplished by an American in 1881. Capt. Calvin Hooper of the U.S. Revenue Cutter Service (now known as the Coast Guard) rowed ashore from the USS Corwin, verbally claimed the island for the United States and planted an American flag to establish sovereignty. His record of the event was later published as Senate Executive Document No. 204.

Hooper was obviously an empire builder in the heroic mold. He was commander of the Bering Sea Patrol at the time. Yet Wrangel Island is hundreds of miles north of the Bering Straits, which separate Alaska from Siberia. Geography is understandably hazy in the icy Arctic expanse, but Wrangel Island is usually described as between the East Siberian and Chuckchee seas. Hooper didn't explain what he was doing so far off his beat, and nobody bothered to ask.

Three weeks after Hooper proclaimed the island American territory, another U.S. ship, the Rodgers, sent a landing party ashore. They made an extensive survey of the place and found the flag Hooper had planted.

After this brief burst of traffic, Wrangel Island was left to the polar bears until 1911, when two Russian icebreakers landed and erected a 35-foot beacon.

But they quickly abandoned the island.

Three years later, a stronger American claim to Wrangel was established. An American explorer and Harvard man, Vilhjalmur Stefansson, became trapped in the ice floes and literally bumped into the island. He was in the midst of a five-year expedition.

Stefansson's ship, the *Karluq*, was manned by a largely Canadian crew, and when the 35-year-old explorer hiked over the ice to Siberia for help, the crew he left behind claimed the island for England and King George. But after six months in the place, they were only too happy to leave when an American rescue ship showed up.

In 1916, Czar Nicholas II issued a proclamation claiming Wrangel and the entire Arctic for Russia. The United States paid no attention.

When Stefansson returned to civilization in 1918, he touted Wrangel Island enthusiastically as a breeding ground for Arctic wildlife. In 1921, he landed on the island, set up a hunting and trapping colony and departed. He sent a supply ship to administer to the colony, but it was delayed by ice. When it finally arrived in September 1923, only an Eskimo woman remained alive.

Nevertheless, the little colony was revived, and the following

year, three Coast Guard ships arrived with supplies for the thriving fur enterprise.

No sooner had the Coast Guard departed than a Soviet gunboat, *Red October*, steamed up to Wrangel and forcibly evicted the Americans. That ended the American occupation.

In 1941, the Soviets established a small scientific community on the island. It is still there.

Reagan could assure his place in history by taking the island back from the Russians.

A timid policy toward Wrangel Island should only encourage the Russians to sneak up on another Arctic outpost, known as Svalbard, which is the legal property of the Norwegians.

Declares a top-secret Central Intelligence Agency assessment shown to my associate Dale Van Atta: "The Soviets are undoubtedly aware of growing Norwegian concern about the situation of Svalbard and the increasing inclination to adopt a tough line on Soviet encroachments. They appear to be testing Norway's willingness to enforce the sovereignty to which it is legally entitled..."

Maybe all the White House needs is to rework the old Reagan slogan on the Panama Canal to fit Wrangel Island: "We found it; we settled it; it's ours."

Jack Anderson is a syndicated columnist based in Washington.

THE UNITED STATES CLAIM TO WRANGEL ISLAND: THE DORMANCY SHOULD END

At the base of international law lies the notion that a State occupies a defined part of the earth's surface.¹ Upon this foundation international law prescribes the legal modes of territorial acquisition,² among which discovery, occupation, conquest, cession, accretion, assimilation, and prescription have been accepted under customary international law.³ The rules governing these modes are derived from two considerations: the prior legal status of the territory, and the way in which the claimant state obtained its possession and control.⁴

This Comment evaluates the competing United States and Soviet claims to Wrangel Island. Wrangel Island is located eighty nautical miles north and 160 nautical miles west of the Siberian coast.⁵ It is a habitable island surrounded by frozen seas. Presently the island hosts a small Russian colony engaged in scientific research.⁶ It is hoped that the legal arguments presented here will facilitate a reconsideration of the presently dormant United States claim to the Island.

As far back as 1925 Wrangel Island was considered by explorers to be a strategic site for an air base, as the shortest air routes between the industrial centers of the world cross through the Arctic Circle.⁷ For years conflicting claims to this island by the world's two super-powers have been unresolved. The Soviet's have maintained possession since 1924 when they forcibly removed a United States colony, and for the past fifty-six years the United States' claim to the island has remained dormant. In light of recent United

1. J.L. BRIERLY, *THE LAW OF NATIONS* 163 (1963).
2. I G. HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 3916 (1940).
3. C. RHYNE, *INTERNATIONAL LAW* 102 (1971); J. L. BRIERLY, *LAW OF NATIONS*, 91-102 (6th ed. 1963); W. BISHOP, *INTERNATIONAL LAW* 400-21 (1971); 2 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 1028-1231 (1971); G. VON GLAHN, *LAW AMONG NATIONS* 273 (1976).
4. M. SORENSON, *MANUAL OF PUBLIC INTERNATIONAL LAW* 321 (1968).
5. I G. HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 464 (1940) [hereinafter cited as HACKWORTH].
6. V. STEPHANSSON, *THE FRIENDLY ARCTIC* 693-96 (1969); Y. SEMYONOV, *SIBERIA* 385 (1963).
7. D.M. LE BOURDAIS, *NORTHWARD ON THE NEW FRONTIER* 16 (1931) [hereinafter cited as LE BOURDAIS]. See also *ASIA MAGAZINE* 291 (April 1925).

CALIFORNIA WESTERN INTERNATIONAL SCHOOL OF LAW
VOLUME 11, WINTER 1981
EXHIBIT D

States-Soviet conf
land has acquired
reexamination of c

United States-
velopment and dep
tion of a SALT II
future, the issues di
tial utility of Uni
Throughout the U
nents of the treaty
inadequate.¹⁰ They
listening post in Ir
monitored, greatly
This loss of the Ira
United States to re
opportunity to reeva
Island.

Article XV of
methods for verifyi
technical means of
satellites, land base
ships and aircraft.¹³
procedures consists

8. Secretary of State
INT'L LEGAL MATS. 1119
strengthen strategic stability
tion to the national security

9. Secretary of State
ment, June 21, 1979, *United*
ment, Vienna, June 18, 197
LEGAL MATS. 1119 (1979) [h
forth important rules which
Treaty. To verify complian
as national technical means
photo-reconnaissance satell
based on ships and aircraft

10. Lall, *Salt and the C*
Lodal, *SALT II and Ameri*

11. Lall, *supra* note 10.

12. Salt II Selected Do
Treaty states that: "For the
sions of the Treaty, each par
nal in a manner consistent w

13. See note 9 *supra*.

14. *Id.*

States-Soviet confrontations and Soviet nuclear deployment, the island has acquired a mounting strategic significance supporting a reexamination of claims to this territory.

United States-Soviet concern over the dangers of nuclear development and deployment have been manifested by the negotiation of a SALT II Treaty.⁸ Although SALT II has an uncertain future, the issues discussed during negotiations illustrate the potential utility of United States sovereignty over Wrangel Island.⁹ Throughout the United States Senate ratification hearings opponents of the treaty contended that verification arrangements were inadequate.¹⁰ They emphasized that the loss of the United States' listening post in Iran, where Soviet missile deployment had been monitored, greatly reduces United States verification capabilities.¹¹ This loss of the Iranian listening post provides the impetus for the United States to reassess its verification capabilities and a unique opportunity to reevaluate the United States policy towards Wrangel Island.

Article XV of the Salt II Agreement enumerated the various methods for verifying compliance with the Treaty's terms.¹² The technical means of verification consist of photo-reconnaissance satellites, land based radar, and other intelligence systems based on ships and aircraft.¹³ An integral part of United States verification procedures consists of land based radar stations.¹⁴ Geographically,

8. Secretary of State Cyrus Vance, Letter of Submittal June 21, 1979, *reprinted in* 18 INT'L LEGAL MATS. 1119 (1979). "I firmly believe that SALT II Treaty will measurably strengthen strategic stability and help reduce the risk of nuclear war. It is a major contribution to the national security of the United States."

9. Secretary of State Cyrus Vance, Letter to President of Submittal of SALT II Agreement, June 21, 1979, United States Department of State Publication 8984, SALT II Agreement, Vienna, June 18, 1979, Selected Documents No. 12A, at 3-50, *reprinted in* 18 INT'L LEGAL MATS. 1119 (1979) [hereinafter cited as Salt II Selected Documents]. "Article XV sets forth important rules which facilitate verification of compliance with the provisions of the Treaty. To verify compliance, each party will use intelligence gathering capabilities known as national technical means. These include highly sophisticated technical equipment such as photo-reconnaissance satellites, land based radars, radar and other intelligence systems based on ships and aircraft which we use to monitor Soviet missile tests."

10. Lall, *Salt and the Coming Public Debate*, 65 WOMAN LAW. J. 29 (1979). *See also* Lodal, *SALT II and American Security*, 57 FOR. AFF. 245 (1978-79).

11. Lall, *supra* note 10, at 29.

12. Salt II Selected Documents, *supra* note 9, at 1155-56. Article XV of the SALT II Treaty states that: "For the purposes of providing assurance of compliance with the provisions of the Treaty, each party shall use national technical means of verification at its disposal in a manner consistent with the generally recognized principles of international law."

13. *See* note 9 *supra*.

14. *Id.*

Wrangel Island penetrates 160 miles into the Russian territorial sphere.¹⁵ An American radar station here would increase the United States' ability to monitor nuclear deployment in the Soviet Union and reduce the risk of nuclear war.¹⁶

In examining the United States' rights to Wrangel Island this Comment utilizes the classical analysis of territorial acquisition under international law. First, the historical background of Wrangel Island will be discussed and the competing claims to the Island will be identified. The body of the Comment will analyze these claims in connection with the accepted modes of territorial acquisition. The United States and Soviet claims will then be evaluated for their strengths and weaknesses under international law. The reasons for examining the United States title to Wrangel Island will be reiterated before concluding with suggestions on implementing the United States claim.

I. HISTORICAL BACKGROUND OF WRANGEL ISLAND

The first recorded mention of Wrangel Island came in 1823 when Baron von Wrangell, a Russian explorer postulated the existence of the Island.¹⁷ First sighted in 1849 by a British ship,¹⁸ the island was later named after the Russian explorer by the captain of an American whaling ship in 1867.¹⁹ During this same year, the United States and Russia entered into a treaty which ceded the Alaskan territory to the United States. However, there was no mention of Wrangel Island in the treaty.²⁰

It was not until 1881 that the first recorded landing and claim to Wrangel Island was made by Captain Calvin Hooper of the United States Revenue Cutter Service (now the United States Coast Guard).²¹ Hooper was captain of the *Corwin* and commander of

15. See note 5 *supra*.

16. See note 8 *supra*.

17. Hooper, *The Discovery of Wrangel Island*, reprinted in 24 OCCASIONAL PAPERS OF THE CALIFORNIA ACADEMY OF SCIENCES 24 (February 21, 1956) [hereinafter cited as Hooper].

18. Letter by William Phillips for the Secretary of State to the Ambassador to Great Britain, Sept. 12, 1922, reprinted in 1 FOREIGN RELATIONS DOCUMENTS 281 (1923).

19. *Id.*

20. Cession of Alaska, done, June 20, 1867, 15 Stat. 539, T.S. No. 301 [hereinafter cited as Cession of Alaska].

21. "As soon as the official shore party had completed the formalities of discovery, a careful search was made along the shore in each direction for evidences of a landing of any kind. After several hours of searching it became impossible to remain at anchor any longer. Leaving an American flag flying and a complete record of their visit the *Corwin* now worked

the Bering Sea F Hooper's discove Executive Docun States vessel, the American flag le three weeks and ing the only map years.²³

No other lan when the crews o *gach* went ashore Russians abandon

In 1914 the Vilhjalmur Steph Wrangel Island²⁶ the island's shore by foot to Siberia nadian, and durin the British Empir an American ship

In 1916 the which they claime "sector" theory. W claimed.³⁰

her way out to the lead an American Calvin L. F was the first to set foot c Hooper, *supra* note 17, at 22. *Id.* at 11.

23. V. STEPHANSSON [cited as STEPHANSSON].

24. *Id.* at 395; GEOG LONDON (Dec. 1923).

25. STEPHANSSON, *supra*.

26. *Id.* at 24.

27. *Id.*

28. *Id.* at 25.

29. *Id.*

30. *Id.* at 22-23.

The Imperial Govern ing part of the emp Oujedinenia, which w near the Asiatic coast continental shelf of S

Id.

the Bering Sea Patrol. The United States Congress acknowledged Hooper's discovery by publishing his submitted report as Senate Executive Document No. 204.²² Three weeks later another United States vessel, the *Rodgers*, landed at Wrangel Island and found the American flag left by Hooper. The crew occupied the Island for three weeks and carried out an extensive geographic survey, making the only map of the Island available for the next thirty-three years.²³

No other landing on Wrangel Island was recorded until 1911²⁴ when the crews of two Russian ice-breakers, the *Taimuir* and *Vaigach* went ashore. After constructing a thirty-five foot beacon, the Russians abandoned the island.²⁵

In 1914 the crew of the *Karluk*, one of the three boats in a Vilhjalmur Stephansson geological expedition, was marooned on Wrangel Island²⁶ when the ice trapped their boat and carried it to the island's shores.²⁷ The captain, an American citizen, travelled by foot to Siberia for help. The remaining crew members were Canadian, and during their six-month wait they claimed the Island for the British Empire.²⁸ They did, however, voluntarily leave when an American ship came to their rescue.²⁹

In 1916 the Russians issued a diplomatic proclamation in which they claimed sovereignty over certain Arctic regions under a "sector" theory. Wrangel Island was within one of the regions they claimed.³⁰

her way out to the lead . . . outside the Soviet Union, geographers and historians agree that an American Calvin L. Hooper, commanding the United States Revenue Cutter, *Corwin*, was the first to set foot on this arctic wasteland and claim it in the name of his country." Hooper, *supra* note 17, at 6-7.

22. *Id.* at 11.

23. V. STEPHANSSON, *THE ADVENTURE OF WRANGEL ISLAND 20* (1925) [hereinafter cited as STEPHANSSON].

24. *Id.* at 395; *GEOGRAPHICAL JOURNAL OF THE ROYAL GEOGRAPHICAL SOCIETY OF LONDON* (Dec. 1923).

25. STEPHANSSON, *supra* note 23, at 22.

26. *Id.* at 24.

27. *Id.*

28. *Id.* at 25.

29. *Id.*

30. *Id.* at 22-23.

The Imperial Government takes this occasion to set forth that it considers as making part of the empire the islands Henriette, Jeanette, Bennett, Herald and Oujedinenia, which with the New Siberian Islands, Wrangel and others situated near the Asiatic coast of the Empire, form an extension toward the north of the continental shelf of Siberia.

Id.

Ignoring the Russian claims the *Silver Wave*, an American sloop, landed at Wrangel Island in 1921. This expedition, promoted by Stephansson, set out to further explore the resource and airbase potential of Wrangel Island.³¹ Unfortunately, heavily frozen waters surrounding the Island delayed their supply ship, the *Donaldson*, until September, 1923, at which time the only survivor of the *Silver Wave* expedition was an Eskimo woman. The *Donaldson* left ashore a group of American whites and American Eskimos to colonize the Island.³² This colony, another Stephansson enterprise, began trapping, hunting, and prospecting for a profit.³³ Early in 1924 Stephansson sold the Arctic Exploration and Development Company along with his economic rights on Wrangel Island to Carl Lomen, an American citizen. Lomen, who became the new employer of the American colony on Wrangel Island, re-asserted America's claims, assumed supervision over the fur trapping, and began planning for walrusing and sealing operations.³⁴ In an attempt to provide supplies for the colony³⁵ three American Coast Guard vessels tried in vain to penetrate the frozen waters and reach the Island early in the summer of 1924.³⁶ Later that summer a Soviet gunboat, the *Red October*, arrived at Wrangel Island and forcibly removed the American colony.³⁷ The United States government did not immediately object to or confront the Soviet Union concerning the incident. Four years later, however, the United States government expressly rejected the Soviet "sector" theory as a basis for acquiring Arctic territory.³⁸

The next recorded expedition to Wrangel Island was made in 1935 by a Soviet ship, the *Krasin*, led by Captain Katmanov.³⁹ By

31. *Id.* at 67-90.

32. *Id.* at 298.

33. *Id.*

34. *Id.* at 302.

35. New York Times, Oct. 18, 1924; STEPHANSSON, *supra* note 23, at 307.

36. *Id.*

37. *Id.*

38. HACKWORTH, *supra* note 5, at 464, contains excerpts from a letter from Secretary of Navy Adams to Secretary of State Stimson, Sept. 23, 1929, regarding the Department of the Navy's reaction to the "Sector Theory": partitioning the Arctic region into sectors of five contiguous countries: United States, Canada, Denmark, Norway, Russia. It stated

The course of action proposed . . .

(b) contains no justification for claiming sovereignty over large areas of the world's surface

(c) violated the long recognized custom of establishing sovereignty over territory by right of discovery.

39. "He succeeded in passing into difficult waters surrounding Wrangel and Herald Islands. The expedition covered areas west and east of Wrangel. Better knowledge of

1941 the Soviet it has been occ White Russians

Both the So torical events in quently, each significance und international law

The events are the 1822-18 Alaskan Treaty *Vaigach*, a 191 over the Island

The United through the disc landing of the A American occup nomic rights in l theory in 1928.

II. APPLICA MAD.

The founda this context are e national Court o tomary internati writing, and state

Wrangel and Herald Is undertaking." T.A. TA

40. See note 6 *sup*

41. The accepted : cretion, cession, conque ing text.

42. Statute of the I Nations, done June 26.

1. The Court wh such disputes
a) internatio rules expr
b) internatio
c) general pr
d) subject to the most means for

43. *Id.*

1941 the Soviets had set up scientific laboratories on the Island and it has been occupied by a small colony of Eskimos, Chukchi, and White Russians ever since.⁴⁰

Both the Soviet Union and the United States may look to historical events in support of their claims to Wrangel Island. Consequently, each nation's claims will be analyzed for their legal significance under the modes of territorial acquisition in customary international law.⁴¹

The events on which the Soviet Union may base their claim are the 1822-1823 Arctic expeditions of Baron von Wrangell, the Alaskan Treaty of 1867, the 1911 landing of the *Taimuir* and the *Vaigach*, a 1916 territorial proclamation, and Russian influence over the Island since 1924.

The United States may justify its claim to Wrangel Island through the discovery by Captain Hooper in 1881, the subsequent landing of the *Rodgers*, the marooning of the *Karluk* in 1914, the American occupation in 1923, the purchase of property and economic rights in 1924, and the United States rejection of the "sector" theory in 1928.

II. APPLICATION OF INTERNATIONAL LAW TO THE CLAIMS MADE BY RUSSIA AND THE UNITED STATES

The foundations and sources of international law utilized in this context are enumerated in Article 38 of the Statute of the International Court of Justice.⁴² These sources consist of treaties, customary international law, principles of international law, judicial writing, and state practice.⁴³

Wrangel and Herald Islands as well as of the waters surrounding them was the result of the undertaking." T.A. TARACOUZIO, SOVIETS IN THE ARCTIC 100 (1938).

40. See note 6 *supra*.

41. The accepted modes of territorial acquisition have been discovery, occupation, accretion, cession, conquest, assimilation, and prescription. See note 3 *supra* and accompanying text.

42. Statute of the International Court of Justice. Annexed to the Charter of the United Nations, done June 26, 1945. 59 Stat. 1055, T.S. No. 993 25 (June 26, 1945). Article 38 states:

1. The Court whose function is to decide in accordance with international law such disputes that are submitted to it shall apply:
 - a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b) international custom, as evidence of a general practice accepted as law;
 - c) general principles of law recognized by civilized nations;
 - d) subject to the provisions of Article 59, judicial decisions and teaching of the most highly qualified publicists of various nations, as subsidiary means for determination of rules of law.

43. *Id.*

In the absence of a treaty the accepted means of territorial acquisition come under customary international law.⁴⁴ An analysis at this level must include considerations of the legal status of the territory and the way in which possession was obtained.⁴⁵ In addition, the longevity of some of the claims to Wrangel Island makes it necessary to apply the legal doctrines of several time periods. In other words, when discussing a particular claim, its significance must be appreciated in light of the law contemporary with the claim, as well as with present legal doctrine.⁴⁶

A. Discovery

There are no treaties between the Soviet Union, the United States, or any other nation which clarify the discovery rights over Wrangel Island. Customary legal doctrine must therefore be examined to determine the legitimacy of proposed claims. Historically and customarily discovery has been given legal significance in territorial claims⁴⁷ and the formal taking of possession—the symbolic act⁴⁸—has generally been regarded as being sufficient to establish an immediate right of sovereignty over areas claimed.⁴⁹ This was an accepted principle under this customary mode of territorial acquisition.⁵⁰

As far back as the sixteenth century Portuguese discoveries were characterized by the construction of physical signs of possession, usually without any formal recorded declarations.⁵¹ In 1523 Charles V of Spain, in a letter to the Spanish Ambassador in Portugal, stated that taking possession of discoveries by explorers called in practice for nothing more than symbolic formalities. Effective occupation or control was unnecessary.⁵² In France, the erection of a cross or pillar bearing a metal plate with some suitable inscription

44. See note 3 *supra*.

45. See note 4 *supra*.

46. I G. SCHWARZENBERGER, INTERNATIONAL LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 290 (1957).

47. A. KELLER, O. LISSITZYN, & F. MANN, CREATION OF RIGHTS OF SOVEREIGNTY THROUGH SYMBOLIC ACTS 4 (1938) [hereinafter cited as KELLER, LISSITZYN & MANN]. Discovery consists of a purposeful act of exploration or navigation accompanied by a visual apprehension, a landing, and some other marking or recording such visit, but not acts expressive of possession.

48. *Id.* at 148.

49. *Id.*

50. *Id.*

51. *Id.* at 28-32. See also Republication of the Ambassador of Portugal (June 7, 1562) GREAT BRITAIN CALENDAR OF STATE PAPERS, Foreign Series, at 75 (1562).

52. KELLER, LISSITZYN & MANN, *supra* note 47, at 34.

was deemed quit area.⁵³ In 1776 C superiors to take England. In uniri marks and inscrip

Recent write gave an 'inchoate establish effective excluded from oc discovery gave a principles postula covery.

The first chrc the Russian Polar 1822-1823. Howe sighted the Island covery and Euro Wrangell would Wrangel Island.⁵⁷ that "with a painf obstacles with wh discovering the la

The next claim upon their theory under the terms of There is, however strued as expressly

53. *Id.* at 131.

54. *Id.* at 96. See a His Majesty's Sloop and

55. H. KELSEN, PRIN

56. Hooper, *supra* n Wrangell had actually dis self in his book. THE NA 1822, AND 1823, wrote:

with a painful feelin nature has opposed believe to exist. . . w would have been abs

57. Accepted modes quest, cession, accretion, any of these modes. See

58. See note 56 *supra*.

was deemed quite sufficient to establish valid title to a claimed area.⁵³ In 1776 Captain Cook received secret instructions from his superiors to take possession of any lands he might discover for England. In uninhabited areas he was instructed to leave "proper marks and inscriptions as first discoverers and possessors."⁵⁴

Recent writers have maintained that these acts of discovery gave an 'inchoate' title to territory; during the time necessary to establish effective possession after discovery, other states are legally excluded from occupying the territory concerned.⁵⁵ Historically, discovery gave an immediate title to territory, whereas modern principles postulate an uninterrupted right to acquire title after discovery.

The first chronological claim to Wrangel Island originates with the Russian Polar Seas expedition led by Baron von Wrangell in 1822-1823. However, Baron von Wrangell neither landed on, nor sighted the Island on this voyage.⁵⁶ Under customary acts of discovery and European state practice the activities of Baron von Wrangell would appear insufficient to support a legal claim to Wrangel Island.⁵⁷ Wrangell conceded this by his own admission that "with a painful feeling of the impossibility of overcoming the obstacles with which nature opposed us, our last hope vanished of discovering the land which we yet believe to exist."⁵⁸

The next claim to Wrangel Island, again a Soviet one, is based upon their theory that the Island was implicitly granted to them under the terms of 1867 Treaty ceding Alaska to the United States. There is, however, no language in the treaty which could be construed as expressly or impliedly granting Russia dominion over the

53. *Id.* at 131.

54. *Id.* at 96. See also "Secret Instructions For Captain James Cook, Commander of His Majesty's Sloop and Resolution," Navy Records Society III, 357-61.

55. H. KELSEN, PRINCIPLES OF INTERNATIONAL LAW 214-15 (1952).

56. Hooper, *supra* note 17, at 24. Many years later the Soviets claimed that Lieutenant Wrangell had actually discovered the island but unfortunately for their claim. Wrangell himself in his book, THE NARRATIVE OF A VOYAGE TO THE POLAR SEAS IN THE YEARS 1821, 1822, AND 1823, wrote:

with a painful feeling of the impossibility of overcoming the obstacle with which nature has opposed us, our hopes vanished of discovering the land which we yet believe to exist. . . we had done what duty and honor demanded, further attempts would have been absolutely hopeless and I decided to return.

57. Accepted modes of territorial acquisition consist of: discovery, occupation, conquest, cession, accretion, and prescription. Baron von Wrangell's expedition did not satisfy any of these modes. See note 3 *supra* and accompanying text.

58. See note 56 *supra*.

lands in the vicinity of Wrangel Island.⁵⁹ Article I of the treaty, the pertinent provision, merely sets forth the limits of the territory expressly ceded to the United States.⁶⁰ Russia was not then advocating any claim to Wrangel Island nor was the United States yielding any rights to subsequently claim the Island. This treaty, which solely concerns the possession of the Alaskan Territory, is still in force today.⁶¹

The first United States claim to Wrangel Island was established by the landing of Captain Hooper in 1881.⁶² Hooper, upon discovery, claimed the Island as a United States possession by manifesting the symbolic formalities accepted under both customary international law and the historic practices of European nations.⁶³ His acts of discovery consisted of planting the American flag, making a proclamation of United States possession, and leaving a complete record of the landing.⁶⁴

In 1931 discovery was held to give valid territorial title in the international community when a dispute between France and Mexico concerning the possession of Clipperton Island was arbitrated by the King of Italy.⁶⁵ The King ruled in favor of the French, supporting their territorial claim on the basis of discovery.⁶⁶ The facts are as follows: in 1851 a French naval officer sailed by the coast of Clipperton Island and drew up an instrument claiming the island for France. Crew members landed on the island and recorded their findings. No record of any other occupation was made until 1897 when the island became inhabited by Mexicans claiming an ancient right to the island. The Mexicans contended that the island was first discovered by the Spanish and that the title passed to Mexico as the successor of Spain.⁶⁷ After years of dispute between Mexico and France the question of sover-

59. Cession of Alaska, *supra* note 20.

60. *Id.* Article I: The western limit within which the territories and dominion conveyed, are contained, pass through a point in Behring's [sic] straits on the parallel of sixty-five degrees thirty minutes north latitude. . . ."

61. *Id.*

62. Hooper, *supra* note 17, at 4-6. "Captain Hooper's sailing instructions, his preparations, and the details of the voyage which led to the discovery of the new land in the Arctic." See also notes 21 and 22 *supra*.

63. See notes 47-54 *supra*.

64. See note 18 *supra*.

65. Arbitral Award of His Majesty the King of Italy on the Subject of the Differences Relative to the Sovereignty over Clipperton Island (France-Mexico) Jan. 28, 1931, reprinted in 26 AM. J. INT'L L. 390 (1932).

66. *Id.*

67. *Id.*

eighty over the Italy.⁶⁸

When the Spanish discovered the King's discovery, its appearance must be considered completed."⁶⁹

The facts analogous to the Hooper's landing on an uninhabited island of possession subsequently left the just as the French claim. international law would give the

The Soviet international law out that custom. in interstate relations discovery as an inhibited in the Soviet and exploration norm of international observing that the custom of di

68. *Id.*

69. *Id.* at 393.

70. R. ERICKSON [hereinafter cited as E

71. G.I. TUNKIN, TUNKIN]

72. ERICKSON, *supra* gosvdarstva; prava.

73. *Id.* at 127, *reprinted* (Komosomo Truth), J. Truth) stated the Rus-

Our country is the made in the Soviet the right of priority remains eternally

74. TUNKIN, *supra*.

eighty over the island was submitted for arbitration by the King of Italy.⁶⁸

When the Mexicans could not bring forth any proof of the Spanish discovery, the King ruled in favor of France. In his decision the King stated: "From the first moment when a state makes its appearance in an uninhabited territory the taking of possession must be considered as accomplished and the occupation thereby completed."⁶⁹

The facts surrounding the claims to Clipperton Island are analagous to those relating to the discovery of Wrangel Island. Hooper's landing on Wrangel Island constituted an "appearance" on an uninhabited territory; his landing represented the first taking of possession of the island. The fact that he and his crew subsequently left the Island does not diminish the United States claim, just as the French departure from Clipperton Island did not diminish their claim. According to this judicial application of customary international law, Hooper's discovery of Wrangel Island in 1881 would give the United States legal title to the Island.

The Soviet Union also accepts custom as a primary source of international law.⁷⁰ Tunkin, the prominent Russian jurist points out that customary international law is constantly being referred to in interstate relations⁷¹ and that Soviet jurists support the custom of discovery as an accepted means of acquiring territory.⁷² This is exhibited in the Soviet claim to Antarctica which is based on discovery and exploration.⁷³ According to Tunkin, when "recognizing a norm of international law, a state takes upon itself the obligation of observing that rule of conduct."⁷⁴ Since the Soviets have accepted the custom of discovery and have implemented it in their own state

68. *Id.*

69. *Id.* at 393.

70. R. ERICKSON, INTERNATIONAL LAW AND THE REVOLUTIONARY STATE 27 (1972) [hereinafter cited as ERICKSON].

71. G.I. TUNKIN, THEORY OF INTERNATIONAL LAW 113 (1974) [hereinafter cited as TUNKIN].

72. ERICKSON, *supra* note 70, at 260, quoting from Akademii nauk SSSR, Institut gosvdarstva: prava.

73. *Id.* at 127, reprinted from "Russians Discovered Antarctica," Komsomolskaya Pravda (Komosomo Truth), Jan. 28, 1950, at 4. In 1950 the Komsomolskaya Pravda (Komosomo Truth) stated the Russian claim to Antarctica:

Our country is the lawful heir to the outstanding Russian geographical discoveries made in the South Polar Seas at the beginning of the 19th Century. Historically, the right of priority in the discovery and exploration of a number of Antarctic lands remains eternally with Russia and, by succession, with the U.S.S.R.

74. TUNKIN, *supra* note 71, at 124.

practice, they are expected to extend this custom to other nations as well. This includes accepting the United States claim to Wrangel Island on the basis of discovery.

Other nations, including the United States have also accepted discovery as a valid means of territorial acquisition. An example of this is the Guano Islands Act of 1856, in which the United States claimed certain islands in the Jamaica Strait.⁷⁵ Although the United States has never occupied some of the islands, it still maintains its rights on the basis of discovery.⁷⁶

The French have claimed part of Antarctica (Adelie Land) based on its discovery in 1840 by French explorer Dumont d'Urville.⁷⁷ This claim was formally announced to the United States in 1939 through a dispatch from the French foreign office to the Department of State.⁷⁸ Canada presently claims sovereignty over many islands north of mainland North America. Some claims are based on occupation, others are based on discovery and exploration.⁷⁹

A United States claim to Wrangel Island based on discovery is consistent with, and supported by, principles of international law, judicial awards and historic European, French, Canadian, Russian, and United States state practices.

B. Occupation/Abandonment

States can expect that if they first discover and then peacefully occupy a piece of territory with the intent of claiming it, that they have a legal right to subject it to their sovereignty.⁸⁰ The United States claim to Wrangel Island was therefore strengthened by the

75. The Guano Island Acts of 1856. 48 U.S.C. § 1411 (1976):

Whenever any citizens of the United States discovers a deposit of guano on any island, rock or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof and occupies the same, such island, rock, or key, may at the discretion of the President, be considered appertaining to the United States.

76. 1975 DIG. U.S. PRAC. INT'L L. 93. A memorandum by Gordon B. Baldwin Counselor on International Law Department of State, Aug. 7, 1975.

The question of what evidence suffices to show continuing claims to an island claimed in the 'Guano Act' has arisen in connection with Navassa Island an uninhabited isle in the Jamaica Straits. In 1906 the State Department insisted that; internationally speaking the United States retained its claim despite the failure to exploit or physically occupy it.

77. HACKWORTH, *supra* note 5, at 460 (taken from a letter from Counselor of Embassy (Wilson) to Secretary Hull no. 3896 Feb. 24, 1939).

78. *Id.*

79. J. SATUR, *THE ARCTIC BASIN* 10 (1969) (Arctic Institute of North America).

80. ERICKSON, *supra* note 70, at 128. See also notes 49-54 *supra*.

1881 landing an
can naval ship.

Under cust
ereignty by the
isdiction of an
United States, w
land based on it
ble of extending
the Permanent (C
rial dispute betw
Legal Status of
that case the Co
tion involves tw
eign, and some

The degree
with the size, cl
ited.⁸⁴ For exam
manent settleme
approach was e
rights to Denma
stance in which
Island of Palma
Huber, the arbit

Manifestatio
according to
in principle, s
ment on every
nity compat

81. STEPHANSSON

82. G. SCHWARZE
after cited as SCHWAR

83. *Legal Status of*
ANNUAL DIGEST AND RE

after cited as ANNUAL

84. SCHWARZENB

85. O. SVARLIEN,
cited as SVARLIEN]; con

regions.

The relaxation she
dition for the per
establish that by se
it claims to own.

ERICKSON, *supra* note
tional law yields a val

86. ANNUAL DIGE

1881 landing and occupation by the crew of the *Rodgers*, an American naval ship.⁸¹

Under customary international law a state may extend its sovereignty by the effective occupation of territories not under the jurisdiction of any other subject of international law.⁸² Thus the United States, which maintained legal jurisdiction over Wrangel Island based on its discovery claim, was the only nation legally capable of extending its sovereignty on the basis of occupation. In 1933, the Permanent Court of International Justice adjudicated a territorial dispute between Norway and Denmark in a case denoted as the *Legal Status of Eastern Greenland (Eastern Greenland Decision)*. In that case the Court indicated that territorial title based on occupation involves two elements: the intention and will to act as sovereign, and some actual exercise or display of authority.⁸³

The degree of "effectiveness" required in occupation varies with the size, climate, and extent to which the territory is inhabited.⁸⁴ For example, it has been asserted that the necessity of permanent settlements in the polar regions should be relaxed.⁸⁵ This approach was expressed by the Court in its award of territorial rights to Denmark in the *East Greenland Decision*.⁸⁶ Another instance in which the requirements of occupation were relaxed is the *Island of Palmas* case. In awarding the Island to Holland, Max Huber, the arbitrator, stated:

Manifestations of territorial sovereignty assume different forms according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact, at every moment on every point of territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily

81. STEPHANSSON, *supra* note 23, at 20.

82. G. SCHWARZENBERGER, *THE MANUAL OF INTERNATIONAL LAW* 115 (1976) [hereinafter cited as SCHWARZENBERGER].

83. *Legal Status of Eastern Greenland*, [1933] P.C.I.J., cited in 6 H. LAUTERPACHT, *ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES* 97 (1931-1932) [hereinafter cited as ANNUAL DIGEST].

84. SCHWARZENBERGER, *supra* note 82, at 115.

85. O. SVARLIEN, *AN INTRODUCTION TO THE LAW OF NATIONS* 177 (1955) [hereinafter cited as SVARLIEN]; concerning the relaxing of requirements for territorial claims in the polar regions.

The relaxation should be confined to the waiving of settlements as a necessary condition for the perfecting of a right of sovereignty, provided a claimant state may establish that by some other process it is in a position to exercise control over what it claims to own.

ERICKSON, *supra* note 70, at 128, states that *minimum control plus discovery* under international law yields a valid claim.

86. ANNUAL DIGEST, *supra* 83, at 99.

differ accordingly as inhabited or uninhabited regions are involved.⁸⁷

Wrangel Island is surrounded by frozen seas and before airflight was barely accessible. For this reason, the fact that the Island had not been continuously occupied by the United States after its discovery should not diminish the United States' sovereign rights established by Hooper's landing. Additional support for the United States' claims to Wrangel Island based on a limited occupation after discovery can be found in the Clipperton Decision.⁸⁸

In a 1922 memorandum from their Embassy, the Soviets specified what they believed to be the occupational requirements for sovereignty over Wrangel Island. They contended that the region was dangerous and inaccessible and unfit for permanent habitation. They further held that acquisition of unoccupied territory through "use or settlement"⁸⁹ need not be applied to this Island.⁹⁰ The Soviet policy towards Antarctica is consistent with the views expressed in the 1922 Memorandum and the Soviet interpretation of international law. Due to the climate of the South polar region, Soviet scholars have rejected the notion that "effective occupation" is necessary to maintain title to Antarctica.⁹¹ These Soviet policies and statements support the United States claims to Wrangel Island based on the limited occupation by the crews of the *Corwin* and the *Rodgers*.

The State practice of Norway in the polar region also supports territorial title based on limited occupation. In 1927 the Norwegian Government by Royal Decree, claimed Boviet Island in the South Atlantic.⁹² The claim is based on a brief Norwegian occupation and the hoisting of the Norwegian flag.⁹³ Another example of "limited occupied" yielding territorial title in the polar regions comes from the British Empire's claims in 1923 to a large number of Islands in the Ross Sea.⁹⁴ They based these South Atlantic

87. Island of Palmas Arbitration case. (United States-Netherlands) (Perm. Ct. Arb. 1928) cited in 4 H. LAUTERPACHT, ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES 105-06 (1927-1928). Wrangel Island, which is surrounded by frozen seas and maintains a harsh climate made it difficult to reach and inhabit during the late 19th and early 20th centuries.

88. See notes 65-69 *supra* and accompanying text.

89. 1 DEPT. OF STATE, FOREIGN RELATIONS DOCUMENTS 279 (1923).

90. *Id.*

91. ERICKSON, *supra* note 70, at 127.

92. HACKWORTH, *supra* note 5, at 468.

93. *Id.*

94. *Id.* at 462, quoting from the London Gazette, July 31, 1923, at 5211.

claims on their that this entitled

Although V the *Clipperton Is East Greenland* State practice s claim.

The Russian to Wrangel Islan covery because United States. D the Island.⁹⁶ M vested rights bas the *Corwin* and

The Soviets United States ha accepted princip does not imply ment occurs not upon a positive i dum to the Ame tary of State W "reserving" its cl or in any other re abandon its claim would therefore migrate the previo

In 1914 the

95. *Id.*

96. STEPHANSSON.

97. I. BROWNLIE.

98. 1 DEPT. OF ST OF INTERNATIONAL L Foreign Affairs to Mr. island of Trinidad was had never given up its Affairs:

Abandonment de physical power ove desertion. A prop ownership. The ac of dominion over Britain.

I. C. HYDE, INTERNAT

99. 1 DEPT. OF ST

claims on their having a few settlements in the region, reasoning that this entitled them to much of the surrounding territory.⁹⁵

Although Wrangel Island remained uninhabited until 1911, the *Clipperton Island Decision*, the *Island of Palmas Arbitration*, the *East Greenland Decision*, and British, Norwegian, and Russian State practice support the United States "limited occupation" claim.

The Russian landing in 1911 gives rise to another Soviet claim to Wrangel Island. The Soviets cannot designate this landing a discovery because that mode had already been exercised by the United States. Nor was there an attempt by the Russian to occupy the Island.⁹⁶ Moreover, the United States had already acquired vested rights based on the limited occupation made by the crews of the *Corwin* and the *Rodgers* in 1881.

The Soviets might support that claim by arguing that the United States had abandoned Wrangel Island. However, it is an accepted principle of international law that apparent abandonment does not imply extinguishment of a sovereign right.⁹⁷ Abandonment occurs not merely upon simple neglect or desertion,⁹⁸ but upon a positive intention to relinquish rights. In a 1922 memorandum to the American Ambassador in Great Britain, acting Secretary of State William Phillips stated that the United States was "reserving" its claim to Wrangel Island. There is no evidence here or in any other record of a positive intention by the United States to abandon its claim to Wrangel Island.⁹⁹ The Soviet landing in 1911 would therefore appear insufficient to establish legal title or to denigrate the previously established rights of the United States.

In 1914 the *Karluk* was marooned on Wrangel Island for six

95. *Id.*

96. STEPHANSSON, *supra* note 23, at 395. See also note 24 *supra*.

97. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 137 (1966).

98. 1 DEPT. OF STATE, FOREIGN RELATIONS DOCUMENT 65 (1895); I J. MOORE, DIGEST OF INTERNATIONAL LAW 299-300 (1906). Letter from Mr. Carralho, Brazilian Minister of Foreign Affairs to Mr. Phipps, July 21, 1895. In 1895, the occupation by Great Britain of the island of Trinidad was protested by the Brazilian Government, on the ground that the latter had never given up its right to ownership. It was stated by the Brazilian Minister of Foreign Affairs:

Abandonment depends on the intention of relinquishing or on the cessation of physical power over the thing, and must not be confounded with simple neglect or desertion. A proprietor may leave a thing deserted or neglected and still retain his ownership. The acts on the part of Brazil indicating the continuance of its assertion of dominion over the island, justified the concession of its rights therein by Great Britain.

I C. HYDE, INTERNATIONAL LAW 393 (1923).

99. 1 DEPT. OF STATE, FOREIGN RELATIONS DOCUMENTS 283 (1923).

months while the American captain went for help.¹⁰⁰ During this time the Island was occupied by the Canadian crew which claimed the Island for the British Empire. This brief occupation alone, although more significant than the Russian landing in 1911, is insufficient to establish a claim for the British Empire since the United States still had not abandoned its claim to the Island.¹⁰¹ The 1881 United States' claim to the Island based on discovery and occupation remained intact.¹⁰² The whole crew voluntarily left the Island when they were rescued by an American ship.¹⁰³ By voluntarily leaving the Island the Canadian crew abandoned any possible future title claims based on adverse possession (prescription).¹⁰⁴ Fulfilling the legal criteria for a valid prescriptive title may have diminished the initial United States discovery-occupation claim. Nevertheless, the British Empire subsequently relinquished any claims to Wrangel Island in 1924.¹⁰⁵ If the United States had lost their rights to Wrangel Island due to "abandonment," any Soviet or British "occupation based" claim would have been extinguished by abandonment as well. Under those circumstances the United States discovery claim would still have been the dominant claim to the island.

In 1916 the British Secretary of Foreign Affairs received from the Soviet Ambassador in London an official notification that "the territories and islands situated in the Arctic Ocean and discovered by Captain Vilkitski in 1913-1914 had been incorporated in the Soviet Empire."¹⁰⁶ The Soviet Union proclamation of territorial sovereignty was based on either discovery or contiguity (when a state maintains that islands relatively close to their shores belong to them by virtue of their geographical situation).¹⁰⁷ Under customary means of territorial acquisition the Soviet proclamation is of no legal significance. The United States had, in fact, already discovered Wrangel Island. Further, claims based on contiguity have been ex-

100. STEPHANSSON, *supra* note 23, at 24.

101. See notes 97-99 *supra*.

102. See notes 48-55 and 85 *supra*.

103. STEPHANSSON, *supra* note 23, at 61.

104. SVARLIEN, *supra* note 85, at 180. Prescription in international law may be defined as the acquisition of territory by adverse possession over an extended period.

105. Y. SEMYONOV, *SIBERIA* 385 (1963). At the time the Soviets occupied Wrangel Island in 1924 the Labor party was in power in England. His Majesty's government announced that it abandoned all claims to the distant island.

106. See note 30 *supra*.

107. H. BRIGGS, *THE LAW OF NATIONS* 244 (2d ed. 1952).

pressly rejected by leg
Island of Palmas Arbit.
that a title of contigui
eignty, has no founda
trary and lacks preci

The 1921 landing
cue in 1923 of its sole
rights as no conflicting
ing ship the *Donaldson*
ony under the em
Stephansson.¹¹¹ Steph
became the first succes
nomic purposes and
Island. During the yea
in the Island, the Br
Early in 1924 Stephan
to an American citize
economic benefits, Lor
tion of United States

108. *Arbitral Award in the*
Arb. 1928) 39-40; Scott Hague

109. *Id.* "Nor is the princi
question of territorial sovereig
cation lead to arbitrary results
sovereignty, has no foundatio

110. In addition to the lack
limited occupation based clai
Karluk landing of 1914.

111. STEPHANSSON, *supra*

112. I FOREIGN RELATION
Britain (Wheeler) to the Secre

Asked as to whether the c
vessel had landed on the
United States had been n
he personally felt the Russ
above that no definite rep
ing the attitude of the Bri
A footnote to this letter states

Apparently no further st
Office but in a letter dated
'Ponsonby,' acting as the
the Russians during the te
never make a claim to W

113. STEPHANSSON, *supra* r
by our work if Britain did not
interests in Alaska, had told n
and he was especially intereste

114. Letter from Carl Lom

pressly rejected by legal jurists.¹⁰⁸ In the dispute surrounding the *Island of Palmas Arbitration*, Max Huber, the noted arbitrator, held that a title of contiguity, understood as a basis of territorial sovereignty, has no foundation in international law because it is arbitrary and lacks precision.¹⁰⁹

The 1921 landing of the *Silver Wave* and the subsequent rescue in 1923 of its sole survivor also has no effect on United States' rights as no conflicting national claims were asserted.¹¹⁰ The rescuing ship the *Donaldson* did, however, set ashore an American colony under the employment of British citizen Vilhjalmur Stephansson.¹¹¹ Stephansson himself was not on the Island. This became the first successful attempt at colonizing the Island for economic purposes and American citizens again occupied Wrangel Island. During the year that Stephansson held an economic interest in the Island, the British failed to proffer a territorial claim.¹¹² Early in 1924 Stephansson sold his economic interests in the Island to an American citizen, Carl Lomen of Alaska.¹¹³ Along with its economic benefits, Lomen intended this transaction to be a reassertion of United States sovereignty over Wrangel Island.¹¹⁴

108. *Arbitral Award in the Island of Palmas Case*. (United States-Netherlands). (Per. Ct. Arb. 1928) 39-40; *Scott Hague Court Reports*, at 83, 111-12. (2d Ser. 1932).

109. *Id.* "Nor is the principle of contiguity admissible as a legal method of deciding the question of territorial sovereignty; for it is wholly lacking in precision and would in its application lead to arbitrary results . . . The title of contiguity, understood as a basis of territorial sovereignty, has no foundation in international law."

110. In addition to the lack of claim made by a nation, the United States discovery and limited occupation based claim was still superior for the same reasons discussed in the Karluk landing of 1914.

111. STEPHANSSON, *supra* note 23, at 28.

112. I FOREIGN RELATIONS DOCUMENTS 286 (1923). A letter from the Charge in Great Britain (Wheeler) to the Secretary of State. London, Aug. 28, 1923:

Asked as to whether the claims of Russia and the fact that the crew of an American vessel had landed on the island in 1881 and taken possession in the name of the United States had been noted, Mr. Sperling replied in the affirmative, adding that he personally felt the Russians had the weakest claim of all. It will be seen from the above that no definite reply can yet be given to the Department's inquiry concerning the attitude of the British Government in the premises.

A footnote to this letter states:

Apparently no further statement was received directly from the British Foreign Office but in a letter dated May 27, 1925, Mr. Vilhjalmur Stephansson wrote that "Ponsonby," acting as the official spokesman of the British Foreign Office, assured the Russians during the tenure of the Labor Government that Great Britain would never make a claim to Wrangel Island.

113. STEPHANSSON, *supra* note 23, at 299-300. "I was anxious that America should profit by our work if Britain did not care to do so. My friend Carl Lomen, owner of large reindeer interests in Alaska, had told me the Americans were greatly interested in Wrangel Island, and he was especially interested." See also LEBOURDAIS, *supra* note 7, at 16.

114. Letter from Carl Lomen to Vilhjalmur Stephansson Jan. 29, 1925:

As previously discussed, the Soviet interpretation of the customary mode of occupation allows for "limited occupation" in the polar regions.¹¹⁵ Again, this is supported by both the Soviet claim to Antarctica and the Soviet comments concerning the occupation of Wrangel Island.

The United States has also accepted limited occupation as a basis for territorial claims. As far back as 1890, in *Jones v. United States*,¹¹⁶ the Supreme Court set forth the legal foundation for Lomen's territorial claim on behalf of the United States. In that case the court stated that incurring even a menial type of useful possession (such as a base for catching and curing fish) would be sufficient for a claim based on occupation.¹¹⁷ Lomen's use of Wrangel Island for fur and seal trapping, and his plans to establish a reindeer business on the Island,¹¹⁸ can surely be given the same legal significance as "catching and curing fish." More recently, the *Jones* case was cited in *U.S. v. Curtiss-Wright Export Co.*¹¹⁹ to support the Court's emphasis of the United States' right to acquire land by discovery and occupation.

Additionally, significant support for Lomen's United States claim at the international level comes from Judge Carneiro's concurring opinion in the *Minquiers and Ecrehos Case*.¹²⁰ In that case Carneiro stated that a private individual occupying a territory may

You ask me to state briefly my reasons for purchasing your interests in Wrangel Island As an American citizen I was anxious to take a step which would further strengthen American claims. I consider that I can maintain fur trapping establishments in Wrangel Island at a profit.

STEPHANSSON, *supra* note 23, at 302.

115. ERICKSON, *supra* note 70, at 128, discusses the Soviets views concerning the South Pole:

Although Russia supports occupation to validate a sovereign claim, 'effective' occupation is not required. Because of the nature of the South Polar Region only a minimum control over the region is necessary.

116. *Jones v. United States*, 137 U.S. 202, 212 (1890). "When citizens or subjects of one nation, in its name, and by its authority or with its assent, take and hold actual continuous and useful possession (although only for purposes of carrying on a particular business, such as catching and curing fish or working mines) of a territory unoccupied by any other government or its citizens, the nation to which they belong may exercise such jurisdiction and for such a period it sees fit over territory so acquired."

117. *Id.*

118. STEPHANSSON, *supra* note 23, at 302.

119. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936).

120. *The Minquiers and Ecrehos Case (United Kingdom-France)* [1953] I.C.J. 104-05. "In certain circumstances the presence of private persons who are nationals of a given state may signify or entail occupation by that state . . . such individual actions are particularly important in respect of territories situated at the border of two countries which both claim sovereignty to that region."

claim the territory on behalf of the legal significance of *Norwegian Government*, that an individual may inhabit an island if the population is not exploited of the land.¹²²

Thus, the United States is consistent with international law. Britain, Netherlands, Norway, and the United States.

C.

In January, 1924, the United States was sailing into violation of a universally recognized principle of international law. The United States disregarded the principle of international law earlier that year¹²⁴ and did not take possession of Wrangel Island. Lomen's colony of participants from a territory acquired under international law. These actions need not be recognized.

121. *Id.*

122. *Jacobsen v. Norwegian Government*, 1924, 1 I.C.J. 104-05. 123. I FOREIGN RELATIONS DEPARTMENT FOR FOREIGN AFFAIRS (LITINOV) TO THE ENTRANCE OF AN AMERICAN WARSHIP INTO THE PORT OF LITINOV, 1924, 1 I.C.J. 104-05. authorities:

In view of the fact that the United States entered Soviet harbors constituting a violation of international law governing the entrance of warships into the harbors of the Socialist Republics finds itself in violation of international law. The United States should be held responsible for such incidents in the future.

124. See notes 35-37 *supra*.

125. Y. SEMYONOV, *SIBERIA*, 1924, 1 I.C.J. 104-05.

126. See notes 2 and 3 *supra*, at 23, at 300. After his sale to Lomen in 1924, Stephansson postulated:

If the Russian then planted a flag on the island, it is a well established principle of international law that the Russian ownership is the only thing after the Russian claims would not be

claim the territory on behalf of his nation.¹²¹ Further support for the legal significance of Lomen's claim comes from *Jacobsen v. Norwegian Government*. There the Norwegian Supreme Court held that an individual may undertake a legal occupation of an uninhabited island if the person pursued economic activities and exploitation of the land.¹²²

Thus, the United States occupation of Wrangel Island is consistent with international law and the state practices of Denmark, Britain, Netherlands, Norway, the Soviet Union, and the United States.

C. Possession by Force

In January, 1924, the Soviet Union complained that the United States was sailing too close to their territory and alleged a violation of a universally recognized rule governing the entrance of warships into foreign ports.¹²³ In August, 1924, the Soviets totally disregarded the principles of international law they had espoused earlier that year¹²⁴ and dispatched a gunboat, the *Red October*, to take possession of Wrangel Island. The Soviet crew forcibly removed Lomen's colony from the Island.¹²⁵ forcible removal of occupants from a territory is not an accepted mode of territorial acquisition under international law¹²⁶ and claims based on such actions need not be recognized.

121. *Id.*

122. *Jacobsen v. Norwegian Government*, reprinted in 7 H. LAUTERPACHT, ANNUAL DIGEST AND REPORTS OF INTERNATIONAL LAW CASES 109-11 (1933).

123. 1 FOREIGN RELATIONS DOCUMENTS, at 681 (1944). The Soviet Deputy Commissar for Foreign Affairs (Litinov) to the Secretary of State, Moscow, Jan. 31, 1924, concerning the entrance of an American warship the *Bear*, into Kolyuchin Bay without permission of Soviet authorities:

In view of the fact that the circumstances under which the above mentioned ships entered Soviet harbors constitute a violation of the universally recognized rules governing the entrance of warships into foreign ports, the Government of the Soviet Socialist Republics finds itself obliged to protest against such action under the direct control of the United States Government, professing the necessity of strict observation of international laws, will take proper measures to avert the repetition of such incidents in the future.

124. See notes 35-37 *supra*.

125. Y. SEMYONOV, SIBERIA 375 (1963).

126. See notes 2 and 3 *supra*, and notes 128-29 *infra*. See also STEPHANSSON, *supra* note 23, at 300. After his sale to Lomen but before the Russian invasion of Wrangel Island in 1924, Stephansson postulated:

If the Russian then planted a rival colony it would be a later one than the American . . . It is a well established principle of international law that actual occupation is the only thing after discovery and exploration which gives a national ownership. If they took the American colony prisoners and carried them off, the Russian claims would not be strengthened thereby legally.

Any Soviet contention that the removal of Lomen's colony from Wrangel Island was in fact a "conquest" would fail. Although conquest is an acceptable mode of acquiring territory,¹²⁷ in the *East Greenland Decision* the ICJ stated that conquest operates as a loss of territory "when there is a war between two states and by reason of the defeat of one of them sovereignty passes from the loser to the victorious state."¹²⁸ The United States and the Soviet Union were not at war in 1924. The Soviet invasion of Wrangel Island was an isolated, unprovoked act, and according to both the *East Greenland Decision* and customary international law this forceful subjugation of territory by the Soviets is not an acceptable mode of territorial acquisition.¹²⁹ Accordingly, the United States rights to Wrangel Island were not altered by the Soviet invasion.¹³⁰

In 1926 the Soviet Union issued a decree in which it claimed sovereign rights to all the discovered and undiscovered territory north of its territorial boundaries.¹³¹ This "sector" theory of territorial control was rejected by the United States in 1928,¹³² thereby impliedly denying an inherent Soviet right to Wrangel Island. The United States emphasized in its rejection of the "sector" theory in the Arctic that acquisition of territory based on contiguity is not an accepted principle of international law.¹³³ Today the "sector" theory is of doubtful validity in light of the fact that most of the territorial claims have been settled by using the "accepted" criteria for territorial acquisition.¹³⁴

In 1947 the United Nation's General Assembly passed a resolution stating that territorial rights should be denied to those nations who have acquired possession of territory in violation of international law. This included the use of force against the territorial integrity of another state.¹³⁵ In 1970 this same body adopted a

127. It would be inappropriate to describe the forcible subjugation of such territories as conquest. 'For conquest only operates as a cause of loss of sovereignty when there is a war between two states and by reason of the defeat of one of them sovereignty passes from the loser to the victorious state.' Legal status of Eastern Greenland Decision. (Netherlands-Denmark) [1933] P.C.I.J., ser. A/B No. 53 at 46, III Hudson World Court Reports, at 171 (1938).

128. *Id.*

129. *Id.*

130. See notes 69, 126-29 *supra*.

131. HACKWORTH, *supra* note 5, at 461, quoting from Under Secretary Crew, memoranda of conversation with Norwegian Minister (Bryn), June 4, and June 12, 1926.

132. See note 38 *supra* and accompanying text.

133. See notes 38 and 109 *supra* and accompanying text.

134. J. SATUR, *THE ARCTIC BASIN* 10 (1969).

135. Declaration on Rights and Duties of States, Report of the International Law Commission, June 9, 1949, U.N. Doc. A/92J; Official Records of the Fourth Session of the Gen-

Declaration on the Principle of the prohibition against force against another state.¹³⁶ Both the United States and the Soviet Union reported this Declaration to the United Nations Charter, as an instrument of international law.¹³⁸ The purposes of the United Nations resolutions can serve international law, the basic principles of the Charter itself beyond the pale of international law.

In accord with the general practice, judicial rulings, and resolutions, the 1924 Soviet invasion to create a legal Soviet right to Wrangel Island was a violation of international law. It remained a violation in 1970 and is still a violation of international law.

The final Soviet claim to Wrangel Island is based on prescription. Prescription is the acquisition of territory by the passage of a period of time.¹⁴¹ The Soviet claim to Wrangel Island since 1924 is a violation of international law, however, because it denies its validity altogether. The impossibility of prescription is the impossibility of

eral Assembly, Supp. No. 10, at 7-8, meeting on 21, November 1947, at 7-8.

Article 9

Every state has the duty to refrain from the acquisition of territory by force, national policy, and to refrain from territorial acquisition in a manner inconsistent with international law.

Article 11

Every state has the duty to refrain from the acquisition of territory by force from another state acting in violation of international law.

136. TUNKIN, *supra* note 71, at 137.

137. *Id.*

138. *Id.* at 118.

139. G.I. TUNKIN, *CONTEMPORARY INTERNATIONAL LAW* 140.

140. *Id.* at 123.

141. SVARLIEN, *supra* note 85.

defined as the acquisition of territory by force.

142. J.L. BRIERLY, *THE LAW OF INTERNATIONAL LAW* 140.

Declaration on the Principles of International Law reiterating the prohibition against force as a means of acquiring the territory of another state.¹³⁶ Both the United States and the Soviet Union supported this Declaration.¹³⁷ Soviet writers agree that the United Nations Charter, as an international treaty, is a present day source of international law.¹³⁸ They contend that the principles and purposes of the United Nations are important, and that observance of resolutions can serve international cooperation.¹³⁹ A state violating the basic principles of the United Nations or its resolution places itself beyond the pale of the organization.¹⁴⁰

In accord with the general principles of international law, state practice, judicial rulings, and the subsequent United Nations Resolutions, the 1924 Soviet intrusion on Wrangel Island did not effectuate a legal Soviet right to the Island. The Soviet Union's act of aggression was a violation of international law in 1924 and remained a violation in 1947 and 1970. The United States' legal claim to Wrangel Island has not been lost.

D. Prescription

The final Soviet claim to Wrangel Island would be based on prescription. Prescription is defined under international law as the acquisition of territory by adverse possession over an extended period of time.¹⁴¹ The Soviet Union has exercised dominion over Wrangel Island since 1924. Prescription as a means of acquiring title to territory, however, is so vague a concept that some writers deny its validity altogether.¹⁴² The main objection to its recognition is the impossibility of resolving the question of the time neces-

eral Assembly, Supp. No. 10, at 7-10. General Assembly of the United Nations at its 123rd meeting on 21. November 1947, adopted this resolution 178 (II):

Article 9

Every state has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another state, or in any other manner inconsistent with international law and order.

Article 11

Every state has the duty to refrain from recognizing the territorial acquisition by another state acting in violation in Article 9.

136. TUNKIN, *supra* note 71, at 53.

137. *Id.*

138. *Id.* at 118.

139. G.I. TUNKIN, *CONTEMPORARY INTERNATIONAL LAW* 120-21 (1969).

140. *Id.* at 123.

141. SVARLIEN, *supra* note 85, at 180, states "prescription in international law may be defined as the acquisition of territory by adverse possession over an extended period."

142. J.L. BRIERLY, *THE LAW OF NATIONS* 167 (1963).

sary to perfect a valid title by prescription.¹⁴³

In asserting a claim based on prescription the Soviet Union will have to overcome the obstacles of prior United States claims based on discovery and occupation, the illegal invasion of 1924, and a sufficient time of possession.

There are situations in which an inference of acquiescence to a claim cannot be justifiably drawn from the absence of protest.¹⁴⁴ This was exemplified in 1895 when the Brazilian Government successfully retained its claim to Trinidad despite British occupation.¹⁴⁵ It must be remembered that the United States citizens did not abandon Wrangel Island in 1924; they were forcibly removed by the Soviets.¹⁴⁶ The *Clipperton Island Decision* supports the contention that without the animus of abandoning the Island, the fact that the United States has not exercised authority there does not imply the forfeiture of an acquisition already perfected.¹⁴⁷ In the *Eastern Greenland Decision* the Court indicated that a definite renunciation is needed for construing an abandonment.¹⁴⁸ Actual consent must be given; mere passivity in the face of inevitable facts is not enough.¹⁴⁹

The United States has officially "reserved" its right to claim territories in the polar regions.¹⁵⁰ Thus far there has been no strategic necessity for the United States to assert its claim to Wrangel Island.¹⁵¹ Nor has there been an abandonment or disclaimer of the United States' rights to the Island.¹⁵² In fact, Senator Robert K. Reynolds of North Carolina, Chairman of the Military Affairs Committee of the Senate in 1941, urged the United States to re-assert its rights to Wrangel Island.¹⁵³ This effort to re-assert United States' rights to Wrangel Island was obscured however, by the bombing of Pearl Harbor in December of 1941.¹⁵⁴

Another problem with a Soviet claim of prescription is that the

143. M. SØRENSEN, *MANUAL OF PUBLIC INTERNATIONAL LAW* 324 (1968).

144. Y. BLUM, *HISTORIC TITLES IN INTERNATIONAL LAW* 131 (1965).

145. See notes 98-99 *supra*.

146. See note 35 *supra*.

147. *Clipperton Island Arbitration*, reprinted in 26 *AM. J. INT'L L.* 390, 394 (1932).

148. See note 84 *supra*.

149. C. ROSS, *TEXTBOOK OF INTERNATIONAL LAW* 244 (1947).

150. I. C. HYDE, *INTERNATIONAL LAW* 333-35 (1947).

151. Hooper, *supra* note 17, at 7.

152. Franklin & McClintock, *The Territorial Claims of Nations in the Arctic: An Appraisal*, 5 *OKLA. L. REV.* 46 (1952).

153. V. STEPHANSSON, *THE FRIENDLY ARCTIC* 63 (1945).

154. *Id.*

Soviets acquired c
ternational Law.¹
land by violating
Palmas Arbitration,
investigate the or
though he found
indicated that his
had originally tak
national law.¹⁵⁷

The Guatem
the importance of
justifying a presc
parties agreed tha
borders in accord
when the countrie
treaty further pro
obscure either pa
fixing the bounda
one party in expr
occurred, it could
transferred to the
extreme hardship.

A Soviet pres
Nations Resolutio

155. See notes 123-3

156. *Id.*

157. "Finally it is to
Dutch on Talautse Isle
circumstance might hav
longed exercise of state
nized the state of things
Tobukan Miangas." The
law when gaining domin
mas Case, *supra* note 10

158. I. C. HYDE, *INT*

In fixing the bound
possession: (2) the c
good faith, and with
territory actually oc
thus asserted, quest

Guatemala-Honduras B
DIGEST REPORTS AND R

159. *Id.* at 122.

160. *Id.*

161. *Id.*

162. L. SOHN, *CASES*

Soviets acquired dominion over Wrangel Island in violation of International Law.¹⁵⁵ They acquired physical possession of the Island by violating the rights of the United States.¹⁵⁶ In the *Island of Palmas Arbitration*, Max Huber made clear that it was necessary to investigate the origin of possession in a prescriptive claim. Although he found that Dutch possession was of legal origin, Huber indicated that his decision might have been altered if the Dutch had originally taken possession of the Island by transgressing international law.¹⁵⁷

The Guatemala-Honduras Treaty of 1930 further illustrates the importance of the manner in which possession is acquired when justifying a prescriptive claim. In Article V of the treaty the two parties agreed that an arbitral tribunal would establish their mutual borders in accordance with the legal boundary created in 1821 when the countries received their independence from Spain.¹⁵⁸ The treaty further provided that prescription should not be invoked to obscure either party's property rights. Part of the criteria used in fixing the boundary was whether territory had been acquired by one party in express violation of the other party's rights.¹⁵⁹ If this occurred, it could be required that the territory or compensation be transferred to the prior sovereign.¹⁶⁰ In cases where there was no extreme hardship, the transfer of land took place.¹⁶¹

A Soviet prescriptive claim faces challenges based on United Nations Resolution 178(II) adopted in 1947¹⁶² and the Declaration

155. See notes 123-30 *supra*.

156. *Id.*

157. "Finally it is to be observed that the question whether the establishment of the Dutch on Talause Isle in 1667 was in violation of the Treaty of Munster and whether this circumstance might have prevented the acquisition of sovereignty even by means of prolonged exercise of state authority need not be examined since the Treaty of Utrecht recognized the state of things existing in 1714 and therefore suzerain right of the Netherlands over Tobukan Miangas." The question was not examined because the violation of international law when gaining dominion had not been established. *Arbitral Award in the Island of Palmas Case*, *supra* note 108, at 60.

158. J. C. HYDE, *INTERNATIONAL LAW* 388 (1947). Criteria used by the Tribunal:

In fixing the boundary, the Tribunal must have regard to the facts of (1) actual possession; (2) the question whether possession by one party has been acquired in good faith, and without invading the right of the other party; and (3) to relation of territory actually occupied to that which is as yet unoccupied. In light of the facts thus asserted, questions of compensation may be determined.

Guatemala-Honduras Boundary Arbitration, [1933], cited in 7 H. LAUTERPACHT, *ANNUAL DIGEST REPORTS AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES* 115-27 (1933-1934).

159. *Id.* at 122.

160. *Id.*

161. *Id.*

162. L. SOHN, *CASES AND MATERIALS ON WORLD LAW* 272 (1973). See also Report of

on the Principles of International Law adopted in 1970,¹⁶³ which postulate non-recognition of territorial rights over possessions acquired in contravention of international law.¹⁶⁴ Since the Soviet's acquisition of Wrangel Island was made in violation of international law, United Nations policy warrants a denial of the Soviet's sovereignty over the Island.

Another widely discussed problem with prescription in international law is the amount of time actually necessary for a prescriptive claim to vest. Hugo Grotius maintained that "a possession beyond memory, not interrupted nor disturbed by appealing to an arbitrator transfers dominion."¹⁶⁵ Certainly the United States claim to Wrangel Island is still within memory. Although Grotius' comments are 300 years old, jurists today agree that no fixed rules exist as to the length of possession necessary to create a valid title.¹⁶⁶ Max Sorenson asserts that prescription is a controversial mode of territorial acquisition because of the impossibility of resolving the question of required time limits.¹⁶⁷

The Guatemala-Honduras Treaty of 1930 provided that the newly defined boundary be consistent with the legal boundary created in 1821 when the countries received their independence. This Treaty exemplifies the fact that one-hundred ten years of adverse possession do not necessarily establish legal title to territory.¹⁶⁸ The Soviet presence on Wrangel Island has existed for fifty-six years; this period of time may be legally insufficient.

In 1957 a dispute between Belgium and The Netherlands concerning the rightful possession of two territories in Baerle-Duc¹⁶⁹ was brought before the International Court of Justice.¹⁷⁰ The Court awarded the territories to Belgium based upon a legal title established in 1843.¹⁷¹ The court ruled in favor of Belgium despite

the International Law Commission, June 9, 1949, U.N. Doc. A/925; Official records of the Fourth Session of the General Assembly, Supp. No. 10, at 7-10.

163. TUNKIN, *supra* note 71, at 53.

164. See notes 135-36 *supra*.

165. SVARLIEN, *supra* note 85, at 180.

166. J. L. BRIERLY, *THE LAW OF NATIONS* 157 (1963); see also G. VON GLAHN, *LAW AMONG NATIONS*, at 278 (1976).

167. M. SØRENSEN, *MANUAL OF PUBLIC INTERNATIONAL LAW* 324 (1968).

168. See *Guatemala-Honduras Treaty of 1930 and Guatemala-Honduras Boundary Arbitration of 1933* [1933] reprinted in 7 H. LAUTERPACHT *ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES* 115-27 (1933-1934).

169. *Case Concerning Sovereignty Over Certain Frontier Land (Belgium-Netherlands)*, [1957] I.C.J. 209-58.

170. *Id.*

171. *Id.* at 213. The Court determined that under the Boundary Convention of 1843

The Netherlands pres years of adverse posses opposed the authority oputed plots, it never ex

It has been asserted of the delinquency [of a against the claim for it scriptive title has rece United States would sti ten in 1843 by Mr. Up dressed to Mr. Evere contended that under dependent of legislation give or destroy title.¹⁷⁶

If prescription is to acquisition by a Tribu United States acquiesced stale of their transgress

between Belgium and the Neth resided in Belgium. "Having ex and relied upon by the two G sovereignty established in 1843

172. *Id.* at 227-29. The Ne plots was vested in Belgium by cised by the Netherlands since 1

(1) Belgium had struck c 1890.

(2) The Dutch Governme: 1860.

(3) Not until 1921, followi ter at the Hague drew gian and that Dutch C documents.

(4) Netherlands relied in a survey, the entry in its births, deaths, and mar; also relied on the fact th any resistance or protes

(5) Netherlands also relied over which the commu publicly announced it

173. *Id.*

174. L. OPPENHEIM, *INTERNA*

175. I. J. MOORE, *DIGEST OF independent of legislation or pos*

... It creates a presumption equ proof is conclusive and final, wh counterproof, or a stronger count

176. *Id.*

The Netherlands prescriptive claim based on over one-hundred years of adverse possession.¹⁷² Although Belgium had not actively opposed the authority exercised by the Dutch officials over the disputed plots, it never expressly yielded its own rights.¹⁷³

It has been asserted that "a protest at the time of the occurrence of the delinquency [of a claim] is held to prevent time from running against the claim for its redress."¹⁷⁴ In other words, even if a prescriptive title has recently accrued in favor of the Soviets, the United States would still have the right to redress. In a letter written in 1843 by Mr. Uplhur, United States Secretary of State, addressed to Mr. Everett, Minister to England,¹⁷⁵ the Secretary contended that under international law mere lapse of time, independent of legislation or positive agreement, cannot itself either give or destroy title.¹⁷⁶

If prescription is to be accepted as a proper mode of territorial acquisition by a Tribunal, the Soviets will have to (1) show the United States acquiesced to Soviet jurisdiction; (2) overcome the obstacle of their transgression of international law when acquiring do-

between Belgium and the Netherlands that the sovereignty of the territory in Baerle-Duc resided in Belgium. "Having examined the situation which, in respect of the disputed plots and relied upon by the two Governments, the Court reaches the conclusion that Belgian sovereignty established in 1843 over the disputed plots has not been extinguished."

172. *Id.* at 227-29. The Netherlands contended that if sovereignty over the disputed plots was vested in Belgium by virtue of the Boundary Convention, acts of sovereignty exercised by the Netherlands since 1843 have established sovereignty in Netherlands.

- (1) Belgium had struck one of the two plots from their maps from 1852 until 1890.
- (2) The Dutch Government had used and changed the land several times from 1860.
- (3) Not until 1921, following examination by the Belgian Ministry that the Minister at the Hague drew attention to the Netherlands that the territory was Belgian and that Dutch Government should strike the land from their survey documents.
- (4) Netherlands relied in addition to the incorporation of the land in the Dutch survey, the entry in its registers of land transfer deeds and registrations of births, deaths, and marriages in the communal register of Baerle-Nassau. It also relied on the fact that it collected Dutch land tax on the two plots without any resistance or protest on the part of Belgium.
- (5) Netherlands also relied on the proposed sale of a large area of the heathland over which the commune of Baerle-Duc had certain rights to. The sale was publically announced in 1953 without any protest by Belgium.

173. *Id.*

174. L. OPPENHEIM, INTERNATIONAL LAW 349-50 (Lauterpacht ed. 1955).

175. I. J. MOORE, DIGEST OF INTERNATIONAL LAW 293 (1906). "Mere lapse of time, independent of legislation or positive agreement cannot of itself either give or destroy title. It creates a presumption equivalent to full proof. But it differs from proof in this, that proof is conclusive and final, whereas presumption is conclusive only until it is not met by counterproof, or a stronger counter presumption."

176. *Id.*

minion over Wrangel Island; and (3) demonstrate a sufficient time of possession.

The legality of a prescriptive claim is not actually determined until it supercedes the claim of the prior sovereign in an international legislative body or by diplomacy.¹⁷⁷ The United States' claim to Wrangel Island retains its legal significance until otherwise adjudicated in a mutually accepted tribunal, or until the United States expressly relinquishes its claim.

III. APPROACH FOR IMPLEMENTING THE UNITED STATES CLAIM

First, the United States must decide to pursue its claim to Wrangel Island. Then, the following procedures might be employed to attempt to reassert control over the island.

The Soviet Union has consistently asserted that only voluntary negotiation and/or adjudication will suffice in the settlement of disputes among nations.¹⁷⁸ In 1961 at the meeting of the International Law Association the Soviets favored diplomatic negotiation as the most appropriate method of settling disputes.¹⁷⁹ Thus, diplomatic negotiations with the Soviets should be the initial step for the United States in asserting their rights to Wrangel Island.

The Soviet Union expressly rejects the idea of compulsory third-party judgment as a principle of international law¹⁸⁰ and it has continually refused to submit to the compulsory jurisdiction of the Statutes of the ICJ.¹⁸¹ It would therefore be unduly optimistic to expect the Soviet Union to honor an unfavorable judgment by the Court. Although the United States has accepted the jurisdiction of the ICJ, there were some reservations.¹⁸² One reservation to compulsory jurisdiction provided that jurisdiction shall not apply to "disputes, the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence."¹⁸³ The United States and the Soviet Union created such an agreement in 1914 which is still in force today.¹⁸⁴ The treaty provides that any

177. *Id.*

178. ERICKSON, *supra* note 70, at 140.

179. *Id.* at 141.

180. *Id.* at 140.

181. *Id.* at 144; see also Statute of the I.C.J. *supra* note 42, art. 36.

182. United States Declaration under Article 36(a) of the Statute of the I.C.J., [1965-1966] I.C.J.Y.B. 67 (1966).

183. *Id.*

184. Treaty for the settlement of disputes, signed at Washington October 1, 1914; entered

differences arising between whatever nature, shall, be submitted for examination of an International Commission."¹⁸⁵ puts.

The United States in addressing its territorial claim under Article 33 of the United States Constitution does not provide an enforcement mechanism. The Russian agreement of 1914 with the United States party, but noncompliance with the agreement has ramifications in the international, or social sanctions. In *Rosenne*, at the ICJ in 1978, the constitution requires it to render an authentic judgment.¹⁸⁷

If the procedures under the agreement decided in favor of the United States could go to the world support for its claim. The United Nations is not satisfied with the United States' claim to Wrangel Island then the United States could go to the ICJ of arbitration. The United States could set up a Tribunal which draw upon the chief justices of national courts and international jurists.¹⁸⁸ If an attempt a

into force March 22, 1915; 39 Stat. 1744; OTHER INTERNATIONAL AGREEMENTS.

185. BEVANS, *supra* note 184, at 141; *supra* note 184. Concerning success of the agreement in maintaining national order, treaty rights and international relations." W. TUNG, INTERNATIONAL LAW.

186. Charter of the United Nations, 1945, 59 O.S.T. 83, para. 1.

Article 33

1. The parties to any dispute, the subject-matter of which is of a legal nature, shall, first of all, attempt to settle it by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, agencies or arrangements, or other peaceful means of their own choice.

187. M. REISMAN, NULLITY AND INVALIDITY OF TREATIES, 1953, 188. *Id.* at 108.

differences arising between the United States and Russia, "of whatever nature, shall, when diplomatic proceedings have failed, be submitted for examination and report to a Permanent International Commission."¹⁸⁵ It is an equitable plan for resolving disputes.

The United States initiation of this secondary method for redressing its territorial claim with the Soviet Union is consistent with Article 33 of the United Nations Charter.¹⁸⁶ Although Article 33 does not provide an enforceable set of procedures, its content implies an international consensus in favor of implementing the U.S.-Russian agreement of 1914. A decision rendered by the selected Permanent International Commission is not binding upon either party, but noncompliance with the decision could have negative ramifications in the international community. Economic, technological, or social sanctions might be considered. It was asserted by Rosenne, at the ICJ in 1957, that any national court whose internal constitution requires it to apply international law must apply any authentic judgment.¹⁸⁷

If the procedures under this treaty were invoked and the Commission decided in favor of the Soviets based on prescription, the United States could go to the United Nations to attempt to gain world support for its claim based on Resolution 178(II). If the United Nations is not successful in removing the Soviets from Wrangel Island then the United States might resort to another form of arbitration. The United States and the Soviets might agree to set up a Tribunal which draws its members from the ranks of chiefs of state, chief justices of national Supreme Courts, or other eminent jurists.¹⁸⁸ If an attempt at arbitration is unsuccessful, the United

into force March 22, 1915; 39 Stat. 1622; T.S. 616; reprinted in 11 C. BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES 1776-1949, at 1239-41 (1974).

185. BEVANS, *supra* note 184, at 1239. See also Treaty for the Settlement of Disputes, *supra* note 184. Concerning succession of treaties, it has been held that "In interest of international order, treaty rights and obligation should be observed under normal circumstances." W. TUNG, INTERNATIONAL LAW IN AN ORGANIZING WORLD 61 (1968).

186. Charter of the United Nations, *done* June 26, 1945, 59 Stat. 1031, T.S. No. 993, art. 33, para. 1.

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

187. M. REISMAN, NULLITY AND REVISION 816 (1971).

188. *Id.* at 108.

States would have exhausted its legal remedies and should rest its claim.

If the Commission decided in favor of the United States and the Soviets ignored the ruling, political and economic sanctions would be the means of redress available to the United States.

Wrangel Island appears to be in an ideal strategic position for monitoring Soviet nuclear deployment and compliance with SALT Treaties. In a time of intricate geopolitical balance in the world, the United States needs to take full advantage of its strategic assets.

IV. CONCLUSION

An examination of the claims to Wrangel Island within the international legal framework reveals that the United States has a legitimate legal claim to the island based on discovery and occupation. The *Clipperton Island Decision*, along with European, Soviet, and United States state practices sustain the claim of a vested United States right in the Island since 1881. The claim's continued superiority is further supported by the *Palmas Island Arbitration* and the *Eastern Greenland Decision*. Carl Lomen's economic activity on Wrangel Island in 1924 was a reassertion of the United States' intention to continue and expand its occupation. European, Soviet, and United States state practices, along with Judge Carneiro's interpretation of international law, concede a further United States legal right to the Island.

The Soviet Union has exercised dominion over the Island since 1924, despite violations of international law in its acquisition. There was no abandonment, nor was there a subsequent acquiescence by the United States in the Soviet claim to Wrangel Island. In fact, the United States impliedly rejected Soviet authority in its 1928 statement on the Soviet "sector" theory. The viability of a Soviet prescriptive claim remains questionable under international law. The lack of United States acquiescence, the illegal origin of Soviet possession and the length of possession are all obstacles with which the Soviet Union must contend.

Until adjudicated, the United States claim to Wrangel Island continues to have legal significance. At the very least, the United States can use its legal claim as a political lever in diplomatic negotiations with the Soviet Union and in the future SALT discussions. The United States may also use the claim to magnify world apprehension of Soviet expansionism, an issue of great concern after the recent Soviet invasion of Afghanistan.

This commen
of a United States
nothing to lose by
ter time than the

This comment has attempted to demonstrate the legal viability of a United States claim to Wrangel Island. The United States has nothing to lose by asserting its claim and there will never be a better time than the present to do so.

Don Eric Salom