

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2360 SCOMM 99 HOUSE SPEC. WORLD TRADE. RELATIONS, 1995-1996 655

House GOP 'Contract with America'

Status Chart

(as of Jan. 27, 1995)

Bill and Background	House	Senate	Final
CONGRESSIONAL ACCOUNTABILITY (HR 1, S 2): Apply civil rights, health and safety, and labor laws to Congress.	HR 1 passed 1/4/95	S 2 passed 1/11/95	House cleared S 2, 1/17/95 PL 104-1
LINE-ITEM VETO (HR 2, S 4, S 14): Give the president the authority to veto specific portions of appropriations acts, unless overridden by Congress. S 14 requires affirmative approval by Congress.	Gov't Reform Committee approved 1/24/95 Rules Committee approved 1/26/95 Floor action scheduled 1/31/95 or 2/1/95	Budget Committee markup scheduled 1/31/95	
CRIME CONTROL (HR 3, S 3): Shift federal spending from crime-prevention programs to prison construction and hiring more police officers; make it more difficult for death-row inmates to appeal their sentences; and set mandatory minimum sentences for certain crimes involving guns. The House Judiciary panel broke HR 3 into several smaller bills, including HR 665, HR 666, HR 667 and HR 668.	Judiciary Committee markup began 1/27/95		
WELFARE REFORM (HR 4): Cap welfare spending and encourage a reduction in illegitimacy by prohibiting welfare benefits to mothers under 18.	Hearings began 1/5/95		
UNFUNDED MANDATES (HR 5, S 1): Make it more difficult for Congress to impose mandates on states without providing funding to carry them out.	Government Reform Committee approved 1/10/95; Floor debate began 1/19/95	S 1 passed 1/27/95	
FAMILY TAX RELIEF (HR 6): Provide a \$500-per-child tax credit; ease the "marriage penalty" in tax code; authorize new, more flexible IRA accounts.	Hearings began 1/5/95		
NATIONAL SECURITY RESTORATION (HR 7): Prohibit further cuts in defense spending to finance social programs; instruct the Pentagon to develop an anti-ballistic missile defense system; prohibit the use of U.S. troops in U.N. missions under foreign command.	Select Intelligence approved 1/27/95 Int'l Relations Committee continues markup 1/30/95 National Security Committee markup scheduled 1/31/95	Armed Services Committee hearing scheduled 1/31/95	
SOCIAL SECURITY (HR 8, S 30): Permit senior citizens to earn up to \$30,000 per year without losing Social Security benefits; repeal the 1993 law making 85 percent of Social Security benefits subject to income tax for affluent elderly; and grant tax incentives to encourage people to buy long-term care insurance.	Hearings began 1/5/95		
CAPITAL GAINS, SMALL BUSINESS INCENTIVES (HR 9): Reduce capital gains tax; encourage job creation through a variety of tax-law changes; strengthen the property rights of individuals.	Hearings began 1/5/95		
PRODUCT LIABILITY (HR 10): Limit punitive damages and institute "loser pays" rule to discourage litigation; make product manufacturers liable only for harms caused by their own negligence.	Hearings began 1/19/95		
FAMILY REINFORCEMENT (HR 11): Strengthen child support enforcement; toughen child pornography laws; grant tax credit for care of a dependent elderly relative.	Hearings began 1/5/95		
BALANCED-BUDGET AMENDMENT (H J Res 1, S J Res 1): Amend the Constitution to require that the federal budget be balanced by the year 2002 or two years after enactment of a constitutional amendment, whichever is later. House version would require three-fifths vote for any income tax increase.	HJ Res 1 passed 1/24/95	Floor debate scheduled 1/30/95	
TERM LIMITS (H J Res 2, H J Res 3, S J Res 19): H J Res 2 and S J Res 19 would limit terms of office for both House and Senate members to 12 years; H J Res 3 would limit terms of office to 6 years for House members and 12 years for senators.	Judiciary Committee hearings scheduled to begin 2/3/95	Judiciary subcommittee markup scheduled week of 1/30/95	



TONY KNOWLES, GOVERNOR

STATE OF ALASKA

OFFICE OF THE GOVERNOR

WASHINGTON, D.C.

FAX

DATE: FEB 27 95

TO: WAYNE MAWNEY, REP. GAIL PHILLIPS OFFICE 907-465-3472

PAT FOURCROT, AK GOV.'S OFFICE 907-465-3532

FROM: Wayne Mawney 202-624-5909

Fax: 202-624-5857 PH: 202-624-5858

SUBJECT: _____

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A4 SUNDAY, FEBRUARY 26, 1995

THE WASH

Congress May Ask Historic Gamb

Balanced Budget Amendment Variouslly Characterized as Offering

By Eric Pianin
Washington Post Staff Writer

If the Senate approves the proposed balanced budget amendment Tuesday, Congress will ask the states to take a historic gamble that some say will free future generations from onerous debt and others warn could ruin the economy, disrupt vital government services and devastate the social safety net.

For nearly 60 years, the fight over a constitutional amendment to force the government to live within its means except in times of war has largely been an academic exercise. But in the wake of the Republican takeover of Congress, the House has overwhelmingly approved the measure, 300 to 132, and supporters in the Senate are within a couple of votes of the two-thirds majority needed to adopt the amendment and send it on to the states for ratification.

Republican leaders—including House Budget Committee Chairman John R. Kasich (Ohio) and Senate Judiciary Committee Chairman Orrin G. Hatch (Utah)—say passage of a balanced budget amendment is essential to GOP plans to impose fiscal discipline on an unruly and often cowardly Congress and put the government on a seven-year "glide path" to eliminating the deficit.

With a balanced budget amendment in place, they insist, the Republicans can cut taxes, protect Social Security from reductions, beef up defense and still eliminate the deficit by the year 2002—all without much upheaval or suffering.

"It isn't like we're trying to haul a Mack truck—attach ourselves to a Mack truck—and then pull it 100 yards with the power of our own bodies," Kasich said recently. "There's an impression out there this is somehow impossible or terribly difficult. It's not that at all."

But critics—such as Sen. Robert C. Byrd (D-W.Va.), Paul S. Sarbanes (D-Md.) and Paul D. Wellstone (D-Minn.)—warn the opposite: If the amendment is approved, it would make the government powerless to respond quickly to recessions and other economic crises and force dismantling of agencies and programs crucial to the poor and the middle class.

Others, including Sen. Sam Nunn (D-Ga.), also argue the amendment would disrupt the balance of power among the three branches of government, strengthening the hand of the president to impound funds any time

Text of Proposed Amendment

Following is text of proposed balanced budget amendment:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein): That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states within seven years after the date of its submission to the states for ratification:

ARTICLE

SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a roll call vote.

SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a roll call vote.

SECTION 3. Prior to each fiscal year, the president shall transmit to the Congress a proposed budget for the United States government for

that fiscal year, in which total outlays do not exceed total receipts.

SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a roll call vote.

SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

SECTION 7. Total receipts shall include all receipts of the United States government except those derived from borrowing. Total outlays shall include all outlays of the United States government except for those for repayment of the debt principal.

SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

Congress violated the constitutional strictures and opening the door to judicial intervention on congressional fiscal policy.

Critics also complain Republicans have refused to detail how they intend to achieve a balanced budget within seven or eight years. And they say the Social Security trust fund would become an irresistible target for budget-cutters early next century, despite assurances from House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Robert J. Dole (R-Kan.) that Social Security would be exempted.

"No one is going to escape the wrath of the balanced budget mandate," Byrd said in a recent Senate speech.

The new Republican leadership has premised much of its economic and budgetary strategy on passage of the budget amendment, centerpiece of the House GOP's "Contract With

America." Many proponents favor the amendment on moral grounds, saying its adoption would help spare their children and grandchildren from the economic burdens of a national debt approaching \$5 trillion.

Passage of the balanced budget amendment is also a vital pretext for the larger goal of dramatically shrinking size of government—dismantling or repackaging large chunks of it. Sen. Connie Mack (R-Fla.) said last week, "This is a fundamental debate about those who believe more government will solve our problems and those who believe less government, less taxing and less spending will give us more freedom."

As a foretaste, Republican House appropriators last week voted to cut \$17 billion from current spending for housing, health care, nutrition, clean water, job training and other programs. Moreover, the House Economic and Educational Opportunity

The Washington Post

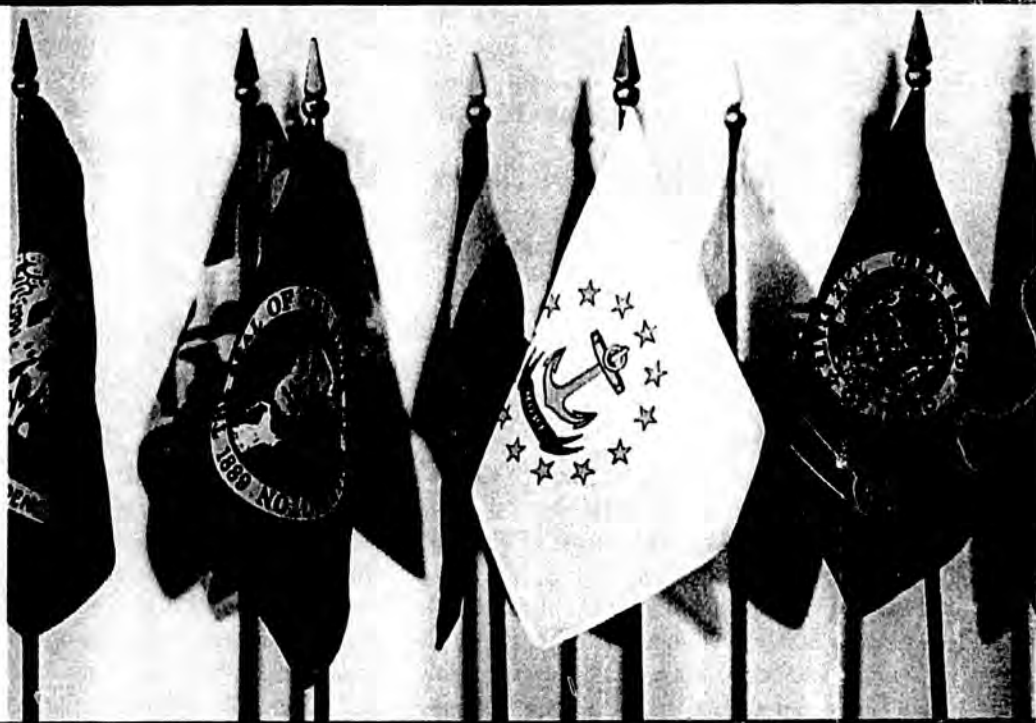
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The Conference of the States:

*The movement to
restore the balance
of power between
states and
Washington, D.C.,
is catching fire.*

by Elaine Stuart



Launching lasting change

For the first time in two centuries, states are uniting to take charge of their own agendas, reversing decades of federal dictates.

Legislators across the country are considering whether to formally convene a Conference of the States this year to discuss the imbalance of power between the states and federal government that has grown in recent years.

The linchpin to this process is passing a resolution, a model of which is now circulating to leaders in every state. When 26 states pass a resolution, the first formal meeting of states will be held since the Constitutional Convention of 1787, which George Washington presided over in Philadelphia. Each state that passes a reso-

lution will send its governor and a bipartisan delegation of legislators to the Conference.

These delegates will debate what type of long-term, structural changes are needed in the federal-state relationship short of a Constitutional Convention. State delegations will vote on a States' Petition, which will then be taken back for approval by each state's legislature.

The Petition could include legislative and legal strategies and even draft amendments to the Constitution. Once the Petition is approved by state legislatures, the Conference would formally petition Congress to vote on its proposals. Proponents say the Congress can't afford to ignore the united weight of the states behind the Petition. If

Congress does, then its refusal would become an issue in the 1996 elections.

The location of The Conference of the States has yet to be determined at this writing. Philadelphia has been suggested because that's where the Constitutional Convention opened in May of 1787. Annapolis, Md., is another possibility because that's where a conference of states was held in 1786 to discuss rewriting the Constitution.

No matter where the Conference is held, expect Utah Gov. Mike Leavitt and Nebraska Gov. Ben Nelson to be there. Leavitt, a Republican, promoted the idea throughout 1994 and found the right forum when he teamed with Nelson, a Democrat and then-president of The Council of State Governments. Leavitt and Nelson gained the

bipartisan support of state officials from across the nation at the Council's annual meeting held in December at Pinehurst, N.C. (See *State Government News* January).

Frustration with federal mandates and pre-emption of state authority played a large role in the states' action.

"We are clearly out of balance," Leavitt said. "It was supposed to be a partnership of equals. But it has now denigrated into a master-servant relationship."

The endless onslaught of burdensome and expensive federal regulations in recent years has strained state budgets and stymied states' ability to meet the needs of their own constituencies.

"You can't control your state budget by keeping your foot on the spending brake, when the federal government has its foot on the accelerator," Nelson said.

States clearly are impatient with the Supreme Court's reluctance to uphold state powers under the 10th Amendment and with Congress' recalcitrance in recognizing state authority.

"We've talked and talked about all kinds of problems we've had with the federal government. We talk; they smile, and that's it," said Illinois Gov. Jim Edgar, a Republican.

The bipartisan nature of the debate also was clear when North Carolina Gov. Jim Hunt, a Democrat, called for quick action during the Pinehurst meeting.

"This is the time to seize the moment," he said. "This is the time to be bold. This is the time to do things we have never dared to do before in redoing this whole system . . . North Carolina will be ready to pass it (resolution calling for The Conference of the States)."

With approval at the CSG meeting, The Conference of the States had moved from a topic of conversation

toward reality. The Council of State Governments agreed to promote the Conference, convene it and serve as fiscal agent. The Council will work



Nebraska Gov. Ben Nelson rallied support for The Conference of the States as president of The Council of State Governments.

with the National Governors' Association and the National Conference of State Legislatures, both of which have put their weight behind it. The effort is being guided by a national bipartisan steering committee of state elected officials under the auspices of the three organizations.

At Pinehurst, Leavitt at last had gained the collective states' endorsement he had pursued all last year. In meetings with state officials and the media, the Utah governor had repeatedly raised the idea of states uniting to restore their constitutional powers. "In order to challenge (Congress) and compete for their rightful role, states require a rallying event, a means of consolidating their power," Leavitt said in a *Washington Post* interview published Aug. 29.

Ideas for change

Even though it will not have force of law, the States' Petition will represent the highest form of formal communication between the states and Congress. Proponents say it would be arrogant of Congress to refuse to heed the States' Petition.

State task forces and scholars have suggested possible constitutional remedies to clarify state powers under the Constitution. One idea is to add a clause to Article V that would put states on equal footing with the Congress in proposing constitutional amendments. States now only have the option of calling a Constitutional Convention to propose amendments. The thought is that the uncertainty of a convention could be avoided by allowing three-fourths of state legislatures to propose an amendment to the Constitution that would become valid unless rejected by a two-thirds vote of Congress.

Another idea was proposed in 1980 by former Arizona Gov. Bruce Babbitt, now Interior secretary. It would permit two-thirds of the states to petition to sunset federal laws, except in the areas of defense and foreign affairs.

In several cases, the U.S. Supreme Court has said states must lobby Congress to fend off federal encroachments, rather than turning to the Court to protect their rights. In so ruling, the Court placed states on the same level as any private special interest group, ignoring their sovereign status. To correct this, some have suggested clarifying the Court's duties to rule on cases involving the 10th Amendment, which reserves power not delegated to the federal government to the states or the people.

Conference proponents say any number of nonconstitutional remedies might be considered, and that

"We are clearly out of balance. It was supposed to be a partnership of equals. But it has now denigrated into a master-servant relationship."

— Utah Gov. Mike Leavitt

any constitutional amendments proposed in the Petition must gain the approval of a super majority of state legislatures.

States in the lead

States need to get the word out about how they are leading the way in many areas, said CSG Executive Director Daniel M. Sprague. States are better prepared than ever to meet the needs of their constituents. And they, not Congress, have come up with innovative solutions to provide health care to the uninsured, help those on welfare become independent, bring up the quality of education and deliver public services effectively.

Just as the Equal Rights Amendment brought women's concerns to the national debate, The Conference of the States will focus attention on states, proponents say.

Conference proponents are adamant that the historic effort not be derailed by fears it will be a vehicle for special interests to amend the Constitution. The CSG resolution approving the Conference specifically directs the Conference Steering Committee to avoid identification with special interests. Moreover, the authorizing resolution now circulating limits the Conference to considering fundamental, long-term structural change.

Issues like gun control or abortion won't be on the agenda. The bipartisan state delegations are another safeguard against right- or left-wing groups seizing control of the Conference.

"The Conference is not a forum for such discussions," Leavitt said to the *Washington Post*. "It must remain focused on the fundamental issue of balancing the federal-state relationship."

With the strong bipartisan support already shown by state officials from every corner of the country for the Conference, it appears that states are well on their way to regaining their role as equals with the federal government. □

Sample Resolution of Participation in a Conference of the States

[Whereas clauses to be provided by individual states]

The following language should be incorporated into each state's resolution:

Now, Therefore, Be It Resolved:

That the following be adopted:

(1) A delegation not to exceed seven voting persons from the State of _____ shall be appointed to represent the State of _____ at a Conference of the States for the purposes described in Section (2) to be convened as provided in Section (3). The delegation shall not exceed seven voting persons as follows: (a) the governor or, if the governor does not wish to be a member of the delegation then a constitutional officer selected by the governor; and (b) a number of legislators not to exceed six, three from each house, of which at least one shall be from each major political party, selected by the presiding officer of that house. Each presiding officer may designate two alternate legislator delegates, one from each party, who have voting privileges in the absence of the primary delegates.

(2) The delegates of The Conference of the States will propose, debate and vote on elements of an action plan to restore checks and balances between states and the national government. Measures agreed upon will be formalized in an instrument called a States' Petition and returned to the delegation's state for consideration by the entire legislature.

(3) The Conference of the States shall be convened under the §501(c)3 auspices of The Council of State Governments in cooperation with the National Governors' Association and the National Conference of State Legislatures no later than 270 days after at least 26 legislatures adopt a resolution of participation.

(4) Prior to the official convening of The Conference of the States the steering committee will draft:

- (a) the governance structure and procedural rules for the Conference;
- (b) the process for receiving rebalancing proposals; and
- (c) the financial and administrative functions of the Conference, including The Council of State Governments as fiscal agent.

(5) The bylaws shall:

- (a) conform to the provisions of this resolution;
- (b) specify that each state delegation shall have one vote at the Conference; and
- (c) specify that the Conference agenda be limited to fundamental, structural, long-term reforms.

(6) Upon the official convening of The Conference of the States, the State delegations will vote upon and approve the Conference governing structure, operating rules and bylaws.

This resolution was drafted for circulation to state leaders.

BRENDA BURNS
DISTRICT 17

STATE SENATOR
FORTY-SECOND LEGISLATURE

CAPITOL COMPLEX
PHOENIX, ARIZONA 85007-2890
PHONE (602) 542-3160
TOLL FREE 1-800-352-8404
FAX (602) 542-3429



COMMITTEES:
PROFESSIONS AND EMPLOYMENT,
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DEVELOPMENT, VICE-CHAIRMAN
FINANCE
JUDICIARY

SENATE ETHICS COMMITTEE,
CHAIRMAN

Arizona State Senate

Phoenix, Arizona

May 1, 1995

Dear ALEC Member:

Re: Conference of the States (COS)

The ALEC Executive Board and the ALEC Committee on State Sovereignty decided to accept a recent invitation to join the Conference of the States Steering Committee. Senator Ray Powers appointed me as one of two ALEC representatives on the Steering Committee, and he will soon appoint the other representative.

ALEC will be joining the Council of State Governments, the National Conference of State Legislatures and the National Governors' Association on the Steering Committee. We will work to produce a unified approach by the 50 states to communicate to Congress the broad opposition to federal usurpation of state sovereignty. The COS will be an opportunity to provide a forum for states to meet together to determine the direction of reclaiming state sovereignty. The COS will not be a constitutional convention, nor will it have any binding authority or force of law.

We urge you to support your state's participation in the COS, and I invite you to call me if you have any questions about ALEC's role in this effort.

If you need further information on the Conference of the States, please contact the Council of State Governments in Kentucky at 606-244-8000.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Burns".

Senator Brenda Burns
Chairman, ALEC State Sovereignty Committee



FYI

Washington State Repeals
Government-run Health Care!

MAY 5, 1995

U.S. Supreme Court Rules for State Sovereignty

*Landmark Decision Marks Historic Shift on
Commerce Clause Interpretation*



RICHMOND

**Virginia to Provide
Historic Backdrop for
National Leadership Summit on
State Sovereignty**

■ THE CONSTITUTION

U.S. Supreme Court Draws a New Line Between the States and the Feds

Close Ruling on *Gun-Free Schools Act* Signifies High Court Taking New Approach to Commerce Clause

By Michael Hotra,
Assistant Editor

In an historic decision announced April 26, the Supreme Court sharply limited the scope of Congressional lawmaking authority as it is constitutionally defined under the interstate commerce clause. For the first time since 1936, the justices placed a limit on Congressional authority to impose legislation upon the states.

The decision represents a victory for proponents of state sovereignty, who see this ruling as a strong first

step toward repealing burdensome and unconstitutional federal mandates. "This decision is long overdue," said ALEC National Chairman Senator Ray Powers (Colo.) "In delivering this decision, the Court has finally recognized that the federal government has overstepped its constitutional authority."

In *United States vs. Lopez*, the Supreme Court ruled by a 5-4 margin to affirm the decision of the Fifth Circuit Court of Appeals and strike down the federal *Gun-Free Schools Act of 1990*. In 1992 Alfonso Lopez, then a high school senior in San Antonio, Texas, was arrested and indicted under the *Gun-Free Schools Act* which forbids, "any individual knowingly to possess a firearm in a place [he] knows is a school zone." At the time of his arrest, Lopez was carrying a .38 revolver. He was initially sentenced to six months in jail, and two years probation.

In overturning Lopez's conviction, the Court ruled that Congress exceeded its constitutional authority when it passed the *Gun-Free Schools Act*. Writing for the majority, Chief Justice William Rehnquist said of this inappropriate law, "neither the statute nor its legislative history contain[s] ex-

press congressional findings regarding the effects upon interstate commerce of gun possession in a school zone. Indeed [the law] plows thoroughly new ground and represents a sharp break with the long-standing pattern of federal firearms legislation."

In his opinion, Rehnquist narrowly defined the scope of federal legislation that is appropriate under the commerce clause. "We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce." The court's determination -- that federal legislation must "substantially affect" interstate commerce -- calls into question the legitimacy of federal regulations on issues like crop regulation, and social policy legislation such, as the *Americans with Disabilities Act*.

Justice Clarence Thomas alluded to these implications in his concurring opinion. "Our [present] construction of the scope of congressional authority has the additional problem of coming close to turning the Tenth Amendment on its head. Our case law could be read to reserve to the United States all powers not expressly *prohibited* by the Constitution."

The Conclusion of Chief Justice William Rehnquist's Majority Opinion:



To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action.

The broad language of these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, and that there never will be a distinction between what is truly national and what is truly local.

This we are unwilling to do.

Perhaps more importantly, the decision draws a line in the proverbial sand. It limits the expansion of federal lawmaking authority in the states, which has grown virtually unchecked since the New Deal. For advocates of states' sovereignty, that's good news. "We are extremely pleased with the Supreme Court's decision to reaffirm state sovereignty," said Samuel A. Brunelli, ALEC's Executive Director. "With its decision, the Court has sent a clear message to Congress and the executive branch that the commerce clause cannot serve as a convenient excuse for Congress to impose their will upon the states."

Justice Stephen Breyer authored the dissenting opinion, with which Justices John Paul Stevens, David Souter, and Ruth Bader Ginsburg concurred. In his brief, Breyer asserted that the *Gun-Free Schools*



Breyer

Act was a proper exercise of congressional authority. He argued that guns in the classroom create an environment in which teachers cannot teach,

and students cannot learn. Poorly educated students, the workforce of the future, undermine the ability of businesses to compete -- to engage in interstate commerce. Breyer says that by controlling guns in our nation's schools, our nation's business climate improves. "Upholding this legislation would do no more than simply recognize that Congress had a 'rational basis' for finding a significant connection between guns in or near schools and (through their effect on education) the interstate and foreign commerce they threaten."

From Justice Thomas' Concurring Opinion:



...it seems to me that the power to regulate "commerce" can by no means encompass authority over mere gun possession, any more than it empowers the Federal Government to regulate marriage, littering, or cruelty to animals, throughout the 50 states. Our Constitution quite properly leaves such matters to the individual States, notwithstanding these activities' effects on interstate commerce. Any interpretation that even suggests that Congress could regulate such matters is in need of reexamination.

As Rehnquist duly notes, the implications of Breyer's argument, which supports the government's contentions, are expansive. "Under the theories that the government presents in support of [this law] it is difficult to perceive any limitation on federal power; even in areas such as criminal law enforcement or education where States historically have been sovereign. Congress could regulate any activity that it found was related to the productivity of individual citizens: family law (including marriage, divorce, and child custody) for example."

Constitutional scholars are in agreement that this is a key decision. "This is good constitutional law. To stretch [the commerce clause] to cover this law is, in my opinion, stretching it way too far," said Syracuse University Professor of Political Science Ralph Ketcham. "In a way, I was proud of the court for keeping the commerce clause in line." Harvard law professor Laurence Tribe said, "If ever there was an act that exceeded Congress' commerce power, this was it."

U.S. Senator Herb Kohl (D-Wis.), the author of the *Gun-Free Schools Act*, expressed his dismay on the Senate floor. "In my judgment, this is a classic example of judicial activism, and it ignores the safety of America's children." However,

Kohl fails to recognize that 40 states *already* have some form of legislation outlawing firearms in school-zones. Therefore, Kohl's legislation, in 80 percent of the states, is not only intrusive, it is also redundant. Kohl remarked that he plans to add a technical amendment to the more recent version of the *Gun-Free Schools Act* included within the 1994 *Crime Bill*. He says he wants to ensure that this newer version of the bill remains constitutional.

At this early juncture, the future of the *Lopez* decision is unclear. Liberals, such as *New York Times* columnist Anthony Lewis, discount this decision, saying that the court has substituted its judgment for the judgment of legislators. He paints the ruling as the defeat of well-intentioned, beneficial legislation. Maybe so, but the court has chosen to act strongly because, for decades, the Congress has acted *wrongly*.

This case could be the benchmark upon which onerous federal mandates are repealed, and further intrusive laws are struck down. At the very least, this decision serves notice to Congress that it can no longer enact with impunity legislation using the commerce clause as the basis. The rights of the states must be respected. The Constitution requires nothing less. ■

■ STATE SOVEREIGNTY

Arizona Leads As States Push For Devolution

By Karen O'Brien, Task Force Director

From Alaska to Wyoming, states are reasserting their rights under the Tenth Amendment in an effort to balance the shared powers of the states and the federal government. This focus on state sovereignty is being driven by the dissatisfaction with federal government programs that are unfunded, inefficient and ineffective.

The states are calling for the federal government to put an end to the oppressive mandates that are pouring out of the federal bureaucracies, and to devolve certain powers and responsibilities back to the states. The movement is picking up momentum and has even attracted the attention of the new Congress, as well as Senate Majority Leader and Republican presidential hopeful Bob Dole, who launched his campaign for the Republican presidential nomination by reciting the Tenth Amendment. He said his mandate would be to "rein in" government and devolve power back to the states and the people.

One of the first fulfillments of the House Republican's "Contract with America" was passage of legislation to control unfunded mandates. President Clinton signed this bill which limits the practice of requiring states and localities to comply with federal programs without providing federal funds. The president, Congress and the Republican presidential candidates are responding to the overwhelming move-

ment in the state legislatures to curb the federal government's encroachment on state sovereignty.

A forerunner in the pursuit to restore the proper balance of power between the states and the federal government is Arizona, which has enacted more legislation relating to mandate relief and state sovereignty than any other state. Senator Brenda Burns, an ALEC National Director, State Chair, and Chair of the State Sovereignty committee of the Board of Directors, and ALEC member Senator Tom Patterson, have been instrumental in bringing this issue into the mainstream of political debate. Arizona has also created a joint House and Senate Committee with jurisdiction over federal mandates and states' rights issues.

Legislators in several states, including Ariz., Colo., Calif., Hawaii, Mo., Mont. and Utah have adopted ALEC's *Restatement of State Sovereignty Resolution* that declares sovereignty under the Tenth Amendment and instructs the federal government to "cease and desist mandates that are beyond the scope of its constitutionally delegated powers."

In order to make the federal government more responsive to the states, a proposal has been made for a "Conference of the States," (COS) or a meeting of officials and legislators from each state to discuss returning certain powers back to the states. The COS is being organized by a national steering committee comprised of state elected leaders appointed by the Council of State Governments, the National Conference of State Legislators, and the National Governors' Association. Recently, ALEC accepted an invitation to be on the

steering committee and further lend its support. In order for the COS to convene, 26 states must pass a *Resolution for Participation*. Currently, 14 states have passed a COS resolution. Opponents fear that the gathering could turn into a runaway constitutional convention, but the COS is not, nor is it intended to turn into, a constitutional convention. It will be a forum for states to express their frustration with federal mandates and discuss proposals that would restore the appropriate balance of power. The COS is the best way for states to express their wishes to Congress through a unified voice. The participants will draft a petition that will be presented to the Congress and the White House, but it will have no binding authority or force of law. ■

Types of State Sovereignty Legislation

■ **Declaration of State Sovereignty:** A resolution reaffirming state sovereignty.

■ **Government of the People:** A resolution petitioning Congress to propose a Constitutional amendment that would allow states to nullify federal laws that exceed Constitutional authority.

■ **Restatement of State Sovereignty Resolution:** A resolution restating the powers reserved to the states under the Tenth Amendment.

■ **Constitutional Defense Council:** A resolution designed to restore, maintain and advance state sovereignty. A key component is the establishment of a defense council to examine federal mandates and court rulings.

■ **Federal Mandate/Encroachment Act:** Legislation intended to serve as an alternative to the Joint Committee Act, which is written to demonstrate the effects federal mandates have at the state legislative level.

■ **Joint Committee Act:** Legislation written to demonstrate the effects federal mandates have at the state legislative level.

■ **Congressional Delegation:** Requires all members of a state's Congressional delegation to annually appear before a joint legislative session to discuss problems related to unfunded mandates.

■ **Conference of the States:** A resolution to attend the Conference of the States.

STATE SOVEREIGNTY ACTIVITY UPDATE

State	Declaration of State Sovereignty Resolution	Government of the People Resolution	Restatement of State Sovereignty Resolution	Constitutional Defense Council	Federal Mandate/ Encroachment on State Sovereignty Audit Act	Joint Committee Act	Congressional Delegation	Conference of the States
Ala.							E	I
Alaska								I-P1
Ariz.	E	I	E	E		E	E	E
Ark.			I					E
Calif.			E				E	I
Colo.			E			I		I-P1
Conn.			I					Pending
Del.							E	E
Fla.			I					I-P1
Ga.			I			I	I	I
Hawaii			E					I
Idaho			I	I				E
Ill.	I	E	I	I	I			I
Ind.			I					I
Iowa			I				I	E
Kan.			I					I
Ky.								E
La.			I	I				I
Maine								Pending
Md.								I
Mass.								Pending
Mich.								I
Minn.			I				I	I
Miss.			I		I			I
Mo.			E					E
Mont.			E					I
Neb.			I				E	E
Nev.			I					I
N.H.			I-P1					I
N.J.			I					I
N.M.			I				I	I
N.Y.								I
N.C.								I
N.D.								I
Ohio	I-P1			I				E
Okla.				I-P1				I
Ore.				E				I
Pa.				I-P1		I	E	I-P1
R.I.	I							I
S.C.			I			I	I	I
S.D.			I				E	E
Tenn.			I					E
Texas			I				I	I-P1
Utah			E					E
Vt.							I	I-P1
Va.			I		E		E	E
Wash.			I					I
W.V.			I-P1					I
Wisc.			I					I
Wyo.			I-P1					E
TOTAL	4	2	33	8	3	5	15	-

Key: E: Enacted I: Introduced I-P1: Passed in one chamber

As of April 25, 1995

■ ALEC EVENTS

National Leadership Summit on State Sovereignty

Four Governors and Nearly 200 State Legislators to Attend Summit in Richmond

by Noel R. Card, Managing Editor

More than 300 state and national leaders will be meeting at the Marriott Hotel in Richmond on May 18-20, to discuss the relationship between the states and the federal government.



Governor George Allen is scheduled to address the leaders during lunch on Friday, May 19. On the same day Summit attendees will hear from ALEC alum U.S. Senator Paul Coverdell (Ga.), John Goodman from the National Center for Policy Analysis, and former Reagan OMB Director Jim Miller. On Saturday,



Utah Governor Michael Leavitt and Nebraska Governor Ben Nelson, who are the leaders of the movement for a "Conference of the States," will discuss their efforts. Also on Saturday, Arizona Governor Fife Symington, who has been at the forefront of the state sovereignty movement, will speak, as will Alabama Governor Fob James and former U.S. Attorney General Griffin Bell.

Other invited speakers include: U.S. Senate Majority Leader Bob Dole (Kan.), U.S. House Majority Leader Dick Armey (Texas), and Illinois Governor Jim Edgar.

"We will be bringing to Richmond some of the nation's foremost leaders on the issue of the state-federal relationship," said ALEC Executive Director Samuel A. Brunelli. Brunelli cited the Tenth Amendment as the cornerstone of the state-federal relationship. "There is no more important issue than re-establishing the proper balance between the states and the federal government. Today, we have a federal government that often acts as if the states are mere administrative units to a huge bureaucracy on the Potomac. The new leaders in the Congress and in the states are interested in forging a relationship between the states and the federal government. And we are particularly heartened that on the eve of the Summit, the Supreme Court has begun the important process of limiting federal intrusion under the commerce clause of the Constitution, which has long been abused by Congress." (See page 8)

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Issue sessions are planned on the fundamentals of state sovereignty and devolution; environmental deregulation; health care reform in the states; tort reform at the state and federal levels; and returning the responsibility for education and welfare back to the states.

More than 40 state House Speakers and Senate Presidents, and more than 100 state legislators in leadership positions, will attend the Summit. As of this date, 40 states will be represented in Richmond.

"This meeting will set the philosophical underpinnings of future discussions on state sovereignty," said Virginia State Senator Steve Martin, ALEC's State Chair and Chairman of the Host Committee. The Virginia Host Committee has arranged an excellent series of special events and spouse tours for the Summit (see box). "This is a great opportunity for us to showcase Richmond to leaders from around the country, and we've pulled out all the stops to make this an outstanding meeting," Martin added.

For more information, contact Jennifer Whittier at (202) 466-3800. ■

Special Events and Spouse Tours

Thursday, May 18th

- Golf at the Highlands Golfers' Club
- The Summit Opening Reception
- Spouse Tour: Mansions of Richmond

Friday, May 19th

- Virginia Slims Legends Reception
- Virginia Slims Legends Concert
- Spouse Tour: Arts and Garden Tour

Saturday, May 20th

- "Living American History," St. John's Church
- Spouse Tour: Steeplechase Races

States Must Be Resolved to Reverse Federal Expansion

New ALEC Publication
To be Released at 1995
Nat'l Leadership Summit

By Kerry Jackson, Editor

Every four years, at both major parties' presidential conventions, all 50 states announce their nominations by beginning with these famous but never seriously regarded words:

"The sovereign state of ..."

Even in those charged and giddy surroundings, the statements always seem to be curious contradictions of reality. Because the obscured truth is: the states are *not* sovereign entities.

"Through the years, the sovereignty of the states and of the people has been eroded by illegitimate federal expansion," write ALEC Director of Legislation and State Policy Wendell Cox and co-author Samuel A. Brunelli, ALEC's Executive Director, in a new publication, *Sovereignty of the People and Devolution*. "The federal government has treated the states as subordinate units of government, which they are not."

In what is essentially a handbook on state sovereignty and devolution, which will be released as part of ALEC's National Leadership Summit, Cox and Brunelli explore the concept of state sovereignty from an historical perspective and

a constitutional viewpoint. Using a wide variety of works, speeches and studies from which they draw their conclusion, the authors show that the state-federal relationship that many recognize today as the traditional alliance has strayed far from its intended purpose. Run-away federal debt, burdensome mandates, centralized power and a Supreme Court that has too often sided with Congress and the executive branch have all contributed to the dilution of state sovereignty. The authors argue that "federal usurpation of popular sovereignty has generated a serious crisis in American governance."

Cox and Brunelli contend that the three branches of the federal government could reverse their wrongful expansion of power by:

- Congressional repeal of the laws under which it has illegitimately expanded federal power;
- Executive orders to rescind directives and regulations that have wrongly intruded into areas of state responsibility;
- Supreme Court rulings that invalidate laws, regulations, and executive orders that have usurped the sovereignty of the states and of the people.

"There are encouraging indications that federal initiatives will begin to devolve power to states. But it would be overly optimistic to rely upon the federal government to willingly devolve all of the powers that it has wrested from the states," they write. "Restoration of the sovereignty of the states and the people will primarily depend upon the resolve of the states and the people." To that end, Cox and Brunelli ad-

vocate two mechanisms for rendering constitutional decisions" since the amendment process is "difficult and cumbersome." One is the *Government of the People Amendment*. It allows two-thirds of the states to nullify sections of federal law or regulation where they find such federal action to have violated the sovereignty of the states.

The other is the *States Initiative Amendment*. In this method, the Constitution would be amended if three-fourths of the states proposed an amendment and Congress failed to block the proposal by a two-thirds vote in both chambers within two years.

"The people, through the states, retain the right to reclaim their sovereignty through constitutional amendments," Cox and Brunelli explain.

In their work, the authors include models for the constitutional amendments, as well as ALEC model resolutions, model proposals and model legislation.

"The cornerstone of the ALEC sovereignty and devolution agenda is the 'Declaration of Sovereignty,' " they write, "which recalls the institution of the federal government under the Constitution, outlines the extent to which the federal government has illegitimately assumed sovereignty, affirms the importance of fundamental law, proposes principles by which popular sovereignty should be restored, and outlines strategies by which such restoration might occur."

This in-depth and cogent analysis is prescribed reading for all proponents of state sovereignty and devolution. ■

SCOMM

99:18

Alaska State Legislature



While in Session:
State Capitol Building
Juneau, Alaska 99801-1182
907-465-3719

Interim:
119 N. Cushman
Suite 211
Fairbanks, Alaska 99701
907-456-5081

Representative Al Vezey

SPONSOR STATEMENT

On August 14, 1867 Captain Thomas Long and the crew of the whaling bark "Nile", from New London, Connecticut, discovered Wrangel Island in the Chukchi Sea. Captain Long named the Island after the former governor of Russian Alaska, Baron Ferdinand Petrovich von Wrangel. This Island has an area of 1,740 square miles, larger than the state of Rhode Island and is located some 270 miles northwest of Cape Lisburne, Alaska.

Even though Captain Long was the first to sight and to describe Wrangel Island, the first recorded landing on the island occurred August 12, 1881, when Captain Calvin L. Hooper, commander of the Bering Sea Patrol, a division of the U.S. Treasury Department and as such, the de facto governor of Alaska, landed at Clark River on the eastern coast of Wrangel Island. With his fellow officers and John Muir (who later founded the Sierra Club) they raised the American Flag and took possession of the island in the name of the United States.

Wrangel Island and its nearby satellite island Herald Island were placed by the United States Coast and Geodetic Service within the District and later Territory and State of Alaska in publications from 1900 through 1977.

The De Long Islands of Henrietta, Jeannette and Bennett were first discovered in the East Siberian Sea and were claimed and named by U.S. Navy Commander George W. De Long during his 1879 - 1881 expedition into the Arctic where the commander and his crew died when their ship, the "JEANNETTE", was crushed and sunk by ice floes.

Captain Hooper was engaged in a Congressionally sponsored effort to rescue the "JEANNETTE", a vessel engaged in Arctic research that was locked in ice floes and subsequently lost. Therefore Captain Hooper had the authority to claim Wrangel Island for the United States.

Wrangel Island became a part of the United States by right of confirmed discovery and first possession. Later, a permanent settlement was established there when the American ship "SILVER WAVE" landed a party on the island on September 15, 1921 under the direction of Captain Jack Hammer. The party landed with provisions for only six months as they stated that they planned to sustain themselves by hunting. The relief vessel of 1922 was blocked from arriving by ice floes and it was not until August 23, 1923 that the ship "DONALDSON" arrived. The only survivor of the 1921 expedition was an Eskimo woman named Ada "Blackjack" Johnson, who died just a few years ago in Alaska.

A new party led by Charles Wells of Uniontown, Pennsylvania continued settlement on Wrangel Island and on May 13, 1924, Secretary of State Charles Evans Hughes stated that the Americans, the Lomen Brothers, were the proprietary owners of Wrangel Island.

On August 20, 1924, an armed party from the Soviet gunboat "RED OCTOBER" landed on Wrangel Island, took Wells and other Americans by force, and told them that they were being returned to Alaska. In typical Soviet fashion, they took the Americans to Vladivostok and confiscated the pelts that the American trappers had accumulated during the 12 bitter months on the island.

The Americans who survived their ordeal in Vladivostok were released following the intervention of the American Consul at Harbin, Manchuria but Charles Wells and two residents of Alaska died while detained by the Soviet Government.

The residents of Alaska who survived were all from Golvin Bay, Alaska. They survived the severe physical and emotional trauma resulting from the assault, kidnapping, false imprisonment, theft of property together with other violations of American and Alaska law by the agents of the Soviet regime.

After seizing Wrangel Island, the Soviet government proceeded to seize more American soil by occupying the nearby and defenseless Herald Island. The Soviet government subsequently asserted a spurious claim to the American De Long Island of Henrietta, Jeannette and Bennett.

These illegal acts by the Soviet government interrupted 57 years of peaceful use of these island by American seamen, herders and hunters.

The Soviet occupation of what they refer to as Ostrova De Long is an affront to all Americans, is an insult to the memory of their brave discoverer and a source of embarrassment to the United States Navy, which memorializes his memory at the Naval Academy in Annapolis.

The soil of all five of these American islands and their surrounding continental shelf has been held by the military force of a foreign power, in contravention of international law and by conduct that is contrary to what is recognized as proper by civilized nations.

The Soviet government has typified the uncivilized conduct of socialist dictatorships by establishing forced labor camps on Wrangel Island as reported in testimony before the U.S. Senate Judiciary Committee in January of 1973. It has also been reported that Wrangel Island was the last known place of imprisonment of Raoul Wallenberg, the Swedish Consul in Budapest, Hungary, who was arrested by Soviet Forces at the end of World War II. Mr. Wallenberg was responsible for saving the lives of thousands of European Jews from the Nazi Holocaust.

This conduct on American soil has continued in defiance of American law as well as in defiance of the international rules of conduct resulting from the Nuremberg war crime trials after World War II. The continuing trespass by the Commonwealth of Independent States, the heir to the despicable former Soviet Union, deprives the State of Alaska and its people of their fundamental right to use the islands of Wrangel, Herald, Henrietta, Jeannette and Bennett together with the surrounding continental shelf and its valuable resources.

Unlike the government of Canada and Great Britain, the United States has never surrendered its claims of sovereignty over these islands.

The then Secretary of the U.S. Department of State, James Baker III, negotiated a treaty to give the islands of Wrangel, Herald, the American De Long Island of Henrietta, Jeannette and Bennett and Copper Island, Sea Lion Rock and Sea Otter Rock on the west end of the Aleutian Chain and their territorial shelf to the Former Soviet Union.

Secretary Baker also signed a secret side agreement that stated the Bush administration would recognize the treaty "in force" until such time as the United States Senate ratified the proposed treaty. The Secretary had no authority to make such agreements. American government is not permitted to enter into secret international treaties.

The sponsor of this bill does not believe that agreements between the United States and the former Soviet Union, which no longer exists, whether they be secret or otherwise, can affect American claims to these islands until they have been ratified by the United States Senate.

The sponsor of this legislation believes that the State of Alaska and the American Government should assert and reassert American sovereignty over Wrangel Island, Herald Island, and the De Long Islands of Henrietta Jeannette and Bennett and Little Diomed Island in the Bering Strait, their resources, and their territorial shelf in the behalf of the American people. We further propose that the maritime boundary between Alaska and eastern Russia not be established until and unless the State of Alaska is formally represented in the negotiations and it's consent obtained.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HJR 22

Revision Date:	Dept. Affected: Department of Law
Title: "Relating to the maritime boundary between Alaska and the former Union of Soviet Socialist Republics"	BRU: Legal Services
Sponsor: Representative Vezey	Component: Operations
Requester: Governor's Office	COMPONENT SERIAL NO. 0093

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	150.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	150.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	150.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	150.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HJR 22 declares that because the proposed United States - U.S.S.R. Maritime Boundary Agreement was not put into force before the dissolution of the U.S.S.R., the agreement does not have legal force, and any agreement on a maritime boundary between Alaska and eastern Russia must be negotiated anew with whatever new foreign government has sovereignty at the time. The resolution further declares that for such an agreement to be negotiated by the United States government, Alaska must be formally represented in the negotiations and its consent obtained. HJR 22 also requests that the Governor, in consultation with the Attorney General, prepare and provide to the Legislature, within 120 days after passage of the resolution, a study of the legal aspects of the maritime boundary proposed in the Agreement in order to determine the following:

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: 2/6/95
Date: 2/6/95

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FISCAL NOTE

**STATE OF ALASKA
1995 LEGISLATIVE SESSION**

BILL NO. HJR 22

ANALYSIS CONTINUATION:

(1) what effect the boundary would have had on the state's sovereignty over Wrangell, Herald, Bennett, Jeannette, and Henrietta Islands in the Arctic, over Copper Island, Sea Otter Rock, and Sea Lion Rock on the western end of the Aleutian Chain, and over Little Diomed Island in the Bering Strait;

(2) what effect, including an appraisal of the dollar values involved, the proposed boundary would have had on the state's property interests in the areas in (1) identified above and their territorial seas and seabeds;

(3) what legal actions Alaska could take to prevent the usurpation, abrogation, or cession of state sovereignty over these islands and their territorial seas and seabeds and to recover just compensation for the taking of Alaska property if attempts are made to enforce the proposed maritime boundary.

Finally, HJR 22 requests the U.S. Department of State to reveal any and all acts, directives, and reports regarding implementation of the side agreement, signed by then Secretary of State James A. Baker III and that bound the United States and the U.S.S.R. to abide by the proposed agreement until it was put into force, and respectfully requests the Governor and the Attorney General to investigate whether any actions in this matter may have violated state law and to report on their findings to the Legislature within 120 days after passage of HJR 22.

The actions requested of the Governor and the Attorney General involves issues of international law and records of transactions that are available only in Washington, D.C. Therefore the Department of Law will require the services of an international law expert resident in Washington, D.C. to fulfill the request. The amount involved in this fiscal note will purchase about 500 hours of such an expert's time.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSIONBILL NO. HJR 22

Revision Date: _____
 Title: "A Resolution Relating to the maritime boundaries between Alaska and the former Union of Soviet Socialist Republics".
 Sponsor: Representatives Vezey, Ogan, Toohey
 Requestor: _____

Department Affected: Office of the Governor
 BRU: All BRUs
 Component: All Components
 COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN						
-----------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact

Prepared by: Michael A. Nizich, Director
 Division: Division of Administrative Services

Phone: 465-3876
 Date: 1/31/95

Approved by Commissioner: Jim Ayers, Chief of Staff
 Agency: Office of the Governor Date: _____

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Curriculum Vitae

MARK SEIDENBERG

P.O. Box 6616
Arlington, Virginia 22201
818-223-8080

Education: A.A., Los Angeles City College, Los Angeles, CA
 B.A., San Francisco State College, San Francisco, CA
 M.S.A., California State University Dominguez Hills

Current positions: Senior Traffic Management Specialist,
 (LWOP) United States Department of
 Agriculture

Vice Chairman, State Department Watch
Nonpartisan foreign policy watchdog group
founded in 1984. Testified before U.S.
Senate Committee on Foreign Relations on the
proposed US-USSR Maritime Boundary Agreement

Curriculum Vitae

CARL OLSON

P.O. Box 6102
Woodland Hills, Calif. 91365
818-223-8080

Education: B.A., Pomona College, Claremont, California
M.B.A., Columbia University, New York City
M.S., Columbia University, New York City

Current positions: Adjunct professor of finance, accounting, and
taxation at Chapman University, University
of La Verne, and Moorpark College

Chairman, State Department Watch
Nonpartisan foreign policy watchdog group
founded in 1984. Testified before U.S.
Senate Committee on Foreign Relations on the
proposed US-USSR Maritime Boundary Agreement

Lieutenant Commander, USNR (Retired)

Carl Olson
P.O. Box 6102
Woodland Hills, California 91365

February 16, 1995

Ms. Sharon Young
State Recorder
3601 C Street #1180
Anchorage, Alaska 99503-5947

Dear Ms. Young:

Your directive to your recorder's offices of February 19, 1993, came as an incredible shock to me. A copy of the directive is enclosed.

Since I am the person referred to who wanted to record a quitclaim deed regarding Wrangell Island in the Chukchi Sea part of Alaska, I am truly alarmed that your decision was based on purely political motives and was intentionally made to prejudice international negotiations. I am further alarmed that you would take such actions to prejudice the boundary negotiations against the State of Alaska and the United States governments (which have their own property interests at stake along with individual landowners).

Let me ask you to respond to the following points:

1. Did you seek any legal advice for your decision, and if so, from whom?
2. Did you realize when you wrote this directive in 1993 that the proposed "1991 boundary treaty" was not in force, and therefore had no relevance? It is still not in force.
3. Did you realize that for all the negotiations regarding a potential maritime boundary between Alaska and Siberia, the State of Alaska has been systematically and wrongfully excluded from the negotiations, and that the State Legislature has passed strong protest resolutions about the unconstitutionality of this procedure and the exceptional value of the property and sovereignty at stake?
4. Do you realize that your actions make it seem that you support the Russian/Soviet side against Alaska and the United States?
5. Do you realize that your language apparently defames and libels me and may be actionable?
6. Do you realize that the "at least one document that did find its way into the record" is probably the original deed of mine on Wrangell Island which was properly recorded at Nome in 1985, and that your assertion that deeds for Wrangell Island can no longer be recorded must be either an administrative oversight or a declaration of cession of Wrangell Island from Alaska?

Page 2

7. Do you realize that numerous other deeds have been properly recorded in Nome and elsewhere in Alaska regarding Wrangell Island?

8. Do you realize that your spelling of the island as "Wrangel" is the Russified spelling, which again shows an unfortunate bias? In all the Alaskan and English usages, the actual spelling is "Wrangell" with two l's.

I urge you to reconsider your policy as quickly as possible, so as to rescind it and allow recordations regarding Wrangell Island. Please advise me soonest on this critical issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl Olson".

Carl Olson

cc: Distribution list

February 19, 1993

Directive to Recorder's Offices from Sharon Young, State Recorder

"I am taking this opportunity to issue an alert to all Recording Offices to keep an eye out for documents affecting Wrangel Island property. While these would likely be directed to the Nome office, it is possible that they might also be directed to some other office, hoping that they would find their way into the public record anywhere in Alaska. The important thing to remember is that Wrangel Island is not within any recording district boundary in the state and cannot be accepted for recording. Purported landowners of Wrangel Island property have recently sought authorization from the State Recorder's Office to record their documents in Nome; this authorization was not given. Some of you may be aware of the colorful history associated with Wrangel Island; Wrangel Island property interests have been the subject of numerous attempts to record documents in Alaska in the past, and we are aware of at least one such document that did find its way into the record. There have been conflicting international claims to the island for years; both the United States and Soviet Union have claimed ownership. U.S. citizens who own property there are hoping that recordation of their claims in official state records in Alaska will support their position and undermine negotiations which could result in the U.S. loss of ownership. (Under a 1991 boundary treaty with Russia, the island lies inside the Soviet side of the boundary.) The recording system in Alaska has no interest or desire in becoming embroiled in international disputes and will not subject itself to being used to further the interests of the purported landowners. Therefore, be aware of this situation and be especially alert to any attempts to try to slide a Wrangel Island document into the record, perhaps even in conjunction with some other transaction." Sharon.

☐ SACRAMENTO ADDRESS
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-8366

☐ DISTRICT ADDRESS
107 WHITE OAK, SUITE 124
G. ANDA HILLS, CA 91344
(818) 358-3838



Assembly California Legislature

PAULA L. BOLAND

MEMBER OF THE ASSEMBLY
THIRTY-EIGHTH DISTRICT

COMMITTEES
HOUSING & COMMUNITY
DEVELOPMENT
LOCAL GOVERNMENT
PUBLIC SAFETY
UTILITIES & COMMERCE

June 5, 1991

Honorable Joseph Biden, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Biden:

The purpose of this letter is to request further study concerning the Soviet-Alaska Maritime Boundary Treaty.

As an Assemblymember from California, I support the State of Alaska, or any State, in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union. The rights of states to be involved in determining their own boundaries must be upheld.

I ask that you and the other subcommittee members look upon this request favorably. Thank you for your time.

Sincerely,

A handwritten signature in black ink, reading "Paula L. Boland".

PAULA L. BOLAND
38th Assembly District

PB/kf





California State Senate

SENATOR
DON ROGERS

Sixteenth Senatorial District

COMMITTEES
FOREIGN AFFAIRS
CHAIRMAN
CULTURE AND WATER
RESOURCES
BUDGET AND FISCAL
AFFAIRS
RANGE, CLAIMS AND
DEMANDS
NATURAL RESOURCES AND
WILDLIFE
J. CAUCUS

PLEASE RESPOND TO:

- ☐ SACRAMENTO OFFICE
STATE CAPITOL
SACRAMENTO, CA 95814
916-448-8837
FAX 916-443-4018
- ☐ 1328 H STREET
BAKERSFIELD, CA 93301
805-385-2927
FAX 805-861-8413
- ☐ 804 NORTH IRWIN
HANFORD, CA 93230
209-582-2648
FAX 209-582-3193
- ☐ 528 BARSTOW ROAD
BARSTOW, CA 92311
619-258-5805
- ☐ P.O. BOX 621
RIDGECREST, CA 93566
1080 NORTH NORMA
RIDGECREST, CA 93565
919-448-4118

June 11, 1991

Honorable Joseph Biden, Jr.
Chairman, Subcommittee on
European Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Biden:

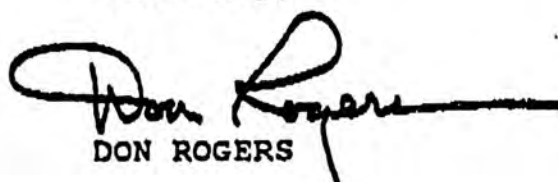
With respect to your committee's consideration of the proposed U.S.-U.S.S.R. Maritime Boundary Treaty, I would like to express the grave reservations that are contained in the enclosed copy of Senate Joint Resolution 20. This measure is a follow-on to Assembly Joint Resolution 37 which passed nearly unanimously in 1987 on the same subject matter.

Every state and all Americans have a compelling interest in this matter. As you know, the State Government of Alaska has never been permitted to participate in any of the negotiating sessions, or is its consent being currently contemplated for the boundary terms.

I urge you to reject the treaty in its present condition, to request the President and Secretary of State to include the State Government of Alaska in a new round of negotiations and to require the consent of the State of Alaska to any terms of a treaty that affect its boundaries or territory.

Thank you for your timely assistance in this matter.

Sincerely,


DON ROGERS

DAR:abr

Enclosure

Exhibit 60



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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

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 8784, 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 Loda, *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*.

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).

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. 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.

... of their visit the *Corwin*

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 *Vai-gach* 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.

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 men and American Eskimos to colonize the Island.³² This colony, under 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 46, 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 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 its 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

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 were legally excluded from occupying the territory concerned. 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*.

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).

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 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* (Komsomo Truth), Jan. 28, 1950, at 4. In 1950 the *Komsomolskaya Pravda* (Komsomo 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

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 known 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

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*.

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. LUTERPACHT, *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 the 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 Bovie 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

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 the landing a discovery because that mode had already been used 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

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.

95. *Id.*

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

97. I. BROWNIE, 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-

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. 1 FOREIGN RELATIONS DOCUMENTS 286 (1923). A letter from the Chargé 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:

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).

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 incursions of 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 *Miniquiers 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 *Miniquiers 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 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 (Litvinov) 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 Nations 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/921; Official Records of the Fourth Session of the Gen-

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 organization 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 of 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 *Terra do Góes* 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

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 trespassing 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 Talautse 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. I. 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 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. I. SOHN, *CASES AND MATERIALS ON WORLD LAW* 272 (1973). See also Report of

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).

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, is not 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 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. Uphur, 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, act 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.*

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. SORENSON, 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

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

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.

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

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 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

FILED

MAY 23 1991

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

R.M. CHRISTIANSEN,	)	
	)	
Plaintiff,	)	CASE NO. A90-362 Civil
	)	
v.	)	ORDER DIRECTING SERVICE
	)	
GEORGE BUSH, et al.	)	
	)	
Defendants.	)	

Plaintiff, R. M. Christiansen, pro per, has filed a complaint (and brief in support thereof) naming George Bush, President of the United States, and James A. Baker, III, Secretary of State, as defendants. The complaint seeks injunctive relief and a declaratory judgment declaring null and void an agreement signed June 1, 1990, by James Baker and Foreign Minister Eduard A. Shevardnadze on behalf of the United States and the Soviet Union, respectively, under the terms of which the United States surrenders any claim it may have to the Wrangell, Herald, Bennett, Henrietta and Jeannette Islands in the Arctic Ocean and fixes an ocean boundary between the two nations. Plaintiff further asks this Court to declare the ownership of the


aforementioned islands, their seabeds, natural resources and sovereign limits. Finally, he asks the Court to order the complete text of the agreement; and, if satisfied that its "top secret" classification is not warranted, to order its publication.

In a separate pretrial motion for preliminary injunction, Plaintiff seeks a preliminary (temporary) injunction halting any further action either Executive or Legislative until this matter is decided by the Court.

As grounds for his complaint, Plaintiff alleges that the Executive branch of the United States government does not possess the authority to divest the United States of its property and that the agreement therefore is repugnant to the U. S. Constitution under Article IV, Section 3, Clause 2 which provides:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State".

This Court, having reviewed Plaintiff's complaint and having determined that a cause of action may exist; IT IS HEREBY ORDERED:

1. That Plaintiff shall proceed forthwith to serve

aforementioned islands, their seabeds, natural resources and sovereign limits. Finally, he asks the Court to order the complete text of the agreement; and, if satisfied that its "top secret" classification is not warranted, to order its publication.

In a separate pretrial motion for preliminary injunction, Plaintiff seeks a preliminary (temporary) injunction halting any further action either Executive or Legislative until this matter is decided by the Court.

As grounds for his complaint, Plaintiff alleges that the Executive branch of the United States government does not possess the authority to divest the United States of its property and that the agreement therefore is repugnant to the U. S. Constitution under Article IV, Section 3, Clause 2 which provides:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State".

This Court, having reviewed Plaintiff's complaint and having determined that a cause of action may exist; IT IS HEREBY ORDERED:

1. That Plaintiff shall proceed forthwith to serve


a copy of the complaint, brief in support thereof and exhibits attached thereto, along with the summons, Plaintiff's motions and a copy of this Order, upon Wevley Wm. Shea, United States Attorney for the District of Alaska; the Attorney General of the United States at Washington, District of Columbia; and defendants as named in the complaint. [Fed.R.Civ.P. 4(i)(1)(2)].

2. The Clerk of Court is directed to mail copies of Form 285 to Plaintiff. Plaintiff shall complete a separate form for each defendant and return completed forms to the United States Marshal Service, 222 W. 7th Avenue, Box 28, Anchorage, Alaska, 99513.

3. That the United States Marshal, upon receipt of an appropriately completed Form 285 for each defendant, shall serve forthwith a copy of the complaint; brief in support thereof and exhibits attached thereto; along with summons, Plaintiff's motions and a copy of this Order upon defendants (as set forth in Paragraph 1 of this order) in a manner specified in Form 285. Cost of service to be advanced by the Government.

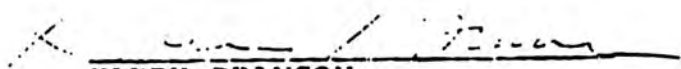
4. That the Government shall, within 60 days of the date of this Order, file an answer or other responsive pleading.

3. That a copy of all subsequent pleadings or documents submitted by the Plaintiff to this Court for consideration of this case be served upon the United States Attorney for the


District of Alaska. Petitioner shall included with any original paper(s) to be filed with the Clerk of Court a certificate stating that a true and correct copy of such document(s) was mailed to defendants or their counsel. Any such motions shall contain a statement which certifies that said service has been made. Any papers received by a U.S. District Court Judge or Magistrate Judge which have not been filed with the Clerk of Court or which fail to indicate a certificate of service shall be disregarded by the Court.

4. All parties shall refrain from communicating ex parte with any Judge or Magistrate of this Court concerning the merits of this case.

DATED this X day of July,
1991, at Anchorage, Alaska.


HARRY BENSON
U.S. MAGISTRATE JUDGE


cc: 
R. Christiansen w/att
285's & summons.



DEPARTMENT OF STATE

Washington, D.C. 20520

RECEIVED
Department of Law

OCT 10 1975

AM PM
7,8,9,10,11,12,1,2,3,4,5,6

A

October 3, 1975

Robert M. Johnson, Esq.
Assistant Attorney General
State of Alaska
Department of Law
Office of the Attorney General
Juneau, Alaska 99801

Dear Mr. Johnson:

Thank you for your letter of September 2 which has been referred to my office for reply.

Wrangel Island, which lies approximately 200 miles west of the 1867 "Alaska Purchase" line in the Bering Strait and the "Frozen Ocean," was known to Siberian natives under Russian sovereignty at a very early period, but efforts by Wrangel, a Russian national, in the 1820's to "discover" it were unsuccessful.

The date of eventual discovery is variously given as 1849 (a British explorer) and 1881. In the latter year an American, one Captain DeLong of the U.S. Navy sighted but apparently did not land on the island. A subsequent expedition, commanded by Captain Hooper, sent to find DeLong and his ship, did land on Wrangel and claimed it for the United States that same year.

In the 1920's the Canadian polar explorer, Vilhjalmur Stefansson, was convinced that the age of the Arctic had come and organized a company to occupy Wrangel and perhaps adjacent islets beginning in 1921, in order to exploit its resources and establish British sovereignty. Most of the colony put ashore on the island are said to have been United States Eskimos, but one was Canadian. In 1923 an American company purchased the holdings of this Canadian group. The winter of 1923 was particularly difficult and Stefansson was unable

to return to Wrangel; when he did in 1924, all the expedition members had perished. He left a second party, which was removed by a Soviet vessel in August of 1924; the Soviets removed the British flag which was still being flown and raised their own, which has remained since. Slightly later the British and Canadian Governments disclaimed any interest in establishing sovereignty over the island.

We have found little evidence that the United States has ever actively asserted a claim to Wrangel Island. We are unaware of American actions subsequent to 1881 which evidence the actual, effective and continuous functions of a state required to preserve and perfect a claim of sovereignty. While it is true that Wrangel Island (also given as Wrangell) was indicated shortly after the turn of the century as a part of Alaska on Interior Department maps and in their geographical publications, this would not constitute by itself an exercise of such functions. Mere discovery, of course, unsupported by effective occupation over time, is insufficient to acquire sovereignty over a "terra nullius" according to the legal authorities. The most recent official U.S. statement on Wrangel contained in our files dates from the period when the Soviets were establishing their control of it, in the early twenties, when it was merely noted that the United States had not relinquished its claim. We are unaware of diplomatic activity at any time to advance such a claim against the British or, after 1924, the Soviets.

The United States has never had occasion to formally recognize Soviet ownership of Wrangel Island and early Soviet claims based on a sector principle in the Arctic were rejected. The United States, however, has long adopted the practice of dealing with authorities in de facto control of territory, and we do not consider that scientific cooperative activities with the U.S.S.R. with respect to Wrangel necessarily import any recognition of legal status. The Department of State does not envision any circumstances under which it would have occasion to modify this practice, or to revive an American claim to Wrangel. As noted in your letter, a Soviet argument founded on acquisitive prescription through effective and apparently unopposed occupation over a half century, would, in light of the history of the United States claim, be a formidable obstacle to its successful assertion today.

The Department of State would welcome any views of the State of Alaska on the history and current validity of an American claim to Wrangel Island, as well as information derived from your own research which may be unavailable to us.

We are contemplating further historical research on our part, and will of course share any results with you if you would be interested in receiving them.

The following sources may be of interest:

1 Hackworth, Digest of International Law,
398 et seq. (discovery and occupation),
464 (Wrangel Island)).

2 Whiteman, Digest of International Law,
1028 et seq. (discovery, occupation
and prescription)

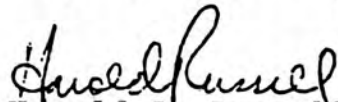
The Voyage of the Jeanette, Emma DeLong,
ed., Boston: 1884

The Friendly Arctic v. Stefansson, n.d.

Ostrov Uranglaya, A.I. Mineev, Moscow:
1946

I hope that this letter has been helpful, and please
contact me if we can be of further assistance.

Very truly yours,



Harold S. Russell
Assistant Legal Adviser
for European Affairs

U.S. Considered Plan to Sell Part of Alaska to Denmark

Associated Press

Washington

Americans might be buying much of their oil from Denmark if a plan to trade parts of Alaska for military sites in Greenland had been approved after World War II.

The proposed swap came to light in newly discovered documents in the National Archives that also showed the United States proposed in 1946 to buy the entire arctic island from the Danes.

Secretary of State James Byrnes said the offer "seemed to come as a shock" to Danish Foreign Minister Gustav Rasmussen, but Rasmussen "did not reject my suggestions flatly."

He said he gave Rasmussen a memorandum, and the Danish official agreed to study it. There is no known record of any response, but the sale was never consummated. The United States did obtain military bases in Greenland.

Byrnes made the offer to Rasmussen in New York on Dec. 14, 1946, according to a telegram from Byrnes to the U.S. legation in Copenhagen.

After discussing other security arrangements for Greenland, the secretary of state said he told Rasmussen that perhaps an outright sale to the United States "would be the most clean-cut and satisfactory."

Discovery of the documents, which have been declassified since the early 1970s, was first reported by the Copenhagen newspaper Jyllands-Posten.

One alternative that was discussed was for the United States to trade land in the Point Barrow district of Alaska for those portions of Greenland that the United States considered of military value.

Oil Rights

Under this plan, the Danes would have received the rights to any oil discovered in the district and would have had to sell the oil to the United States.

The richest oil strike in U.S. history was made in 1967 in the Prudhoe Bay area, 200 miles east of Point Barrow. The Point Barrow area now is part of the National

Petroleum Reserve, which is reserved for national defense.

William C. Trimble, assistant chief of the State Department's division of northern European affairs, said in a memo in May 1946 that he did not think the Danes would look any more favorably on such a swap than on a sale.

Trimble suggested buying the 844,000-square mile island, more

The richest oil strike in U.S. history was made in 1967 in the area Denmark would have owned

than five-sixths of which is covered by ice, for \$100 million in gold.

He said only about 600 Danes resided in Greenland. In more recent years, there have been an estimated 10,000 Danes and 44,000 Inuit, or Eskimos.

Trimble said purchase of Greenland would give the United States "valuable bases from which to launch an air counteroffensive over the arctic area in the event of attack."

The proposed purchase first cropped up in the files in November 1945, when Senator Owen Brewster, R-Maine, said he considered it "a military necessity" and American military and naval authorities also favored it.

Purchase Plan

In April 1946, State Department official John Hickerson attended a meeting of the planning and strategy committee of the Joint Chiefs of Staff and reported that "practically every member... said that our real objective as regards to Greenland should be to acquire it by purchase from Denmark."

On June 20, 1946, Secretary of War Robert Patterson weighed in, writing to Undersecretary of State Dean Acheson that "it might be a good idea to take prompt action toward securing from Denmark (even to the extent of purchasing

the entire island, if necessary) the military rights which have been outlined by the Joint Chiefs of Staff."

Acheson replied that the State Department was aware of the importance of Greenland, but he did not say anything about buying it.

Greenland was made an integral part of Denmark in 1951 after two centuries as a colony. In 1979, the island was granted home rule, but Denmark retains control of foreign and defense affairs.

The U.S. Air Force currently maintains two bases in Greenland, Thule and Sondstrom, both part of the Space Command.

Construction of the Thule base in 1952 was made possible by a defense treaty signed by the United States and Denmark in 1951. Originally designed as a refueling base for long-range bombing missions, it has been a ballistic missile early warning site and satellite telemetry station since 1961. Sondstrom's mission is in support of the base at Thule.

San Francisco Chronicle

April 15, 1991

Exhibit 64



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Coast and Geodetic Survey
Rockville, Maryland 20852

Mr. Carl Olson
Chairman, State Department Watch
West Coast Office
Post Office Box 7981
Northridge, California 91327

Dear Mr. Olson:

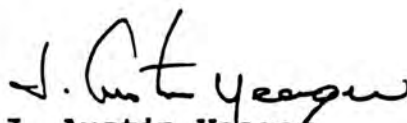
Thank you for your letter regarding the reef off the southwest side of Little Diomed Island, Alaska.

The National Ocean Service (NOS) surveyed in the Bering Strait area in 1960 but the survey did not cover the area of the Diomed Islands. We have never performed a hydrographic survey, nor have we ever compiled a shoreline manuscript of Little Diomed Island. The sand spit/reef was added to the nautical chart around 1930 and was based on information from the U.S. Coast Guard vessel BEAR which was in the area in 1925 and 1926. A copy of that report taken from microfilm is enclosed.

The sand spit/reef is simply a portrayal based on the textural information given in the report and, therefore, must be considered only symbolic rather than a true representation based on an accurate survey, hence the notation on the chart "Reef Rep."

Determining bottom foot ice conditions would require extensive field work which NOS has no plans to pursue.

Sincerely,


J. Austin Yeager
Rear Admiral, NOAA
Director
Coast and Geodetic Survey

Enclosure



Comments for the record of the hearing on the U.S.-U.S.S.R. Maritime Boundary Agreement, held on June 13, 1991, before the Committee on Foreign Relations

1. Failure of U.S.S.R. to ratify the agreement for over a year

On page 3 of the testimony of Legal Advisor Edwin D. Williamson is the statement: "I would also like to emphasize that our prompt ratification of the agreement could facilitate early Soviet ratification of the agreement...."

It would be worthwhile to find out what opposition has arisen in the Soviet Union to this agreement and why it has become such a low priority that no ratification has been forthcoming in over a year since the signing on June 1, 1990.

2. Legitimacy and substance of the 1977 U.S.-U.S.S.R. maritime boundary agreement

On page 5 of the testimony of Edwin D. Williamson is the statement: "In early 1977, the United States proposed that the two sides agree to respect treaties in force between them, in particular the 1867 Convention, in establishing their respective 200 mile zones. The Soviet government agreed...."

This is a significant revelation about a heretofore undisclosed 1977 U.S.-U.S.S.R. maritime boundary agreement. It must be presumed that this agreement is currently operative and carries the force of law. I strongly suggest that the following be made a part of this hearing record: 1. the full text of any documents by which the U.S. made the proposal in 1977, and any discussion papers and legal opinions leading up to the proposal; 2. the full text of any documents by which the Soviet government agreed to the proposal; 3. any documents by which any terms of the agreement were implemented; 4. any legal opinions rendered regarding interpretation, application, or other aspect of the agreement; 5. any documents showing any modification of the agreement; and 6. any documents showing any rescission, revocation, or termination of the agreement.

3. Cession of sovereignty over several Alaskan/U.S. islands

On page 9 of the testimony of Edwin D. Williamson is the statement: "There are allegations that this agreement gives away five Arctic islands to the Soviet Union. This allegation is simply incorrect. The agreement is a maritime boundary agreement. It does not recognize Soviet sovereignty over those islands."

First of all, it should be understood that the five islands referred to are the American Alaskan Arctic islands of Wrangell, Herald, Bennett, Jeannette, and Henrietta. In addition to these, other Alaskan islands are being given away. A portion of Little Diomed Island is being given away by drawing the boundary line north and south through the middle of the southwestern reef of Little Diomed, thus putting part of the reef on the Soviet side. Moreover, the westernmost Alaskan Aleutian chain is being given away by placing Copper Island, Sea Lion Rock, and Sea Otter Rock on the Soviet side.

87

The proposed maritime boundary agreement speaks of recognizing the sovereign rights and jurisdiction of each government with regard to fishery zones, exclusive economic zones, and outercontinental shelves. Such rights attach solely and exclusively from the sea coastline of sovereign land--to the seaward from which these zones and areas are measured. Recognizing the sovereignty of a government over these zones and areas directly concedes that such government obtained them by right of sovereignty to the land territory. The only other possibility would be that a government obtained such rights by cession from some other government.

If the proposed maritime boundary agreement indeed does not recognize Soviet sovereignty over any of these islands, but does recognize Soviet sovereignty over the zones and areas extending from them, then such a significant proviso must be explicitly included in the agreement. Otherwise, the plain and presumptive interpretation of the agreement would be that the U.S. is indeed abandoning and surrendering any sovereign rights it had to these islands.

4. Immediate property loss by State of Alaska under the agreement

This proposed maritime boundary agreement would bind the United States to accept Soviet sovereignty and ownership of the fishery zones, exclusive economic zones, and outercontinental shelf from all these islands. As such, this agreement would constitute an immediate taking of considerable property of the State of Alaska. Under the Submerged Lands Act of 1953, states have property rights to all submerged lands up to three miles from the coastlines. The fishery zones, EEZ, and OCS also begin at the same coastlines. Thus, all of the submerged lands belonging to Alaska around these islands (amounting to hundreds of square miles) will have been taken from the State of Alaska and ceded to the Soviet Union by the U.S. government. The State of Alaska would be immediately entitled to just compensation for these submerged lands, which are understood to be rich in hydrocarbon and other resources.

5. Warnings of legal consequences of policy of using the 1867 U.S.-Russia Convention Line as a boundary

Because of the unprecedented nature and immense consequences of the boundary setting policy, there have been times that legal warnings have been issued to the U.S. federal government about possible civil and criminal offenses being committed and the possible financial liability being assumed by the federal government by taking property. ~~Liability being assumed by the federal government by taking property.~~

(Exhibits 66-69)

List of Exhibits

66. Letter dated May 31, 1990, from Everett P. Wood, Administrator of the Estate of Ralph Lomen, to Senator Jesse Helms
67. Telegram dated July 22, 1984, from Mark Seidenberg to Elizabeth Verville, Deputy Legal Advisor, c/o U.S. Embassy, Moscow
68. Telegram dated April 8, 1986, from Mark Seidenberg to Elizabeth Verville, Deputy Legal Advisor, c/o U.S. Embassy, Moscow
69. Mailgram dated July 24, 1988, from Carl Olson to George Shultz, Secretary of State, Washington, D.C.

900 University St. #15-R
Seattle, Washington 98101

May 31, 1990

U. S. Senator Jesse Helms
Senate Foreign Relations Committee
Washington, D. C. 20004

Dear Senator:

The question of ownership of Wrangell Island is on the agenda for today's Summit Meeting in Washington, D. C.

If the State Department wants to proceed with giving away the island, then it must obtain "just compensation" for taking this territory from its rightful owners, Lomen Brothers Company of Nome, Alaska.

On September 15, 1921 the American ship "Silver Wave", owned by Lomen Brothers, landed on Wrangell Island and the crew raised the Stars and Stripes over the island. They brought provisions for the thirteen American Eskimos.

On August 20, 1923 the relief ship "Donaldson", owned by Lomen Brothers, landed with provisions.

On May 13, 1924, Secretary of State Charles Evans Hughes declared that the Lomen Brothers were the owners of Wrangell Island.

On February 18, 1930 Attorney General William Mitchell acknowledged that Lomen Brothers Company was the owner of Wrangell Island, and that the Soviet occupation was in violation of international law.

Ownership of the island with its potentially vast resources of oil and gas, on and adjacent to Wrangell Island, carries with it huge monetary values. If the State Department is going to deprive the Lomens of these values, it has an obligation to compensate the Lomens for such loss.

Yours very truly,



Everett P. Wood
Administrator of the
Estate of Ralph Lomen

EPW/eo

EXHIBIT 66

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645
22PM

Western
Union Mailgram



-016746S204002 07/22/84 ICS IPMMTZZ CSP NVFR
7039310401 MGM ARLINGTON VA 07-22 1115P EST

MARK J SEIDENBERG
PO BOX 6616
ARLINGTON VA 22206

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7039310401 TDMT ARLINGTON VA 313/298 07-22 1115P EST
WUW 871413160 413160 USGSO SU
ELIZABETH VERVILLE DEPUTY LEGAL ADVISOR
US EMBASSY
MOSCOW SOVIET UNION

LEGAL NOTICE: AS AN OWNER OF APPROXIMATELY 93,000 ACRES ON WRANGELL ISLAND, ALASKA. UPON ADVICE OF COUNSEL, I HEREBY NOTICE YOU AND YOUR DELEGATION THAT ANY ACT TO ESTABLISH A MARITIME BOUNDARY, BETWEEN THE U.S. AND SOVIET UNION, THAT DOES NOT INCLUDE THE UNITED STATES ISLANDS OF WRANGELL, HERALD, BENNETT, HENRIETTA, AND JEANNETTE AS SOVEREIGN TERRITORY OF THE STATE OF ALASKA MAY SUBJECT YOU TO CRIMINAL AND/OR CIVIL PENALTIES. ESTABLISHING THE 1867 CONVENTION LINE AS A MARITIME BOUNDARY BY EITHER ORTHODROME OR LOXODROMIC CURVE PROJECTIONS WILL EXCLUDE THE ABOVE STATED FIVE ISLANDS FROM ALASKA. I INTEND TO HOLD YOU AND YOUR AGENTS PERSONALLY FOR ACTIONS DEPRIVING ME OF MY RIGHTFUL PROPERTY INTERESTS. THESE U.S. ISLANDS WERE FIRST INCLUDED WITHIN ALASKA BY COAST AND GEODETIC SURVEY UNDER SUPERINTENDENT JULIUS HILGARD, AND REMAIN SO TODAY. ALASKA'S STATUS AS AN INCORPORATED TERRITORY WAS SETTLED BY THE SUPREME COURT IN 1905 (197 U.S. 516). SECTION 2 OF 72 STAT. 339 STATES: THE STATE OF ALASKA SHALL CONSIST OF ALL THE TERRITORY, TOGETHER WITH THE TERRITORIAL WATERS APPURTENANT HERETO, NOW INCLUDED IN THE TERRITORY OF ALASKA. MY TITLE AND THAT OF OTHERS IS RECORDED AT NOME. PLATTING AUTHORITY IS THE CADASTRAL ENGINEERING SECTION, ALASKA STATE DIVISION OF LANDS, PURSUANT TO ALASKA CODE SECTIONS 40.15.010 AND 40.15.075. YOUR DELEGATION IS DANGEROUSLY CLOSE TO VIOLATING EACH OF THE FOLLOWING STATUTES: ALASKA CODE SECTION II.60.340 (CONSPIRACY AGAINST RIGHTS OF PERSONS) IN CONJUNCTION WITH ARTICLE 1, SECTION 1 AND 18 OF THE CONSTITUTION OF THE STATE OF ALASKA. 50 USC SECTION 783 (CONSPIRACY TO ATTEMPT TO ESTABLISH TOTALITARIAN DICTATORSHIP). I AM, AS EVER VIGILANT,

SIGNED: MARK JEROME SEIDENBERG PO BOX 6616 ARLINGTON VA 22206

: GEORGE SCHULTZ
: FRED FIELDING
CC DON HOEL
CC WILLIAM CLARK
CC MICHAEL SPAAN

EXHIBIT 67



Telegram

IPMWGK WSH
1-019371A098 01-11-86
ICS IPMWGK WSH
00440 (03171) WASHINGTON DC 04-08 0629P EST
ICS IPMWGK
(CONFIRMATION COPY MAIL TO
MARK JEROME SEIDENBERG
4500 S. FOUR MILE RUN DR #214
ARLINGTON VA 22204

ELIZABETH VERVILLE DEPUTY LEGAL ADVISOR
DEPT OF STATE
US EMBASSY
MOSCOW (SOVIET UNION)

LEGAL NOTICE: UPON ADVICE OF MY ATTORNEYS, I HEREBY
NOTICE YOU AND EVERY MEMBER OF YOUR DELEGATION THAT
ANY ACT IN FURTHERANCE OF THE ESTABLISHMENT OF A
MARITIME BOUNDARY BETWEEN THE UNITED STATES AND
THE SOVIET UNION WILL LIKELY CAUSE SEVERE DAMAGE TO
MY PROPERTY RIGHTS TO APPROXIMATELY 93,000 ACRES ON WRANGELL

W.U. 1201-SF (R5-89)



Telegram

ISLAND (AS DULY RECORDED AND TO THE STATE OF ALASKA, WITH
THE ALASKA STATE DIVISION OF LANDS)
I AM INFORMED AND BELIEVE, THAT ANY WILFUL OR NEGLIGENT
FAILURE OF YOUR DELEGATION TO RECOGNIZE U.S. AND ALASKA
SOVEREIGNTY OVER THE ISLANDS OF WRANGELL, HERALD, BENNETT,
HENRIETTA AND JENNETTE MAY SUBJECT YOU TO CRIMINAL AND/OR
CIVIL PENALTIES WHICH INCLUDE THE FOLLOWING: ALASKA
CODE SECTION 11-340 (CONSPIRACY AGAINST RIGHTS OF PERSONS)
IN CONJUNCTION WITH ARTICLE 1, SECTION 1 AND 18 OF THE
CONSTITUTION OF THE STATE OF ALASKA. 50 USC SECTION 783
(CONSPIRACY TO ATTEMPT TO ESTABLISH A TOTALITARIAN DICTATORSHIP).

BY ESTABLISHING THE 1867 CONVENTION LINE OR ANY LINE TO THE
EAST OF IT AS A U.S. MARITIME BOUNDARY. THE US SOVERIGN RIGHTS
TO ABOVE STATED FIVE ISLANDS OF ALASKA WILL BE FORFEITED TO THE
SOVIET GOVERNMENT, A MARXIST- LENINIST DICTATORSHIP. I BEGAN
PUT YOU ON NOTICE AS I DID ON JULY 22, 1984 OF THE U.S. FORMAL AND
PERFECTED CLAIM TO SAID ISLANDS.

THESE ISLANDS WERE FIRST INCLUDED WITHIN ALASKA BY THE U.S.
COAST AND GEODETIC SURVEY UNDER SUPERINTENDENT JULIUS HILGARD.
I FURTHER PUT YOU ON NOTICE OF THE PENDING STATUS OF SENATE

EXHIBIT 68



Telegram

RESOLUTION 279 AND HOUSE BILL 3766 IMPACTING ON YOUR ACTIONS.

SINCERELY,

MARK JEROME SEIDENBERG

C.C.

GEORGE SCHULTZ
GEO SHEFFIELD
SEN STEVENS
SEN. MORKOWSKI
CONG. YOUNG
ADM. POINDEXTER
CONG SILJANDER
SEN. JESSE HELMS
CARL OLSON

2131 EST

IPMWGWK WSH

66





California Republican Party

1903 West Magnolia Blvd. • Burbank, California 91506 • (818) 841-5210

Bob Naylor
Chairman

Frank Visco
State Vice Chairman

Gerti B. Thomas
Regional Vice
Chairman North

Beth Ahlf
Regional Vice
Chairman Central

Mrs. Phil Moore
Regional Vice
Chairman South

Charlotte Mousel
Secretary

Marcia Gilchrist
First Assistant Secretary

Bill Hawkins
Second Assistant Secretary

Howard G. Schaefer
Treasurer

Brian O'Toole
Assistant Treasurer

Hon. Clair Burgener
National Committeeman

Esther Greene
National Committeewoman

James Dignan
President, County Chairmen's
Association

January 29, 1988

Honorable Ronald Reagan
The President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

Enclosed is a copy of a resolution relative to the Alaska Boundary Negotiations which passed unanimously at our last California Republican Party Convention.

I ask that you consider the support by the California State Legislature with respect to Joint Resolution 37, and our membership's convictions on the matter of involving the State of Alaska in boundary negotiations with the Soviet Union.

Respectfully,

Robert Naylor
Chairman

cc: Vice President George Bush
Hon. Jim Wright,
Speaker of the House
Steve Cowpers,
Governor of Alaska
California Congressional Delegation

PASSED BY CALIFORNIA REPUBLICAN PARTY IN
CONVENTION, ANAHEIM, CALIFORNIA
SEPTEMBER 27, 1987

RESOLUTION

RELATIVE TO ALASKA BOUNDARY NEGOTIATIONS

SUBMITTED BY: CARL OLSON

WHEREAS, A resolution was passed by the California State Legislature Joint Resolution 37, authored by Marian LaFollette (38 AD) and co-authored by Assemblymen William Leonard, Gil Ferguson, Nolan Frizzelle, Eric Seastrand, John Lewis, Bill Bradley, Stan Statham, Gerald Felando, and Phil Wyman, and by Senators Don Rogers and Ed Royce supporting the State of Alaska in boundary negotiations with the Soviet Union; and

WHEREAS, The boundaries of the State of Alaska are of vital concern to the state government of Alaska; and

WHEREAS, The essence of sovereignty of a state within America's federal system requires that a state government have complete and unambiguous jurisdiction over well-defined geographical boundary lines; and

WHEREAS, Any time that boundaries of a state are to be altered in any way, that state has an essential and overriding interest in the determination of the boundary; and

WHEREAS, Alaska is unique among all American states in that it is the only state with the potential for having boundaries with more than one foreign country (Canada and the Soviet Union); and

WHEREAS, Boundaries with foreign countries and a state are, and ought to be, coterminous with America's national boundaries with those foreign countries; and

WHEREAS, Negotiations are underway between the United States Department of State and the government of the Soviet Union over setting boundaries between the United States and the Soviet Union, and there have been at least seven rounds of negotiations on this issue since 1981; and

WHEREAS, The economic issues of petroleum, fishery, and other valuable resources have great impact on Alaska's welfare and prosperity; and

WHEREAS, At no time has the United States Department of State allowed, or even offered to invite, a representative of the state government of Alaska to be on any negotiating delegation, or has it formally solicited the input or advice of the state government of Alaska over the content or form of these negotiations; and

WHEREAS, These negotiating delegations that the United States Department of State has assembled have included representatives of various other agencies of the federal government; and

WHEREAS, It is settled procedure for negotiations of boundaries that representatives of any affected state not only must be included in the negotiations, but also must consent to the proposed terms of the boundary treaty (such as was the case when Secretary of State Daniel Webster negotiated with Great Britain in 1842 over the boundary between Canada and the State of Maine); and

WHEREAS, The usurpation of one state's rights and sovereignty is an attack on the entire federal system of the United States of America; now, therefore, be it

RESOLVED, That the California Republican Party supports the State of Alaska in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union or Canada; and, be it further.

RESOLVED, That the California Republican Party urges the President and U.S. Congress to ensure that any terms and conditions of any boundary agreement with respect to Alaska's boundaries is consented to by the State of Alaska, and that any such boundary agreement is drafted in the form of a treaty or ratification by the United States Senate; and, be it further

RESOLVED, That the Secretary is directed to transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States, and to the Governor of Alaska.



The California Republican Assembly

RESOLUTION E

SOVIET EMPIRE'S CLAIM TO 5 ALASKAN ISLANDS

WHEREAS: The following five islands located in the Arctic Circle adjoining Alaska: Henrietta, Jeanette, Bennett, Wrangell, and Herald were discovered by United States explorers, and have been claimed by the United States Government since 1881, and

WHEREAS: the Soviet Empire ^{is} negotiating with our State Department for the ^{legal} possession of these islands; therefore be it

RESOLVED: that the Board of Directors urges our members of Congress to oppose the Soviet Empire's claim to these islands which are known to be rich in oil and are strategically located; and be it further

RESOLVED: that our State Department be unyielding to the Russian demands; and be it further

RESOLVED: that this mandate of the January 18, 1987 CRA Board of Directors meeting be forward to : The President of the United States, United State Secretary of State, President Pro-tem of the United States Senate, Speaker of the House of Representatives, and Chairpersons of the Foreign Affairs Committess of both the United States Senate and the House of Representatives.

Adopted January 18, 1987
Board Meeting, Ontario, Calif.

Dr. Ralph Waugh, President
40646 16th Street West
Palmdale, Calif. 93550
805-948-5061, 273-2233



The California Republican Assembly

Bob Byerley, President
1230 Essex Drive
Fairfield, California 94533
707-422-9696

Be it resolved by the California Republican Assembly to urge each of the Republican members of the State Senate and Assembly to sponsor or co-sponsor the attached resolution in support of the State of Alaska regarding its fight to be included in the U.S. State Department's negotiations of an international boundary with the Soviet Union.

Adopted in Convention
March 29, 1987
Irvine, California

RESOLUTION OF SUPPORT FOR STATE OF ALASKA
IN BOUNDARY NEGOTIATIONS WITH SOVIET UNION AND CANADA

Whereas the boundaries of the State of Alaska are of vital concern to the State Government of Alaska, and

Whereas the essence of sovereignty of a State within America's federal system requires that a State Government have complete and unambiguous jurisdiction over well-defined geographical boundary lines, and

Whereas any time that boundaries of a State are to be altered in any way, that State has an essential and overriding interest in the determination of the boundary, and

Whereas Alaska is unique among all American States in that it is the only State with the potential for having boundaries with more than one foreign country (i.e. Canada and the Soviet Union), and

Whereas boundaries with foreign countries and a State are, and ought to be, coterminous with America's national boundaries with said foreign countries, and

Whereas negotiations are underway between the U.S. Department of State and the government of the Soviet Union over setting boundaries between the United States and the Soviet Union, and

Whereas there have been at least ~~six~~^{seven} rounds of negotiations on this issue since 1981, and

Whereas the economic issues of petroleum, fishery, and other valuable resources have great impact on Alaska's welfare and prosperity, and

Whereas at no time has the U.S. Department of State allowed, or even offered to invite, a representative of the State Government of Alaska to be on any said delegation, nor has it formally solicited the input or advice of the State Government of Alaska over the content and/or form of these negotiations, and

Whereas these negotiating delegations that the U.S. Department of State has assembled has included representatives of various other agencies of the Federal Government, and

Whereas it is settled procedure for negotiation of boundaries that representatives of any affected State not only must be included in the negotiations, but also must consent to the proposed terms of the boundary treaty (such as was the case when Secretary of State Daniel Webster negotiated with Great Britain in 1842 over the boundary between Canada and the State of Maine), and

Whereas a usurpation of one State's rights and sovereignty is an attack on the entire Federal system of the United States of America,

CALIFORNIA

Therefore be it resolved by the State of _____
to support the State of Alaska in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union or Canada, and

Be it further resolved that any terms and conditions of any boundary agreement with respect to Alaska's boundaries must be consented to by the State of Alaska, and that any such boundary agreement must be drafted in the form of a treaty for ratification by the U.S. Senate.



LOS ANGELES COUNTY
FEDERATION OF REPUBLICAN WOMEN

HEADQUARTERS: 511 MISSION ST. SO PASADENA, CA 91030 (818) 441 2861

RESOLUTION TO PREVENT GIVEAWAY OF ALASKA ISLANDS

WHEREAS: The United States State Department has proceeded unchecked toward giving away the strategic Alaskan Arctic islands of Wrangell, Herald, Bennett, Henrietta, and Jeannette to the Soviet Union; and

WHEREAS: The State Department is also negotiating on our immensely valuable seabeds of the outer continental shelf areas around Alaska; and

WHEREAS: The State Department has conducted at least 8 negotiating sessions with the Soviet Union in total secrecy from the American public and Congress, refusing even to give the names and titles of the U. S. negotiators; and

WHEREAS: The State Department is trying to create a boundary between Alaska and Siberia without a treaty, thereby avoiding the constitutional requirement for a vote of the U.S. Senate for approval of such a boundary, and

WHEREAS: The State Department has unconstitutionally excluded the State of Alaska from participating in any of the negotiating sessions with the Soviets, even though they would alter Alaska's own boundary and surrender Alaskan territory to the Soviets; now, therefore be it

RESOLVED: That the Board of Directors of the Los Angeles County Federation of Republican Women urge all Congressmen to support efforts to stop the giveaway of the Alaska Islands and the vast oil-rich seabeds to the Soviet Union, and to investigate the State Department personnel who are responsible for formulating this policy; and be it further

RESOLVED: That we urge President George Bush to prohibit the Secretary of State, James Baker, from completing this giveaway, and to require former Secretary of State, George Schultz, to come before Congress to testify under oath about the secret negotiations, and the names of the personnel involved; and be it further

RESOLVED: That we send copies of this resolution to President George Bush and to our Los Angeles County Congressmen, Senators Pete Wilson and Alan Cranston, and Secretary of State James Baker.

Submitted by North Hollywood Republican Women Federated

Unanimously Approved 2/22/89

Women's Republican Club

of Grosse Pointe

PRESIDENT

MISS B. EUGÉNIE DURANT
425 Lincoln Road
Grosse Pointe, 48230

1ST VICE-PRESIDENT

MRS. GERALD F. WEBSTER

2ND VICE-PRESIDENT

MRS. STEPHEN WASINGER

RECORDING SECRETARY

MRS. RICHARD SUHRHEINRICH

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MRS. W. H. SCHMITT
MRS. MARK STEVENS
MRS. FRANK G. WELSHER
MRS. FRANK WILTON
MRS. BURT VAN SICKLE

RESOLUTION

WHEREAS the United States State Department is instigating a formal giveaway of American land to the U.S.S.R., and

WHEREAS the International Court of Law has always recognized the validity of the United State's claim to these five Alaskan Islands - Wrangell, Bennett, Henrietta, Jeannette and Herald - by virtue of discovery and settlement, and

WHEREAS said American islands contain oil-rich sea beds, the drilling, refining and distribution of which can provide thousands of jobs for Americans as well as petroleum security for future generations, and

WHEREAS any border dispute should be settled by a 2/3 vote of the Senate and not by a decree of the State Department,

THEREFORE let it be known that the Women's Republican Club of Grosse Pointe fully supports the work and commitment of State Department Watch in keeping the American Alaskan islands American.

Voted on and passed unanimously on March 26, 1987.

B. Eugénie Durant
President



California Federation of Women's Clubs

Member: General Federation of Women's Clubs, Int'l

HEADQUARTERS: SUITE 610, 2220 TULARE, FRESNO, CALIFORNIA 93721 / TELEPHONE 209-264-3690

June 3, 1988.

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Ruth Schermitzler (Mrs. Lyle)
610 Archwood
Brea, 92621

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3479 Grossmont Drive
San Jose, 95132

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5644 Blackthorne Avenue
Lakewood, 90712

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Grand Terrace, 92324

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El Segundo, 90245

Kathleen Pritchard (Mrs. George)
1300 Paseo Grande
Fullerton, 92633

DIRECTOR OF JUNIOR CLUBS

Brenda Fletcher
12600 Santa Lucia
Atascadero, 93422

OFFICE SECRETARY

Jo Windsor (Mrs. L. H.)
Headquarters Office

State Department Watch
P. O. Box 65398
Washington, D.C. 20035

Dear Sir:

The attached resolution was adopted by the California Federation of Women's Clubs at their annual State Convention held May 9 - 13, 1988 at Oakland, California.

It is our hope that you will give serious attention to the subject of this motion and the request therein.

With best wishes,

Sincerely,

Mrs. Lyle Scherm.
CFWC President

EMERGENCY RESOLUTION

ALASKAN ISLANDS GIVEAWAY

- Whereas, The Convention of 1867, at which time the United States of America purchased the Alaskan Territory from Imperial Russia, used the Convention Line as the Maritime Boundary, and
- Whereas, This Convention Line has been recognized by both parties to that sale and subsequently the Islands named Wrangell, Herald, Bennett, Henrietta and Jeannette were discovered within this purchased territory, and
- Whereas, These Islands are not only valuable as strategic United States Territory but are located in more than half of all the vast United States outer continental shelf which contains billions of barrels of oil and natural gas, and
- Whereas, Secret negotiations by the United States State Department, under way since 1981 between Washington and Moscow, have been uncovered which, if continued in their present trend would cede these Islands to the Soviet Union without any reference to the constitutionally required action by the United State Senate, and
- Whereas, As uncovered by and reported in the Wall Street Journal, State Department Watch and other publications, these reports bring to light the possibility of ceding these strategic and profitable Islands, without regard to the vast economic future, at the upcoming USA-USSR Summit Meeting to the Soviet Union, Therefore be it
- RESOLVED, That the California Federation of Women's Clubs, in Convention assembled this 13th day of May, 1988, demands that such secret negotiations leading to the illegal ceding of territories cease forthwith and the appropriate Congressional Committees of both legislative bodies be completely informed and exercise their investigative powers to prevent this and any other future secret territorial giveaways, and further
- RESOLVED, That copies of this Resolution be sent to:
President Ronald Reagan, 1600 Pennsylvania Avenue,
Washington, D. C. 20500
Secretary of State George Schultz, U. S. State Department,
Washington, D. C. 20505

Rozanne L. Ridgeway, Assistant Secretary of State, (Foreign Policy Representative with the Soviet Union), Department of State, Washington, D. C. 20505

The following State Department Officials involved in this giveaway policy:

David Robinson, Legal Adviser (Delegation Leader)

Elizabeth Verville and Scott Hajost, Legal Adviser's Staff

Harry Harshall and Richard Scully, Bureau of Oceans and International Environmental and Scientific Affairs

Robert W. Smith, Office of the Geographer

Senator Alan Cranston, Senate Office Building, Washington, D. C. 20510

Senator Pete Wilson, Senate Office Building, Washington, D. C. 20510

Representative William E. Dannemeyer, 1214 Longworth, House Office Building, Washington, D. C. 20515

The Wall Street Journal

State Department Watch, P. O. Box 65398, Washington, D. C. 20035

Phyllis Roberts, President, General Federation of Women's Clubs, 1734 N Street N.W., Washington, D. C. 20036

Ruth Schermitzler, President, CFWC, 610 Archwood, Brea 92621

Mary Ruth Dargis, President-Elect, CFWC, 3479 Groosmont Drive, San Jose 95132

Madoline Porter, Chairman, International Affairs Department, CFWC, 2321 Hastings Drive, Belmont 94002

Jacque Gordon, Chairman, Public Affairs Department, CFWC, 23325 Bessemer Street, Woodland Hills 91367

Submitted by the Resolutions Committee

Legislative Research Associates



Box 2973 • Springfield, Illinois 62708



Oct. 15, 1986

Mr. Carl Olson, Chairman
State Department Watch
West Coast Office
P. O. Box 2161
Toluca Lake, Calif. 91602

Dear Mr. Olson:

Thank you for your letter of Sept. 29 and the enclosures. We plan to make a quantity of copies of the enclosures for distribution by our members. We ask that you keep us supplied with all additional material that may come into being, if possible send quantities and eliminate the need of making copies - also, please keep us informed of developments in this very important fight to save our islands etc..

The resolution, copy of which you request, adopted by L.R.A. is as follows:

"On this 13th day of September, 1986, Legislative Research Associates does hereby resolve to take on as a project the support of State Department Watch and Congressman Mark Siljander in their effort to stop the give away to the Soviet Union of the five Alaskan Islands and vast area of the Outer Continental Shelf."

Sincerely,

Marge Visney
Marge Visney, Secretary

MV/MH

ADOPTED AUGUST 2, 1985

THIRTEENTH NATIONAL CONVENTION

YOUNG AMERICANS FOR FREEDOM

DENVER, COLORADO

REPORTED BY DOMESTIC AFFAIRS

SUBCOMMITTEE

WHEREAS, YOUNG AMERICANS FOR FREEDOM HAS RESOLVED AT ITS THIRTEENTH NATIONAL CONVENTION IN NEW YORK CITY, AUGUST 1985, THAT THE SOVIETS OCCUPYING WRANGELL ISLAND, ALASKA BE REMOVED FORTHWITH AND THE STATE DEPARTMENT CEASE AND DESIST ITS PLAN TO GIVE PERMANENT CONTROL OF SAID ISLAND TO THE SOVIET UNION,

WHEREAS, IN 1981 THE STATE DEPARTMENT BEGAN MARITIME BOUNDARY NEGOTIATION WITH THE SOVIET UNION OVER A ALASKAN-SIBERIAN BOUNDARY, WHICH DID NOT BECOME PUBLICLY KNOWN UNTIL 1984. DURING THE COURSE OF THESE NEGOTIATIONS THE STATE DEPARTMENT OFFERED TO CEDE TO THE SOVIET UNION FIVE ARCTIC ISLANDS NOW PART OF THE STATE OF ALASKA AND HALF OF THE OUTER CONTINENTAL SHELF OF THE UNITED STATES,

WHEREAS, IN 1973 THE GENERAL PUBLIC BECAME AWARE THAT THE KGB WAS USING WRANGELL ISLAND, ALASKA AS A PRISON CAMP FOR NON-SOVIET PRISONERS. [SOURCE: USSR LABOR CAMPS. HEARINGS BEFORE THE SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY LAWS OF THE COMMITTEE OF THE JUDICIARY, U.S. SENATE, 93RD CONGRESS, FIRST SESSION, FEBRUARY 1 & 2, 1973, WASHINGTON, GOVERNMENT PRINTING OFFICE, 1973]

THEREFORE BE IT RESOLVED, THAT YOUNG AMERICANS FOR FREEDOM CALL ON PRESIDENT REAGAN TO REMOVE FROM FEDERAL OFFICE THOSE OFFICIALS RESPONSIBLE FOR OFFERING THE SOVIET UNION THE ALASKAN ISLANDS OF WRANGELL, HERALD, HENRIETTA, BENNETT, AND JEANNETTE WITH HALF OF THE OUTER CONTINENTAL SHELF OF THE UNITED STATES.

BE IT FURTHER RESOLVED, THAT THE ALASKAN-SIBERIAN BOUNDARY BE BROKEN OFF FORTHWITH AND PRESIDENT REAGAN REMOVE ALL SOVIET NATIONALS FROM THESE FIVE ALASKAN ISLANDS.

Border Dispute

Question: What country was the first to lose territory to Soviet aggression?

Answer: Not Finland, not even the unfortunate Baltic States, but the United States of America.

That happened on Aug. 20, 1924, when the crew of the Soviet gunboat Krasny Oktober (Red October) landed on Wrangell Island off the northeast coast of Siberia and took as prisoners the 14 American fur trappers encamped there. Twelve survivors were eventually released. Two men died in captivity. The Soviets claimed Wrangell and now operate a political prison camp on the island.

On "Face the Nation" last month, National Security Adviser Robert McFarlane indicated that the Wrangell "boundary dispute" will be on the table at the Geneva summit. Some members of Congress believe the State Department wants to finally resolve the island's status—in the Soviets' favor. Resolutions demanding that any agreement be subject to congressional approval have been drafted by Sen. Jesse Helms and Rep. Mark Siljander.

A U.S. irredentist claim to a chilly piece of Arctic real estate might sound like small potatoes. But the congressmen figure that it doesn't make much sense to complain to the Soviets about their expansionist tendencies—as President Reagan clearly intends to do—while at the same time politely forgetting that they once grabbed some land from the U.S. itself.

The U.S. claim to Wrangell and four small nearby islands dates from 1881. A U.S. Revenue Marine (Coast Guard) party that included John Muir, the famed naturalist and founder of the Sierra Club, visited the area that year. Mr. Muir later wrote that they "landed on Wrangell Land and took possession of it in the name of the United States." A czarist explorer, Lt. Ferdinand Wrangell, ad-

mitted in his memoirs that he never actually discovered the island that bears his name. Until the Krasny Oktober showed up, there was no official Russian presence.

Several U.S. oil companies are interested in searching for oil on the continental shelf between the U.S. and the Soviet Union. When last year the Interior Department announced it would begin leasing tracts in the Arctic Ocean, the State Department warned that anyone bidding on tracts to the west of the so-called 1867 Convention Line should be aware that the area might become Soviet territory.

As recently as 1973, the State Department maintained that the U.S. had never relinquished its claims to Wrangell and the other islands, and that the "convention lines" depicted on maps *did not* constitute an international boundary. But in December 1984, after some negotiations in Moscow, the department said it had not "found any evidence that the Government of the United States has ever formally asserted a claim to any of the islands." That seems to contradict the John Muir account. It also ignores a 1959 ruling of the Foreign Claims Settlement Board that the property of the fur trappers was illegally expropriated. *Russian* maps made early in this century show the islands as American.

We've had our own doubts about irredentist claims. The further back in history you go, the greater amount of disputed acreage there is. But the Soviets themselves are among history's most aggressive irredentists. Aside from their grab of the Baltic States and their expansion of the old czarist empire westward to the Elbe and southward to Kandahar, they have border disputes with Norway, Sweden, Japan and China. Whatever the prospects for satisfaction, the U.S. should hang tough over Wrangell Island just to demonstrate its resistance to Soviet imperialism.

THE WALL STREET JOURNAL.

WEDNESDAY, NOVEMBER 13, 1985

Letters to the Editor

Keep the Wrangell Wrangle on Ice

I was interested to read your Nov. 13 editorial "Border Dispute" about Wrangell Island and the U.S.-Soviet maritime-boundary discussions. Alaska has many ties to the boundary area and the islands you mention. It was two Alaskans, the Lomen brothers, who lost furs and trapping equipment when the Soviet ship landed on Wrangell Island in 1924. The Lomens received compensation for the personal property they lost in the 1959 Foreign Claims Settlement Commission decision you mentioned.

Currently, many Alaskans depend on the resource-rich waters in the Navarin Basin area of the Bering Sea for their livelihood. Although your editorial made a number of valid points, I believe it is important to separate the question of whether the U.S. has ever exerted claims over Wrangell Island and other territories north of the Soviet Union, from the negotiations now under way with the U.S.S.R. over the boundary in the Navarin Basin. I understand that the two issues can be linked, but it appears that our interests would be better served by resolving whatever issues can be addressed now, and working on the other issues as facts become more clear.

The Navarin Basin issue requires our immediate attention because Soviet activities in the waters off Alaska have become increasingly worrisome. This summer, the Soviets deliberately harassed U.S. drilling rigs involved in energy exploration in the Navarin Basin area. Soviet overflights of

rigs caused dangerous interference in the safe operation of helicopters carrying American workers to and from the oil rigs. These irresponsible incidents jeopardize the negotiations which we have been conducting over the maritime boundary, and put the lives of Americans at risk. The State Department protested the flights.

I am monitoring the negotiations because I am concerned that our negotiators keep American energy, fisheries and strategic interests foremost in their minds. The waters off Alaska contain some of the world's richest fisheries, and could also contain significant mineral deposits.

On the other issues you mention, I have reviewed a great deal of material about claims over Wrangell, Henriette and other islands, and I confess that the record is not clear. I believe Congress must be given a comprehensive review of the dispute, and hear all sides before a judgment is made about ownership. In this regard, I am considering legislation to require our government to give the Senate Foreign Relations Committee a full report, which could provide a basis for future hearings. In addition, any treaty negotiated with the Soviet Union that proposes to give up territory claimed by the U.S. will be subject to careful review by the Senate before it is ratified.

FRANK H. MURKOWSKI (R., Alaska)
U.S. Senate
Washington

THE WALL STREET JOURNAL MONDAY, DECEMBER 2, 1985

Oil deposits shift Cold War to drab, icy Arctic islands

By SUE CROSS
Associated Press

JUNEAU, Alaska — For more than 60 years, since Russian sailors landed on Wrangel Island, raised the Red flag and kicked out a dozen people, the Soviet Union and the United States have been arguing over who really owns five Arctic islands off Siberia.

Depending on whose version of history is believed, the people forced off the island by sailors from the ship *Red October* in 1924 were either American colonists or Eskimo hunters.

The American claim to Wrangel and the other five islands has been reincarnated recently by politicians who say the area includes vast oil reserves and submarine access to the Arctic.

In Congress, Sen. Jesse Helms, R-N.C., and Rep. Mark Siljander, R-Mich., have introduced resolutions seeking what they call reassertion of the United States' control over the islands. And the Alaska Senate passed a resolution this month echoing that request and asking that the islands be made part of Alaska.

"I think there's far more at stake here than five islands covered by ice and snow," said Democratic State Sen. Bill Ray. "If we surrender these islands, we'll be surrendering more than half our continental shelf."

Wrangel and Herald Islands lie about 100 miles north of Siberia and 200 miles west of the recognized United States border. The other islands are farther west and north, part of the DeLong group named for U.S. Navy Commander George DeLong, who explored the area around 1880.

REPORT FROM ALASKA



U.S. Sen. Ted Stevens, R-Alaska, told a joint session of the Alaska Legislature that the state should stay out of the fight over the disputed islands.

Regardless of whether the islands ever were American, they never were Alaskan, and that's a major point in arguments that the state should not dabble in foreign policy.

"Alaskans don't belong in that fight," U.S. Sen. Ted Stevens, R-Alaska, told a joint session of the Alaska Legislature.

The islands were not part of Russia's sale of Alaska to the United States in 1867, and the

United States repeatedly has declined to claim them, said State Sen. Jay Kerttula, a Democrat.

Though Americans are credited with discovering some of the islands, they never formally claimed them, said U.S. Sen. Frank Murkowski, R-Alaska.

"I don't want to see the Soviets get anything they don't have coming, but ... I've yet to see the validity of claims made by the U.S. government," Murkowski said.

MIAMI HERALD, 23 March 1986

THE WALL STREET JOURNAL

MONDAY, DECEMBER 7, 1987

Crusade to Reclaim Arctic Island for U.S. May End at Summit

Bureaucrat Has Devoted Life
To Cause Despite Odds;
Site of Soviet Foul Deeds?

By ROBERT S. GREENBERG

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Mark Seidenberg believes that Aug. 20, 1924, was a day of infamy for the United States.

On that day, the Soviet warship Red October steamed into Doubtful Harbor on Wrangell Island in the Arctic Ocean. Armed with a six-pound cannon and a company of soldiers, the Red October captured 14 Americans who worked for Lomen Reindeer & Trading Corp. and shipped them off to nearby Siberia.

Carl Lomen, a U.S. businessman, had just bought the island. He sued the Soviets to regain 167 fox skins and 40 polar-bear skins, and complained to the U.S. State Department. The U.S. was miffed but said that it couldn't do much because it didn't officially recognize the new Soviet government. The Americans were freed after the Red Cross paid \$1,600 to transport them to Seattle, but Mr. Lomen fought the rest of his life to regain Wrangell, passing the torch to Mr. Seidenberg before he died.

Daunting Odds

Mr. Seidenberg, a 40-year-old Agriculture Department bureaucrat, is obsessed with reclaiming the island and uncovering alleged Soviet foul deeds there. He has enlisted such conservative stalwarts as Sen.

Jesse Helms in his cause, but he faces daunting odds. The State Department maintains that the U.S. has never claimed ownership of Wrangell, even though its assertion is flatly contradicted in official U.S. publications.

Right now, Mr. Seidenberg worries that the U.S. may quietly deal the island away, perhaps during this week's U.S.-Soviet summit. "I have great respect for the president," he says. "It's some of his advisers at the State Department who are causing the difficulty. Whatever they can do to shove this under the table, they'll do."

The latest wrangle over Wrangell involves secret negotiations between Washington and Moscow, under way since 1981, over establishing a border between the two nations; right now, there is only a "con-



vention line" drawn when the U.S. bought Alaska in 1867. The State Department insists that Wrangell isn't part of the talks. Conservatives contend that ownership of Wrangell—and four other nearby islands—could affect where and how the borderline is drawn. And, they say, that, in turn, may determine who owns what may be billions of barrels of oil beneath the sea.

"If we surrender these islands, we will be surrendering an area that amounts to almost half our entire outer continental shelf," warns Sen. Helms. The North Carolina Republican, who complains that the State Department won't even tell him who the U.S. negotiators are, has introduced a bill requiring the State Department to negotiate a treaty, which would make review

and approval by the Senate necessary. Otherwise, he fears, the department will make a deal under executive authority.

Mr. Seidenberg is convinced not only that the Soviets are illegally occupying Wrangell Island but also that it is the site of a huge Soviet gulag that once held Raoul Wallenberg. The Swedish diplomat, who helped thousands of Danish Jews escape from the Nazis during World War II, disappeared in 1945 after being arrested by the Soviets in Hungary.

Mr. Seidenberg has spent countless hours researching Wrangell at the National Archives. At his own expense, he traveled to Israel to interview Efrim Moshinsky, a former Soviet citizen who claims that he communicated with Mr. Wallenberg while they were both imprisoned at Wrangell in 1958. Mr. Seidenberg also found an obscure reference on page 10,065 of the March 16, 1964, Federal Register that indicated to him that the State Department was about to make a border deal with Moscow.

"I just want to do something to help Wallenberg. He helped so many people, but nobody wants to help him," says Mr. Seidenberg, his voice cracking with emotion. "The State Department acts like they're totally disinterested. It's a non-important issue to them."

Once, he sent a letter to Moscow praising a Russian geography article and asking whether its publishers could send him any material on Wrangell Island. They did. "I've gotten more information out of the Soviets than I have from the State Department," Mr. Seidenberg complains.

State Department officials sent him "denials—always denials," Mr. Seidenberg says. "They even wrote me a letter once denying that the island existed."

But Mr. Seidenberg isn't easily deterred. In 1976, to help get the department's attention, he took title to the 93,000 acres on Wrangell Island where he thinks the prisons are. Mr. Lomen, then 89 years old and dying, had wanted to give Mr. Seidenberg the land to carry on the fight, but Mr. Lomen's accountant warned of the tax consequences of such a gift. So they entered into a swap: Mr. Seidenberg got part of Wrangell, and he gave Mr. Lomen one square foot of Alaskan land that he had received as a promotional gift in 1967 when he opened a bank account.

But owning a piece of the 3,400-square-mile island didn't increase Mr. Seiden-

berg's influence with the State Department. Once, in 1986, he and a colleague attended a public State Department social function in order to accost Secretary of State George Shultz. When Mr. Shultz came by to shake hands, Mr. Seidenberg held on and asked him about the negotiations. A startled Mr. Shultz, in what was apparently an imitation of the late comedian Jimmy Durante, responded, "Everybody wants to get into the act," and quickly moved on.

A State Department official familiar with the negotiations says that all the talk about a giveaway is inaccurate. "There's a great misperception that somehow these islands have been claimed by the U.S. We've looked very carefully at the history of this. . . . There was never any claim made to them by the U.S. government."

Mr. Seidenberg, too, has looked very carefully, but he has reached a different conclusion. It all started when an American, Capt. Calvin Hooper, planted an American flag on Wrangell on Aug. 12, 1881, claiming it for the U.S. His ship, the U.S. Reserve Vessel Thomas Corwin, was part of a mission authorized by Congress to find the *Jennette*, a ship that had been crushed by ice during a North Pole expedition financed by the New York Herald the year before.

During the search, Capt. Hooper and a party that included John Muir, the naturalist who later founded the Sierra Club, landed on Wrangell. The island was named for Baron Ferdinand Petrovich von Wrangell, even though the Russian arctic explorer never set foot there.

A 1973 printing of the Digest of International Law, an official State Department publication, states that "the United States has not relinquished its claim to Wrangell Island." Five years later, with detente in full flower, a successor publication, the Digest of United States Practice in International Law, did an about-face, stating: "We have found little evidence that the United States has ever actively asserted a claim to Wrangell Island."

Mr. Seidenberg first stumbled on Wrangell in 1963, when he was a high-school senior writing a research paper on Russian exploration of the American Northwest. Textbooks at the time said that Wrangell was unoccupied. In 1973, Mr. Seidenberg learned that Wrangell had surfaced in a Senate Judiciary Committee hearing about

Soviet prison camps. That's when he first heard about Mr. Wallenberg's plight.

A year later, Mr. Seidenberg uncovered what he says was a quiet State Department effort to cede Wrangell to the Soviets. The two nations signed an environmental agreement under which some musk oxen from Alaska were to be shipped to a Soviet island. Moscow asked that the animals be shipped to Wrangell, and the State Department agreed, thereby conceding ownership, Mr. Seidenberg says. When the agreement was signed at Bethel Airport, in Bethel, Alaska, Mr. Seidenberg arranged to have the airport manager watch from a distance and give him a blow-by-blow report over the telephone.

Now, Mr. Seidenberg fears that Wrangell will be lost forever at the summit. Ironically, when Mr. Lomen wrote his memoirs, "Fifty Years in Alaska," he thought his efforts would preserve the U.S. claim on Wrangell for some future U.S.-Soviet negotiating session. He wrote: "We felt that at least we had provided our government with a strong case. If the day ever comes when representatives of the American and Soviet governments sit down at the council table for the settlement of claims, the matter of American sovereignty over Wrangell Island should prove of importance."

Congressional Record



United States
of America

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

INTRODUCTION OF
SENATE RESOLUTION 279
AND FLOOR STATEMENT
BY
SENATOR JESSE HELMS

SENATE RESOLUTION 279—RELATING TO THE TRANSFER OF U.S. TERRITORY IN THE ARCTIC OCEAN

Mr. HELMS (for himself, Mr. HECHT, Mr. EAST, and Mr. DENROD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 279

Whereas Wrangell Island became a part of the United States by right of confirmed discovery during the voyage of Captain Thomas Long, a citizen of the United States, of the barque *Nile* in 1867 and by right of first possession formalized during the voyage of Captain Calvin L. Hooper of the U.S. Revenue Marine steamer *Corwin* in 1881:

Whereas the Senate had printed a "Report of the U.S. Revenue Steamer *Thomas Corwin*, in the Arctic Ocean," as Ex. Doc. No. 204 in the 1st Session of the 48th Congress:

Whereas the House of Representatives had printed reports on the cruise of the United States Revenue Marine steamer *Corwin* in Alaska and the Northwest Arctic Ocean in the 3d Session of the 47th Congress, in the 1st Session of the 49th Congress, and in the 1st Session of the 50th Congress:

Whereas the Senate and House of Representatives of the United States of America approved on March 18, 1878 an Act in aid of a Polar expedition designed by James Gordon Bennett, a citizen of the United States, which authorized the Secretary of the Treasury to issue an American register to the vessel *Jeannette*, purchased in Great Britain:

Whereas the Senate and House of Representatives of the United States of America approved on February 27, 1878 an Act authorizing the Secretary of the Navy to accept and take charge of the ship *Jeannette* for the use of a North Polar Expedition:

Whereas *Jeannette* Island was discovered on May 16, 1881 and formally taken possession of on June 3, 1881 during the voyage of U.S. Navy Commander George Washington De Long on the *Jeannette*:

Whereas Henrietta Island was discovered on May 24, 1881 and formally taken possession of on June 3, 1881 during the voyage of U.S. Navy Commander George Washington Long on the *Jeannette*;

Whereas Bennett Island was discovered on July 11, 1881 and formally taken possession of on July 29, 1881 during the voyage of U.S. Navy Commander George Washington De Long on the *Jeannette*;

Whereas Wrangell, Herald, Jeannette, Henrietta, and Bennett Islands were surveyed by the United States Navy for the United States Coast and Geodetic Survey in 1881;

Whereas the United States Coast and Geodetic Survey placed Wrangell, Herald, Jeannette, Henrietta, and Bennett Islands in the District of Alaska;

Whereas beginning in 1900 the United States Geological Survey included Wrangell, Herald, Jeannette, Henrietta, and Bennett Islands as part of the District, later Territory, and State of Alaska; and

Whereas unlike the governments of Canada and Great Britain, the Government of the United States has never surrendered its sovereignty over these islands; Now, therefore, be it

Resolved, That (a) it is the sense of the Senate that under the United States in any territory, outercontinental shelf, exclusive economic zone, or fishery conservation zone, including the territory described in subsection (b), may only be transferred to any other country—

(1) by treaty, in accordance with Article II, section 2, clause 2 of the United States Constitution which states that "(the President) shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur"; and

(2) by enactment of Congress in accordance with Article IV, section 3, clause 2 of the United States Constitution which states that "(t)he Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

(b) The territory referred to in subsection (a) includes the islands of Wrangell, Herald, Bennett, Henrietta, and Jeannette which are located in the Arctic Ocean and the outer continental shelf of, and the exclusive economic zone surrounding, those islands.

Mr. HELMS. Mr. President, I am deeply concerned that the Department of State is endeavoring to turn over to the Soviet Union five U.S. islands in the Arctic Ocean. These islands are: Wrangell Islands, Herald Island, Jeannette Island, Henrietta Island, and Bennett Island.

There is far more at stake here than the ownership of five small islands covered with ice and snow. What is at stake is how, under the rules of international law, the United States will define its Outer Continental Shelf. If we surrender these islands we will be surrendering an area that amounts to almost half of our entire Outer Continental Shelf.

Moreover, these islands lie in the Arctic between the Soviet Union and the North Pole. If we surrender the islands to Soviet sovereignty we may well be surrendering control of the Arctic Ocean to Soviet nuclear submarines.

The State Department refers to this problem as a boundary dispute involving the 1867 Convention Line estab-

lished with the purchase of Alaska. It is true that there are substantive issues involving the 1867 Convention Line in the Navarin Basin, south of the Bering Strait. These are questions which ought to be carefully studied, both by the administration and by the Senate.

But the islands are all north of the Bering Strait, in the Arctic Ocean, and deserve to be a focus of separate attention. A glance at the map will show that this is hardly a "boundary dispute," a term which might imply drawing a line a hundred miles one way or another. This is a major issue, substantively different from the Navarin Basin problem, which could determine control of the Arctic Ocean for generations to come.

These islands are U.S. territory and property. They were discovered by U.S. citizens and taken possession of on behalf of the United States. The United States has asserted sovereignty over them. The U.S. Congress has acted upon them as our territory and property. Therefore, it is clear that, under the Constitution, they cannot be alienated by the State Department, without the express consent of both Houses of the U.S. Congress.

The resolution which I am submitting today expresses the sense of Congress that the provisions of the Constitution with regard to the disposition of U.S. territory and property be complied with fully. I hope that the Committee on Foreign Relations will schedule hearings on this resolution at an early date next year, so that all aspects of the issue can be considered. Incredibly, there have never been hearings on this issue; yet the State Department has been blithely proceeding as though this were just a minor issue.

The resolution that I am offering today is simple and to the point. It states that it is the sense of the Senate that under the U.S. Constitution any right, title, or interest of the United States in any territory, Outer Continental Shelf, exclusive economic zone or fishery conservation zone may only be transferred to another country by treaty, within the meaning of article II, section 2, clause 2 of the U.S. Constitution, and by enactment of Congress in accordance with article IV, section 3, clause 2 of the U.S. Constitution.

Mr. President, the President has the power to make treaties, by and with the advice and consent of the Senate, provided two-thirds of the Senators concur. There is no dispute over the President's power to make treaties. All we are saying in this resolution is that this matter is a matter which should be handled by treaty. It is not a matter to be considered as a technical issue settled by an Executive order.

Mr. President, the treaty-making power does not stand alone. Where U.S. territory and property is concerned, there are further requirements. Our Constitution in article IV,

section 3, clause 2 states clearly that, "(t)he Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Nowhere does our Constitution state that the Department of State has the power to hand over U.S. territory to a foreign power by means of an Executive Agreement or other similar instrument.

The historical facts about United States sovereignty over these islands are clear. Unfortunately, the Department of State has been spreading all manner of disinformation concerning these islands not only to Members of Congress but also to the public at large.

In a letter to me earlier this year, the State Department referred to this matter as "a maritime boundary" issue. It stated that "all of these islands are claimed by the U.S.S.R." The State Department went on to say that "It has been alleged that the United States has claimed sovereignty over the five islands"—it is noteworthy that the State Department states the Soviet claim as an accepted fact, whereas it asserts that "after extensive research, the Department of State has not found any evidence that the Government of the United States has ever formally asserted a claim to any of these islands."

That statement is totally false. In fact, one of my illustrious predecessors representing North Carolina in the Senate, Senator Robert R. Reynolds, dealt with this matter extensively in 1940. The State Department simply has not bothered to look into the historical record. I have spent some months researching that record, including diaries of the period newspaper accounts of the discovery period—including previously overlooked accounts in Honolulu newspapers of the last century—the U.S. Geological Survey, the CONGRESSIONAL RECORD, and other official documents of record.

So let us be clear about the historical record.

Wrangell Island was discovered during the voyage of Captain Thomas Long, a citizen of the United States, aboard the barque "Nile" in 1867. A new account of this confirmed discovery appeared in the "Pacific Commercial Advertiser" published in Honolulu on November 9, 1867.

First possession of Wrangell Island was formalized during the voyage of Capt. Calvin L. Hooper of the U.S. revenue marine steamer *Corwin* in 1881. Information about this voyage was printed in Senate Executive Document Number 204 in the first session of the 48th Congress. The title of this report is, "Report of the U.S. Revenue Marine Steamer *Thomas Corwin*, in the Arctic Ocean." The House of Representatives also printed reports about this voyage during the second session of the 47th Congress; during the first

session of the 49th Congress; and during the first session of the 80th Congress.

Mr. President, on March 25, 1922, a distinguished Senator Joseph T. Robinson placed a letter in the *Record* written to him by the Captain Commandant of the U.S. Coast Guard, W.E. Reynolds. In his letter, Commandant Reynolds notes that he was a junior officer aboard the *Conwin* and was the officer assigned to carry our flag during the landing on Wrangell Island on August 12, 1881. In the letter he states, and I quote, "The captain and I landed together, being the first to get ashore. 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."

Mr. President, the words of Captain Reynolds of the U.S. Coast Guard are certainly crystal clear with respect to taking formal possession of Wrangell Island.

Senators should also take note of the following entry in the log book of Captain Hooper, and I quote:

Friday, August 12, 1881. Lat. 71-04 Long. 177-40 off Wrangle Land. Got under way at 4:00 a.m. After a good deal of bumping and squeezing we reached the land and anchored in a small clear space off the mouth of a small river. Went on shore and took possession in the name of the U.S.

This quotation is contained in a study entitled, "The Discovery of Wrangel Island" by Samuel L. Hooper, it was published by the California Academy of Sciences as Occasional Paper No. XXIV, in San Francisco in 1956.

Prof. John Muir, a member of this expedition, wrote in his book that, and I quote, "A notable addition was made to the national domain when Captain Calvin L. Hooper landed on Wrangell Land and took formal possession in the name of the United States." John Muir, one of our Nation's most famous naturalists, was the founder of the Sierra Club.

The famed arctic explorer Vilhjalmar Stefansson in his book, "The Adventure of Wrangel Island" describing an expedition undertaken in 1921, wrote that, and I quote, "... following 1881 ... the island was United States territory."

The Soviet's have, in the past, claimed that a Russian Lieutenant Wrangel discovered the island. This assertion is groundless according to the Lieutenant's own memoirs. Wrangel himself wrote in his work, "The Narrative of a Voyage to the Polar Seas in the Years 1821, 1822, and 1823" that, and I quote, "... with a painful feeling of the impossibility of overcoming the obstacles with which nature had opposed us, our last hope vanished of discovering the land which we yet believed to exist ... we had done what duty and honor demanded, further attempts would have been absolutely hopeless and I decided to return."

Mr. President, the matter of Wrangell Island was before the Senate and the House of Representatives in 1939 and 1940. With the gathering storm of World War II about to engulf our Nation, Members of the Senate and the House became concerned about our Pacific air routes. A bill was offered in the House by Congressman Maas authorizing and directing the Secretary of the Navy to construct a naval air station on Wrangell Island. The bill, H.R. 4286, was introduced on February 17, 1939, and referred to the Committee on Naval Affairs. The State Department influenced the committee to take no action on the bill.

Mr. President, a similar bill was introduced in the Senate by a distinguished predecessor of mine from the State of North Carolina, Senator Robert R. Reynolds. While no action was taken on the bill, in the following year, Senator Reynolds introduced a resolution and articles relative to ownership of Wrangell Island.

Mr. President, so that our colleagues may have Senator Reynolds' resolution and statement for immediate reference, I ask unanimous consent that the statement of Senator Reynolds of Monday, April 8, 1940, be printed in the *Record* at the conclusion of my remarks as exhibit 1.

Mr. President, I ask unanimous consent that a scholarly article entitled, "The Right of American Sovereignty over Wrangell Island," by Mr. David Nolan and Mr. Mark Seidenberg which appeared in the Canadian historical journal published by the University of Saskatchewan, "Musk Ox," be printed in the *Record* at the conclusion of my remarks as exhibit 2.

On March 18, 1878, the Senate and the House of Representatives approved an act in aid of a polar expedition designed by James Gordon Bennett, a U.S. citizen which authorized the Secretary of the Treasury to issue an American register to the vessel *Jeannette* which had been purchased in Great Britain.

On February 27, 1878, the Senate and the House of Representatives approved an act authorizing the Secretary of the Navy to accept and to take charge of the ship *Jeannette* for the purpose of a north polar expedition.

Jeannette Island was discovered on May 16, 1881, and formally taken possession of on June 3, 1881, during the congressionally authorized voyage of U.S. Navy Commander George Washington De Long on the *Jeannette*.

Henrietta Island was discovered on May 24, 1881, and formally taken possession of on June 3, 1881, during this same voyage.

Bennett Island was discovered on July 11, 1881, and formally taken possession of on July 29, 1881, during this same voyage.

Mr. President, there is ample published historical material to verify these facts about the three De Long Islands. For example, Houghton Mifflin Co. published a two volume work in

1883 entitled, "The Voyage of the *Jeannette*, The Ship and Ice Journals of George W. De Long." These were edited by his wife, Emma De Long. There is also an extensive collection of clippings and other information about this voyage at the Naval Academy in Annapolis.

Mr. President, I ask unanimous consent that excerpts from Captain De Long's journals relating to Henrietta, Jeannette, and Bennett Islands be printed in the *Record* at the end of my remarks as exhibit 3.

Mr. President, I ask unanimous consent that the appropriate citations on these five islands from the bulletin of the U.S. Geologic Survey, No. 187, entitled "Geographic Dictionary of Alaska," written by Marcus Baker, the Secretary of the U.S. Geologic Survey, and published in 1902 be printed in the *Record* at the conclusion of my remarks as exhibit 4.

Senators should note that this "Geographic Dictionary of Alaska" was reprinted in a second edition in 1906 by the U.S. Geological Survey. The same citations to these five islands appear in this edition.

Mr. President, in 1930, the U.S. Geological Survey published its bulletin 817 which was entitled, "Boundaries, Areas, Geographic Centers and Altitudes of the United States and the Several States." This publication was written by Mr. Edward M. Douglas and was a revision and enlargement of the 1923 edition. In the chapter entitled, "Additions to the territory of the United States," Wrangell, Bennett, Henrietta, and Jeannette Islands are described. Mysteriously and without explanation, or perhaps owing to the influence of the Department of State, these references were deleted from the 1966 and the 1976 edition of this work which were edited by Mr. Franklin van Zandt. According to information reaching my office, Mr. van Zandt had submitted his manuscript for the 1966 edition to the State Department and was told by the State Department to delete the reference to Wrangell, Bennett, Henrietta, and Jeannette Islands.

Mr. President, I ask unanimous consent that the appropriate citations to these islands in the 1930 edition of this bulletin be printed in the *Record* at the end of my remarks as exhibit 5.

The giveaway of these five islands to the masters of the Kremlin is not some obscure action. In fact, back in North Carolina, folks are concerned about this situation as are other citizens around the country judging by the mail that I have received on the issue.

Mr. President, I ask unanimous consent that an excellent article entitled "U.S. Considering Relinquishing Control of Alaskan Islands" which appeared in the *Laurinburg Exchange* of Laurinburg, NC, on June 5, 1985 be printed in the *Record* at the conclusion of my remarks as exhibit 6.

Mr. President, facts are facts. These five islands are U.S. territory. If the Department of State is endeavoring to give away these islands to the Soviet Union, including the related Outer Continental Shelf areas and economic zone areas, then it is the duty of the Congress to adhere to the Constitution in terms of how territory may be transferred.

Mr. President, this resolution simply expresses the sense of the Senate that the Constitution must be observed in cases where our territory is to be transferred. The resolution outlines the historical facts which I described earlier in order that an accurate description of the sovereign rights of the United States of America over these five islands be presented.

There being no objection, the exhibits were ordered to be printed in the Record, as follows:

EXHIBIT 1

[Extension of Remarks of Hon. Robert R. Reynolds of North Carolina in the Senate of the United States, April 8, 1940]

RESOLUTION AND ARTICLES RELATIVE TO OWNERSHIP

Mr. REYNOLDS. Mr. President, under the permission granted me during the course of my remarks, I ask to have printed in the Appendix of the Record the resolution (S. Res. 253) to which I referred; a statement which I have prepared with respect to Wrangell Island; an article from the Washington Post of February 26, 1939; and an article entitled "War of Propaganda May Be Already Won."

There being no objection, the matters referred to were ordered to be printed in the Record, as follows:

SENATE RESOLUTION 253

Resolved, That the Secretary of State is requested to make a report to the Senate at the earliest practicable date with respect to whether or not the United States has a valid claim to sovereignty over Wrangell Island.

STATEMENT BY HON. ROBERT R. REYNOLDS OF NORTH CAROLINA

Wrangell Island is, roughly, the size and shape of Jamaica, 80 miles long and 35 miles wide. It is rugged rather than rocky with a maximum elevation of about 2,000 feet. So far as we know, there is no permanent ice or snow, with the snows of winter disappearing completely in summer. The minimum temperature in winter is only a little lower than that of Montreal, about the same as that of Winnipeg, and not nearly so low as that of some of the Russian cities. Because the island is small and surrounded by a small ocean, the warmest summers will not be far different from the month of May throughout some of the northwest sections of Canada and some of the northeast sections of the United States. Essentially it is a prairie land—no trees, and only small bushes. The beach is abundantly supplied with driftwood for fuel and for the building of log houses. It is probably the greatest polar bear country in the world. But bearskins have at present a small commercial value. There are no locations better for the trapping of white and blue foxes, and there are considerable quantities of the remains of the prehistoric elephants—mammoth of that fossil monster may be of some importance. It is an excellent station for the walrus and hair-seal industry. Nothing is known about the presence or absence of minerals. Great herds of reindeer are owned

by natives and whites in Alaska and suitable breeding stock could be purchased at reasonable cost and landed in Wrangell Island.

Probably Wrangell Island could support some ten to twenty thousand herd equally in value to double that numbers of sheep.

Although the commercial value of Wrangell Island is small, it is not negligible. As a matter of fact I should not have been in the least interested in this island, however, but for my belief that within 25 years from now the Polar Ocean will be one of the chief theaters of air commerce. It is true that we of the United States have plenty of rich land to develop, both at home and in our Territories, particularly in Alaska, and in speaking of Alaska, may I say that I believe that we have come to need badly a supply station under our own flag somewhere on the northern frontier of Asia such as Wrangell Island, for remember that Asia, Russian territory, is located within a stone's throw of our American Territory of Alaska. Fact is, the Little Diamede Island, which we acquired from Russia together with Alaska and Pribilof in the Aleutian Islands for a consideration of \$7,300,000, is only about one-half mile from the Big Diamede Island which belongs to Russia itself.

Every other island on this vast northern frontier of Asia is clearly the property of some other nation, either by discovery or by occupation, but I believe that this one spot, Wrangell Island, is clearly ours and the longer that we let it go and remain in the hands of Russia, as of now, the more difficult will be our chance of obtaining our legal rights.

From a purely commercial standpoint as of now, the island would not be worth anything to us, but as I have heretofore stated, within 25 years from now it would be a very valuable spot, so my chief design, that what I have said and done, shall rest entirely on the grounds of public interest and public spirit.

If one looks at the Polar Ocean on a globe, which is the only way of correctly realizing the situation, you will note that Wrangell Island lies straight across from New York and is almost directly in line between the metropolis of New York and Manila, the capital of the Philippine Commonwealth. Even though it is not strategically the most important island on the northern coast of Siberia, it is the only island to which the United States Government has a claim on that vast frontier.

A couple of years ago when I was in Alaska and at which time I visited Point Barrow, the northernmost point in the Western Hemisphere, as well as Deering, Wainwright, Nome, and Siberian waters, friends of mine there and others whom I have met from time to time and place to place who were familiar with Siberia, impressed upon me how the Japanese were penetrating northward into that great country. And, as a matter of fact, several years ago while in Russia I understood that the Soviet Government was encouraging the immigration of its nationals from the congested cities such as Odessa, Leningrad, and Moscow to Siberia and its northeastern portions on the mainland in the neighborhood of Wrangell Island.

At the present time I am informed that a number of Chukchee, Russian nationals, are occupying the island as a result of our nationals having been forcibly taken from the island a number of years ago, concerning which incident I shall return to shortly. We have never asked submission of the question to some form of international court, in which case their occupation, coupled with our neglect, could have established ownership, so in this bill I am merely asking that our State Department inquire

into the question of whether or not the United States has a valid claim to sovereignty over this island.

It is my information that in September of 1921 several Britishers, together with a small party of Eskimos, landed on Wrangell Island, where they raised the British flag, which they claimed was the third time that the British flag had been placed upon the soil of Wrangell Island. At that time there were some press stories in the United States to the effect that our Government had protested against Britain's occupation of this island, but as to whether or not these statements are authentic I have not been informed. At that time, however, it is my understanding that the Soviet Government of Russia did protest. This protest contained three reasons on account of which Wrangell Island was said to be Russian.

The first reason was discovery of the island by Baron Wrangell a little more than a hundred years ago. Close students of the baron's journey at the time that he was supposed to have discovered Wrangell Island will reveal that he was never anywhere near it. And in addition to that he states in his description definitely that he failed to discover land. Confirmation of this can be obtained easily.

The second Russian claims are on the basis of a landing between the years 1910 and 1915. As a matter of fact, any nation could have claimed Wrangell Island on the basis of a landing in 1910, 1915, or 1921, the latter of which was claimed by the British.

Thirdly, the Russians advance the claim that Wrangell Island is Russian by reason of its immediate proximity to Siberia. The distance from Siberia is about 100 miles, and as to this claim for ownership through proximity might possibly be agreed upon by some future international convention, but it certainly has not been agreed upon in the past.

In the year 1880 or 1881 the New York Herald fitted out a Polar expedition under the command of Lieutenant De Long, an officer on leave of absence from the United States Navy. This was the famous and tragic *Jeannette* expedition, so called after the ship which De Long took north through the Pacific and through the Bering Straits proceeding into the ice which he met northwest of Alaska, firm in the belief that just beyond were the shores of a great continent. Shortly thereafter, while the *Jeannette* expedition was found in the ice of the great Polar region, the American flag was planted on Wrangell Island either by a member of his expedition or by one of the crew of an expedition that went in search of the members of the *Jeannette* expedition.

I claim that Wrangell Island is originally the property of the United States through right of discovery, but it is a principle of international law that claims arising out of the discovery must be followed up within any reasonable time by exploration or occupancy or else it lapses into the territory of a no-man's land.

The British claim some sort of title as of 1854, by way of discovery or otherwise, and the Russians claim title for the same or similar reasons; but, after all, it is not disputed that the American flag was placed on Wrangell Island in 1881 or 1882, and it was actually occupied by the nationals of the United States when the Russian nationals, forcibly and against their will, removed the nationals of the United States from the island to Siberia, and I understand that since then the Russians have occupied the island.

I think it is pretty well conceded—at least, there is no information to the effect—that any human being ever landed on Wrangell

Island before the Americans did in 1881, and we know pretty definitely that no landing was made upon the island thereafter for any, many years.

Those who claim to have a knowledge of aerial navigation say that conditions on the whole there are better than in any other area in the world, and, of course, for the time being, we are interested in the acquisition of this island for the reason that, as I have heretofore stated, within 25 years it will be a very valuable spot, as the condition of the island is such that, without great difficulty or excessive expense, airplane bases could be established. Some have ventured that a harbor at one end of the island is so enclosed that aquaplanes could make safe landings, and in the winter, with the airport covered with snow, great passenger and freight planes could land safely on skis. Not only are flying conditions over the polar area on the whole good, according to those who are familiar with this section, but it is much the smaller of the oceans and therefore the easiest ocean to cross. As the settlements creep northward along the great rivers of Siberia and Canada, the polar mediterranean will continually increase in importance through the airways above which connects the various lands.

In conclusion, may I say that Russia is now in the possession of Wrangell Island. I claim that that possession was obtained by force and not by discovery. Of course, on account of Wrangell Island's being in the immediately proximity of Russian territory, it would be easy for Russia to seize and difficult for us to defend, but surely it would be possible to establish the ownership of the island at an international conference. If Russia—or any other country for that matter—then acted contrary to the decision of the conference, the facts would at least be known and the blame would be laid where it was deserved; and again I wish to say that to use Wrangell Island as a base we would have there a short cut for airplanes flying over the top of the globe from New York to Manila instead of around the circumference by such routes as are taken by ships and trains.

Wrangell Island has an area of about 2,000 square miles. Its elevation rises to 2,500 feet, but there is much less land on the south and north. Shoals and sand spits project to sea on the north and southwest. The west and east coast are steep and lofty. The harbor is on the southeast. Tundra covers many parts.

In 1923 a party of Eskimos under an Alaskan trapper were established on Wrangell Island, but Russia, laying stress on the claim made around 1915, forcibly removed the colony in August of 1924 and shortly afterward brought 80 Chukchees to form a settlement under Soviet officials, and I understand that the colony was visited by Russian airplanes in 1927. At that time these claims were not officially disputed by the United States, according to my information.

Last year I introduced a bill in Congress calling for the establishment of naval bases on Wrangell Island. This resolution was referred to the Naval Committee of the Senate, and no action to date has been taken thereupon. Fact of the matter is, I think that I was a little premature in the introduction of that resolution. I probably then should have introduced a bill such as I am introducing today, requesting the Secretary of State to make a report to the Senate at the earliest practical date with respect to whether or not the United States has a valid claim to sovereignty over Wrangell Island; and then, after the establishment of this claim, if an international congress awards the island to the United States, then would be the proper time for a bill calling

for the establishment of naval bases there. At any rate, last year, when I introduced the aforementioned bill, which was referred to the Naval Affairs Committee of the Senate, there appeared in the Washington Post under date of February 26, 1935, an article entitled "United States Owns Wrangell Island. Not Soviet, Says Reynolds," and the subhead of that story reads: "Retired rear admiral, who planted American flag, revives controversy of Arctic possession." I wish to have this article at this juncture printed as a part of my remarks.

I ask that the resolution be referred to the Foreign Relations Committee, and I hope that we may shortly ascertain the rightful owner of this island, which in the future, I am confident, will prove to be a most valuable possession.

(From the Washington Post of February 26, 1935)

UNITED STATES OWNS WRANGELL ISLAND, NOT SOVIET, SAYS REYNOLDS—RETIRED ADMIRAL, WHO PLANTED AMERICAN FLAG THERE, REVIVES CONTROVERSY OVER ARCTIC POSSESSION

Because "first come first served" still is the law of the masterless lands, Rear Admiral William Edward Reynolds, retired, believes the Russians ought to get off Wrangell Island.

It is a matter of personal pride to him, for he "came first," in this case, he said, and planted the American flag on that ice-bound spot in the Arctic Sea one August morning in 1881.

There is a first-class international squabble ready to flare up over this disputed land, and it was another Reynolds who started it.

Last Friday Senator ROBERT R. REYNOLDS, of North Carolina, introduced a bill in the Senate to establish a naval air base on Wrangell Island, but there is small chance of doing that while the Russians are there.

It seems that in 1924, taking advantage of a claim they had made in 1916 that had never been officially disputed, the Russians abducted one Charles Wells, an American mailer from Seattle, and 13 Eskimos peacefully engaged in fishing and hunting and otherwise making good America's title to the spot, and replaced them with a colony of enthusiastic Communists.

RESTRAINS HIS PRIDE

This is a pretty intolerable situation for 79-year-old William Reynolds, who retired as rear admiral in the Coast Guard just when this was going on. But, mild-mannered and dignified, he restrained his outraged pride yesterday and spoke of the arrogant Bolsheviks with creditable courtesy.

"I don't know what right they had to take our island," he remarked, "but then I don't know much about international law. I took possession of Wrangell Island for the United States, and we were the first white men that ever landed there. Of course, it's named after a Russian, Baron Wrangell, but he never reached the island; he just saw it."

As a matter of fact, it was something of an accident that led to that historic landing party, the gray-haired seaman admitted. The steamship Corwin, on which he was a junior officer at the time, was not sailing about the Arctic looking for new lands for Uncle Sam. She was searching for survivors of the exploring ship Jeannette crushed by ice just before.

They didn't find any survivors, but they found a lot of polar bears and walrus, and a good plateau now useful as an airplane landing field, and they presented this chilly spot to the State Department to file away for the future.

FIFTEEN YEARS TOO LATE

Now Senator REYNOLDS has found a use for it, but he is 15 years too late. When, in 1924, Commander M. Davidoff came back in triumph to Vladivostok with Wells and his Eskimos he proudly boasted that once more the proletarian revolution had scored over the "imperialists," who were attempting to "seize the island" because it "would have made an ideal aerial base."

Poor Wells died before he ever got away from Siberia and as Rear Admiral Reynolds is the last survivor of the officers on that historic cruise of the Corwin, he is now the only principal of the drama of Wrangell still able to tell the tale.

But Wells' sponsor, Carl J. Lomen, is still very much alive, and so in his claim against the Russian Government for the 167 foxskins and 40 polar bear skins they relieved him of in 1924, not to mention damaged against his firm, the Lomen Reindeer & Trading Corporation, which bought from an English firm the trading interests in the island just in time to have them seized behind their backs by the conquering Russian revolutionaries.

But after all, the whole thing rests with the State Department, and the State Department isn't interested now. Maybe if we build that air base Senator Reynolds wants there will be a showdown, and the Russians will be forced to admit the validity of Rear Admiral Reynolds' deed, and pay Lomen his damages. Such at least is the hope of Reynolds, Reynolds, and Lomen.

WAR OF PROPAGANDA MAY BE ALREADY WON—HUNGER IN JOBLESS HOME MORE PERILOUS THAN ANY FOREIGN SPY, IS VIEW

The little man, sitting in his little home, and wondering where he can get another, pall of coal, will ultimately decide whether we get into war or stay out, asserts Samuel Grafton, writing in the New York Post. He adds:

"We are being told to watch out for propaganda. Good enough. But in the larger sense, this is a false steer. The propaganda fight has already been fought and won by the Allies. The United States now hates Hitler more than it hated the Kaiser in 1916. The toothiest of British lecturers can add only a drop to the brimming bucket of our hate. . . ."

"History is made when the father of the family says he isn't hungry and slides his food down-table to this children, and the kids take it, trying not to think that's all there is, there isn't any more."

"History is made when the foreman at the plant tells John Smith, American worker, that he can't give him a job until the factory gets another war order, but that the factory isn't getting war orders because the Neutrality Act forbids lending money to the Allies. The muse of history really begins to smirk when John Smith walks down the factory street, feeling the stones through his shoes and wondering why the devil we shouldn't lend money to the Allies when it means a job a man can work at and feed his kids with."

"A decent peacetime job would keep John Smith from making this decision. . . ."

"Tracing out the figures nationally, I find that the total of W. P. A. workers has been cut almost in half, from 3,043,367 in February to 1,661,970 in September. The rise in 'war boom' employment doesn't even remotely correspond to this wholesale slaughter of W. P. A. pay envelopes. The cut occurs at a time when a job is the best and most vital antiwar propaganda of all, because it talks to a man 7 days a week and 24 hours a day."