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POLES APART: RUSSIA'S ACTIVITIES TO ADVANCE POLAR SOVEREIGNTY CLAIMS

by

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Biography

David Robinson is assigned to the Air War College, Air University, Maxwell AFB, AL. David was selected to attend the Air War College as part of his selection for the Defense Senior Leader Development Program, the DoD's pinnacle competitive senior leader development program. Prior to being selected to attend the Air War College, as a Navy Civilian, he served as a Naval Facilities Engineering Command Washington employee as the Deputy Public Works Officer for Joint Base Anacostia-Bolling. He is a Commander in the Navy Reserve, a graduate of the Naval Academy, and holds Masters Degrees in Ocean Engineering, Business, and Law.

Abstract

Over the past decade and more, Russia has expanded the type, size, scope, and duration of its activities and investments in the Arctic and in the Antarctic. Those activities and investments have been appropriate to the locale and the governing treaty regimes. Natural resource extraction, economic investment, military power generation, and extending effective control to the extent of claimed territorial boundaries in the North. Scientific research, extending and multiplying manned research outposts, and surveys of natural resources in the South. Russia appears to be engaged in uncoordinated and unlinked activities between the Poles, and without a unifying purpose. When characteristics of their activities and investments are properly described and categorized, they can be binned in a manner to reveal the likely underlying motivation and rationale.

This paper examines the Western Liberal Order bases for state territorial claims and the extension of state sovereignty, and it examines the classic customary international law basis for the same types of claims, and bins Russian investment and activities to reveal the underlying purpose. That underlying purpose is to strengthen and advance, and defend if necessary, territorial claims and potential territorial claims either through legal process or by the exercise of state power. This purpose is the same in both Polar Regions.

The paper concludes with a few brief recommendations for US action that will stop the US retreat from the Polar Regions and invest in activities that will lessen the strength of future potential territorial claims.

The wish to acquire more [territory] is admittedly a very natural and common thing; and when men succeed in this they are always praised rather than condemned. But when they lack the ability to do so and yet want to acquire more at all costs, they deserve condemnation for their mistakes.

Niccolo Machiavelli, The Prince

Introduction

A great deal of writing has been produced over the past decade dealing with Russia's expanding interests and activities in the Arctic and the economic and national security implications to the West. Russia has greatly expanded its activities over the past decade and more. It is moving aggressively to exploit the region's natural resources to drive economic growth and placate a domestic populace looking for a better, more western, standard of living. Working within the existing international order and agreements, Russia has asserted Arctic claims through the United Nations Law of the Sea (UNCLOS) process and has worked with some of its Arctic neighbors, less the U.S., to resolve contested or overlapping claims, thereby solidifying the recognition of its claims in international fora. It is actively engaged in expanding and enhancing official government sovereignty in the region by establishing Coast Guard equivalent facilities along the northern shoreline to be able to respond to mariner in distress calls, by programming an expansion of its fleet of icebreakers to more than forty, and by establishing a state-run economic and regulatory agency to license and manage commercial ship traffic through the Northeast Passage – all actions in recognition of future economic activity that would be driven by the increased accessibility from the retreating icepack. There is a realpolitik explanation for all of Russia's arctic actions.

The Arctic is only one of the world's Polar Regions. The Antarctic, some 10,000 miles south of Russia, is the other Polar Region. As with the Arctic, the advance of global warming measured by the retreat of the permanent icepack is leading to increased interest in the Antarctic.

The Antarctic presents economic and security issues to polar-capable nations and to the world. Much less ink has been spent by academics, research institutes, and think tanks evaluating and analyzing Russian activities in the South Polar Region. While not on the same scale as in the Arctic, Russia is actively engaged in activities to protect and enhance its interests in the Antarctic. Ignoring or minimizing the import of Russia's Antarctic activities and their implication to regional and global security and economic activity is a mistake. Year-over-year, Russia has increased its spending on Antarctic activities and those activities should be evaluated with the same rigor as in the Arctic; it is unlikely that Russia would be investing merely for altruistic reasons.

Much has been made of Russia being a revisionist power looking to overturn the liberal western order. It has also been described as a declining power. Russia's activities in both polar regions should be viewed as investments executed for the purpose of bolstering its territorial claims under both the liberal western order and the classic order that precede the current order.

While Russia's activities at each pole may appear to be dissimilar and unlinked but, using the correct lens, its activities can be correlated and lead to a conclusion that they are both part of the same integrated strategy to bolster its sovereignty and territorial claims in both the western liberal order and in the pre-western liberal order basis for asserting territorial claims. Placing the Russian flag on the seafloor at the North Pole serves a purpose similar to recreating Bellingshausen's voyage of discovery from Russia to the southern hemisphere to commemorate the anniversary of the claimed Bellingshausen discovery of Antarctica. Conducting scientific mineral surveys in Antarctica serves a purpose similar to establishing Coast Guard stations in the Arctic. Discerning the linkages between apparently dissimilar activities can help lead to a deeper understanding of Russian intentions.

This paper will evaluate Russian polar activities against both pre-western liberal order and western liberal order legal basis for establishing and defending a state claim to territorial sovereignty against competing state claims.[1] The analysis will show that Russia is working diligently to advance its polar territorial claims in whatever type of international order exists at the time it seeks to assert those claims.

This last section of the paper briefly examines U.S. polar territorial claim activity through the rubric of recommending actions the U.S. should take to bolster and defend its claims and counter Russian, and by extension Chinese, expansionist claims.

Historical Background: Rules for Construction of International Law, UNCLOS, and the ATS

The world is not completely divided between existing states; and competing territorial claims still exist, some that are more contentious than others. Some of the contested claims that can be described as flashpoints include the Senkaku/Daioyu island dispute between Japan and China, the South Kuril Islands dispute between Russia and Japan, and the South China Sea/Nine-Dash Line dispute between China and each of the countries bordering it. Each of these disputes highlight a facet of polar territorial claims, namely state sovereignty over the water and state terrestrial claims. That territorial disputes exist, even into the 21st century, shows that not all international disputes can be solved by resorting solely to post-WWII liberal order rules and fora.

Grounded in realism, the irreducible maxim of international law is best encapsulated by a quote attributed to Thucydides, "…the strong do what they can and the weak suffer what they must." Thus the rules of international law most often have been written by the victorious, so a claimant must seek to establish their claim based on then current international law or seek to overturn that order and establish new law more to their liking. Even within the existing

international law framework, interests in territorial claims often speak to constituencies both internal and external to the claimant state, thus legal arguments are framed as political arguments and vice-versa.[2] State activities that could relate to advancing a territorial claim should be evaluated through both legal and political lenses.

Recognizing that countries will use legal arguments to bolster political arguments, it is advisable to evaluate Russia's polar activities against the various recognized bases for asserting a territorial claim. Evaluating the use or relative contribution of legal arguments to bolstering a political justification is beyond the scope of this paper.

Interpretation of International Law[3]

In the absence of a codified or universal liberal order basis to sustain or refute a state claim to contested territories, international courts and legal theorists have resorted to pre-liberal order basis for evaluating the validity of claims. While domestic courts interpret international law, both public and private, as it relates to persons subject to that court's personal and subject matter jurisdiction, the arbiter of public international law between states or entities having international legal personality is the International Court of Justice (ICJ), often referred to as the World Court. The ICJ is the court established to decide questions of international law and as such it would decide territorial disputes between claimant states if both the parties consent to jurisdiction of ICJ.[4] Article 38 of the Statute of the International Court of Justice outlines the order of precedence the court shall apply in reaching decisions: International conventions, international custom, the general principles of law recognized by civilized nations, and judicial decision and the teaching of the most highly qualified publicists (academics or expert practitioners).[5]

The status of both of the poles are addressed in treaties, the Antarctic Treaty System for the South Polar Region, and the United Nations Convention on the Law of the Sea for the North Polar Region.

Antarctic Treaty System[6]

The Antarctic Treaty of 1959 was the first agreement in a treaty regime that has come to be known as the Antarctic Treaty System (ATS). The Treaty was negotiated and signed by an original 12 countries, called the 'Consulting Parties'.[7] The Treaty allowed for additional countries to join the regime at a later time, and these countries are called 'Acceding Countries', which are generally treated as inferior parties in subsequent agreements and conventions. The intent of the Treaty is to protect Antarctica from becoming a conflict zone, protect the continent's natural environment, allow only peaceful activities, advance scientific activities, and impose a 'stand-still' on states' territorial claims.[8] Subsequent and related agreements covered subjects on marine resource exploitation, protection of the natural environment, and activities related to natural and mineral resources.

The most important part of subsequent agreements as they relate to state territorial claims is the section of the Madrid Protocol on Environmental Protection, codified in October 1991, which specifically prohibits any activity relating to natural resources, except for scientific research, during the period of the protocol, which is set at 50 years. It is likely that countries are actively looking towards 2041 when the prohibition mineral resource extraction sunsets, and Russia has already conducted mineral resource surveys and is planning additional surveys in the coming couple of years.[9]

UN Convention on the Law of the Sea

The UN Convention on the Law of the Sea (UNCLOS) is the international treaty that addresses state territorial and sovereign rights on the water, and on and under the seabed. The conference that drafted the Convention convened in New York in 1973 and it finished its work nine years later in 1982.[10] The Convention aligned and codified the rules governing territory, sovereignty, and state's rights contained in the multitude of agreements and treaties, and customary international law. The US participated in the drafting of the Convention and signed it, but it has not yet ratified and formally acceded to it. Despite not formally ratifying the treaty, the US generally views most of the treaty as customary international law, and by US law, binding on the US.

Russia formally acceded to the Convention in March 1997.[11] The Convention requires a state to submit a continental shelf claim to the UN Commission on the Limits of the Continental Shelf within 10 years of acceding to the Convention. Russia submitted its claim in 2001, and has submitted additional information to the Commission several times since then.[12] Russia's claim has not yet been adjudicated. Russia has not let the absence of a completed adjudication of its claim to deter moving forward with activities that would solidify its claim such as extensive natural resource investigation, survey, and exploitation; building state organizations to manage commercial activity in, across, and through its claimed Arctic territory; and extending its military's reach and capabilities to the outer boundaries of its claimed territory. With respect to the Arctic and UNCLOS, Russia appears to be acting in accordance with the established liberal western order. As of this date, Russia even has a sitting member of the Commission.[13]

Legal Basis for Territorial Claims

The historically recognized legal basis for state acquisition of territory are *Uti Possidetis*, Occupation, Prescription, Cession, Accretion, *Propinquity*, and Conquest.[14] Geographers will point to other bases for territorial claims such as strategic, geographical, historical, economic, and ethnic, among others, and while legal bases can be binned in some of these other bases it is important to recognize that they are not legal bases.[15] Rather, they are political bases.

Discovery[16]

Discovery is not a recognized basis for a state territorial claim if that is the sole basis of the claim, though it is often used as a supporting argument when combined with a recognized basis. However, in the absence of a competing territorial claim based on other recognized legal basis, the state claiming the earliest discovery of *terra nullius* would have primacy in taking actions to perfect a claim under a recognized legal basis.[17]

There are some discrepancies in the historical record as to who first sighted or discovered Antarctica and when it occurred. Today, Russia has worked diligently to firmly ingrain the idea that Bellingshausen discovered Antarctica on January 27, 1820. The Soviet Union, and Russia before it, strenuously asserted that Antarctica was discovered by a Russian expedition headed by Admiral Bellingshausen sometime between December 28, 1820 and January 28, 1821.[18] What exactly Bellingshausen observed and on exactly what date is somewhat in debate with the date being changed to January 27, 1820 by the Soviet Union, and left unanswered if what was seen was an iceberg, an island, or the continent.[19] The factual basis of Russia's claim of a Bellingshausen discovery is questionable and contested.[20] Regardless, Russia and the Soviet Union before it strenuous defends its claim that the continent was discovered by Bellingshausen. A credible claim of 'Discovery' is the first part of the dormant Russian territorial claim.[21]

To advance and reinforce its claim of discovery, in 2019, Russia began a well-advertised recreation of the Bellingshausen voyage of discovery on the 200th anniversary of the voyage and claimed discovery with three Russian Navy Auxiliary ships, the Yantar, the Marshal Gelovani, and the Admiral Vladimirsky.[22]

Uti Possidetis

The doctrine of *uti possidetis juris* has both a classical application and a modern application. In the more modern context, *uti possidetis* applies when defining state territorial boundaries when those states emerged from the divisions of other states or from former colonial territories – the newly created state possess the territory that it possessed in its earlier incarnation, or its boundaries are what they were.[23] The purpose of applying this doctrine to newly created states is to limit conflict with neighboring states who may have a different interpretation of the correct boundary. A readily visible application of the doctrine can be seen in Africa where the post-colonial states maintained their colonial boundaries instead of reverting to any remembered pre-colonial boundaries.

In it classic formulation, *uti possidetis* is related to the doctrine of conquest and subjugation. It holds that when a state acquires control of an antagonist state's territory during a conflict, if the agreement or treaty ending the conflict is silent as to the disposition of the territory or the territorial claim, the territory belongs to the acquiring state.[24]

Russian activities in the Antarctic serve to create a condition by which *uti possidetis* might apply in the event Antarctic claimant states withdraw from the ATS and seek to assert their claims.

Occupation

Occupation is a broad term for activities that would normally follow a discovery for the purpose of informing potential rival claimants of the existing claim by the home state of the occupants.

Russia's activities in the Antarctic are sufficient to establish prima facie evidence of occupation, especially since Russia maintains a year-around presence on the continent and not just a seasonal presence.

Prescription

Prescription, also known as effective control, is the continuous, uncontested display of control of a territory.[25] The required level of display and/or control to maintain a claim is not clearly defined; in some cases the annual or other periodic return to the claimed land to raise the state's flag and remove any markers left by rival claimants is sufficient to maintain a valid claim. Such action would be akin to the requirements under common law for a property owner to visit their property annually and post/repost No Trespassing signs and remove or block indications of uninvited entry onto the property as sufficient to contest a claim of adverse possession or the creation of a common law easement.

Natural resource exploitation is an economic activity, but the survey, cataloging, and study of the flora, fauna, and geology is a state activity. In the Antarctic, Russia has made extensive hydrographic and terrestrial topographic and mineral surveys, and continues to do so to present. In fact, one of the Russian ships, the Admiral Vladimirsky, included in the 200th anniversary of Bellingshausen's voyage of discovery flotilla remained behind in Antarctic waters to complete hydrographic surveys.[26] Such activity is sufficient to meet the minimum requirements of demonstrating requisite minimum effective control.

In the Arctic, Russia is pursuing a different state activity to advance its effective control claims to the extent of its claimed territorial boundaries. In this case, Russia is building Coast Guard stations along its northern coast line, and it has initiated at state-run organization to manage and regulate commercial transit through the North East Passage.[27] These stations to be equipped with the ability to conduct Search and Rescue operations and provide assistance to mariner-in-distress calls all the way to the farthest point of its territorial claims. Russia has also initiated an extensive icebreaker construction program which when complete is expected to keep its northern waters navigable except only in the most severe and extensive ice accretion situations. Such activity demonstrating effective control in areas of overlapping claims is sufficient to find a valid claim, and in the absence of the same or similar capability demonstration by a rival claimant, it would have the superior claim.

Although the US view of Russia planting its flag on the seabed of the North Pole in 2007 as being symbolic only with no actual effect or force, Russia has effectively created an element of prescription that would be litigated if the US ever ratified the Treaty and agreed to a resolution process.[28] By the US continuing to withhold ratification and not being able to contest the legality or validity of the Russian action, the US diminishes its standing to contest and its stature diminished in any resolution process because (it can be argued) that the US has effectively acquiesced by not advancing a timely dispute in the appropriate forum.[29] While the US has not filed a claim with UNCLOS, Demark and Canada have submitted claims that overlaps the Russian North Pole claim along the Lomonosov Ridge.

Cession

Cession is the transfer of territorial ownership and sovereignty between states. Cession can be through purchase, trade, treaty, or through popular public expression.

As Russia has worked to solidify its Arctic claims through and in compliance with UNCLOS, it has negotiated with other Arctic 5 members to resolve boundary differences. This process of resolving overlapping and conflicting claims is a cession process by which states cede their ownership and sovereignty interests to another state in exchange for that state ceding its interests in other locations. Russia has followed this process with Norway to define and agree to a territorial delimitation line in the Barents Sea and the Arctic Ocean.[30]

Since Russia did not assert an Antarctic territorial claim at the time of or following Bellingshausen's discovery other states have moved to assert claims until such action was paused with the Antarctic Treaty coming into force. Russia first started articulating its claim to discovery and that it had a dormant claim in the years following the end of WWII and preceding the convening of the Antarctic Conference in 1958. Russia has since engaged in activities that, but for the ATS proscription on asserting or advancing a claim, could be used to support a colorable territorial claim. These activities would help define the boundaries of Russian investigation, occupation, and limited prescription, and if those boundaries overlapped the territorial claimed by a rival state, provide opening for negotiations with at least one country in an attempt to negotiate a boundary agreement. Merely by negotiating a boundary agreement, let alone concluding such an agreement, Russia would gain a level of legitimacy to the remaining territory not included in the agreement. Thus, recognition of a territorial claim in one location with one country would advance Russia's territorial claims against all other rival claimants.

Accretion

Accretion is the action by which the territory of a state is increased through a natural process that creates more land such as volcanos and lava flumes, and sand deposited along a coastline through wave and tidal mechanism. Of note, for accretion to be a legally valid claim

the land must have been created through a natural, as opposed to a manmade, process. UNCLOS specifically addresses artificial accretion stating "Artificial islands, installations, and structures do not possess the status of islands."[31] Thus the artificial islands constructed by China in the South China Sea and the micronation of the Principality of Sealand, which is merely an abandoned oil platform in the North Sea, do not constitute a basis to assert a territorial claim per UNCLOS.

Accretion is not being used as a basis for territorial claims in either pole and is unlikely to arise as an issue.

Propinquity

Propinquity is the principle of territorial sovereignty that arises from connectedness and proximity.[32] When a claimant state asserts propinquity it is in essence saying "The valley is mine and everybody recognizes it as mine. The valley is next to the hill, and you can't have a valley without a hill, therefore the hill is mine as well. Running down the hill and into the valley is a river, and since that river connects to the headwaters of the river in the mountain range, I own everything from my valley to the ridgeline of the mountains." The logic of this legal argument quickly extends to the absurd or runs up against rival claims. Propinquity is the legal theory that is the basis for UNCLOS to assign territorial claimant and sovereign rights to nations with coastlines where the terrestrial land extends underwater as the continental shelf.

It is reasonable to assume that propinquity will be one of the basis asserted by Russia if and when it seeks to advance its dormant Antarctic claim. Since exactly what Bellingshausen saw and exactly where it was seen is in doubt, Russia's *propinquity* claim likely may extend to the absurd.

Conquest

With the inception of the United Nations at the end of WWII, and with the governing of Article 2(4) of the UN Charter which states "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state…" it has been a tenant of international law in the liberal order that Conquest and Annexation had ceased to be a valid legal basis to assert, or advance, a territorial claim.[33] In the early 21st century, the continuation of this tenant as being invalid has come into question.

In February and March of 2014, in the midst of other internal Ukrainian troubles, Russia invaded and annexed the Crimean peninsula. Russia has attempted to paint its Crimean actions with a thin patina of legitimacy by calling the action a cession as it was merely responding to the popular will of the irredentist Russian majority population in that region of Ukraine. Later Putin added an additional reason that the territory was really Russian as it had just been transferred from Russia to Ukraine during the Soviet era purely for the purpose of administrative efficiency, adding an historical argument to the Russian claim of sovereignty. Since 2014 Russia has successfully resisted and rebuffed efforts to restore the Crimea to Ukraine and there is little likelihood that such a reversion might occur in the near term. Such action by Russia and the willingness of the world to condemn but take no action should lead to the question "Has the acquisition of territory by armed aggression been resurrected as a valid legal basis for such action?" Because of this situation, all international relations practitioners should evaluate the presence of Russian military, para-military, and quasi-military forces and activities in the Antarctic with a jaundiced eye.

Recommendations

Ratify UNCLOS and formally join the Convention. Register Arctic claim with UNCLOS – The US should move to ratify UNCLOS and submit an Arctic continental shelf claim. The US makes a practice of lecturing the world community of the tenants of UNCLOS and their validity and applicability. Yet, the US has not acceded nor ratified the treaty. By continuing to stand outside the Convention, and by not submitting an Arctic claim under the Convention, the US not only loses credibility on the world stage when it attempts to lecture other states and leaders of the legal requirements of the Convention, the US is likely losing Arctic territorial claim rights it otherwise would be entitled to assert. If the US were ever to contest a Russian Arctic territorial claim in a legal forum, Russia likely would argue that the US has been under notice of the requirements of the Convention for an extended period of time (decades) and yet has chosen to not submit an Arctic claim in all that time; the U.S. has effectively abandoned its claim. Notwithstanding the requirement that only parties to the convention have standing to submit a claim and that the U.S. has never ratified and become a party to the convention so therefore it has been unable to submit a claim, it is likely that Russia would win in a contested legal proceeding before the ICJ. To stop the potential erosion of U.S. international legal stature and rights, the U.S. needs to take positive action to submit a claim and preserve its rights to do so. Other authors have made similar arguments and arrived at similar conclusion.[34]

Accept Canadian Sovereignty Claims to the Northwest Passages – At the time Canada asserted it various territorial and sovereignty claims to the Northwest Passages, those Passages were not navigable waters, therefore the U.S. did not have a basis to refute Canada's sovereignty claim. It does not necessarily follow that just because a country can add to its territory through accretion, a country can lose territory (and/or sovereignty) through a reverse accretion process.

At a time of renewed great power struggle, the U.S. is in need of as many allies as it can retain through the growing chaos of this new era. Accepting Canada's claims to the Northwest Passage costs the U.S. nothing as there is a colorable Canadian claim to the territory and sovereignty over the contested areas. Accepting such a claim likely would generate substantial good will with the Canadian government and its citizens.

Clarify NATO interest in Arctic conflict involving A5 NATO members[35] – Article 6 of the North Atlantic Treaty should be clarified as to the interest of NATO in conflict or armed attack in Arctic Waters. NATO allies and potential adversaries should have a clear understanding of the boundaries of potential conflict. Such a clarification that adjusts the boundaries of NATO interest is not unprecedented. In 1951 a protocol was adopted modifying Article 6 to remove "the Algerian departments of France" from the Article. The North Atlantic Treaty was signed before UNCLOS was drafted and long before the realities of global warming. Both of these events may change the area of interest for non-Arctic 5 NATO members and debate over this issue at time or rising tensions or hostilities or in proximity to conflict may present just the obstacle to timely Article 5 concurrence by member countries as to negatively impact the course of a potential conflict.

Re-establish U.S. Navy research station in Antarctica and staff with uniformed military – In 1954, the US Navy began building military staffed and operated research station in Antarctica at McMurdo, Kainan Bay, and Byrd and Pole stations.[36] The Navy Seabees who built these stations stayed to operate and maintain them until the US Military Antarctic presence was discontinued during the 1990's peace dividend drawdown.[37] Even within the ATS, these Navy Seabees served the purpose to maintain continuous presence sufficient to maintain U.S. territorial claims under Occupation, and Presence in the event of a collapse of the ATS, and in the event of

conflict, *uti possidetis*. As Russia with its dormant claim and aspiring claimant states including China use their military forces to operate in and around Antarctica, the US should seek to invest in Antarctic military operations sufficient to the need and risk. The US Five Eye partner nations, Australia and New Zealand would be reassured by such investment as they have become concerned with other foreign state activities on and around their historically claimed territory.[38]

Conclusion

A cursory examination of Russian government activity in the Arctic with primarily economic and military activities, and the Antarctic with primarily scientific activity likely would lead to the conclusion that Russia is following markedly different strategies at opposite ends of the World. By looking at each of the individual activities Russia engages in to discern the characteristics of each and how that activity would fit into rational or justification to strengthen or extend a state territorial claim in each region, a conclusion that Russia is implementing a remarkably similar strategy in both locations is reasonable. Russia is selecting activities and investments to which it can point to as supporting its territorial acquisition aspirations as each of those activities supports an international legal theory of territorial acquisition in both classic customary international law and in western liberal order fora and regimes. Russia is covering its bases to protect its interests regardless of the future international legal landscape.

While Russia is actively expanding the scope, reach, and duration of its Polar activities, the US is reducing or curtailing its activities. At best, the US activities might be described as prepared to accept increased investment in future years with only minor interest in making those investments by those who decide where the country will spend its money. By retreating from the world stage, even if just in the Polar Regions, the US will realize reduced influence in the international fora and regimes the US was instrumental in establishing in earlier years. Without

the presence of a strong and committed US, the stress cracks in the post-WWII western liberal order will extend and expand, and at some point fray such that regional and international security will transform to insecurity.

To counter an advancing Russia, the US should invest in Polar activities that it dissolved and disestablished during the 1990 peace dividend years. With only minor investments, the US would realize outsized dividends. The US should find ways to support its traditional allies and their interests, especially if doing so will garner outsized gratitude. A US in retreat and/or overly engaged with internal matters leaves a leadership vacuum in the world. In a world where weak states and even stronger states interested in advancing their interests, feel less secure because of an absence of leadership, those states will gravitate to states that can provide security and security assurances. Investing in the Polar Regions will provide those security assurances to traditional allies and friends in those regions.

Notes

[1] This paper will not examine the development or historical treatment of each of the bases for territorial claims nor will it attempt to evaluate the relative merit of each of the type of claims.

[2] Andrew F. Burghardt, "The Bases of Territorial Claims," *Geographical Review* 63, no. 2 (April 1973): 226.

[3] In legal terms, this would be 'Canons of Construction in Public International Law'. Public international law generally refers to treaties and laws that govern relations between states or other entities that have been granted international legal personality.

[4] The ICJ only exercises compulsory jurisdiction in cases where both parties have at some point agreed to ICJ jurisdiction such as with a treaty. In other words, the ICJ exercises jurisdiction only in cases where the parties have acquiesced to such jurisdiction.

[5] "Statute - Statute of the International Court of Justice," UN International Court of Justice, accessed March 26, 2020, https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf.

[6] Parts of this section were first included in a paper submitted by the author in an Academic Year 19 Air War College elective course *Russian and Soviet Military and its Use of Armed Force, Patterns of Change and Continuity*.

[7] The original Consulting Parties were: the United States, the Soviet Union, Argentina, Australia, Belgium, Chile, The French Republic, Japan, New Zealand, Norway, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

[8] "The Antarctic Treaty" (Secretariat of the Antarctic Treaty, December 1959), https://www.ats.aq/e/key-documents.html.

[9] "On Strategy for the Development of the Russian Federation Activities in the Antarctic for the Period Until 2020 and Longer-Term Perspective" (Antarctic Treaty System, 2011), 4, http://www.ats.aq/documents/ATCM34/wp/ATCM34_wp055_e.doc.

[10] "Overview - Convention & Related Agreements," International Organization, United Nations Oceans and Law of the Sea, accessed March 27, 2020, https://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm.

[11] "Chronological Lists of Ratifications of the Convention on the Law of the Sea," United Nations Oceans and Law of the Sea, accessed March 27, 2020, https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea.

[12] "Commission on the Limits of the Continental Shelf," UN Oceans & Law of the Sea, accessed March 27, 2020, https://www.un.org/Depts/los/clcs_new/clcs_home.htm.

[13] "Commission on the Limits of the Continental Shelf."

[14] Mark W. Janis, *International Law: Cases and Commentary* (West academic, 2014), 371.

[15] Burghardt, "The Bases of Territorial Claims"; Alexander B. Murphy, "Historical Justifications for Territorial Claims," *Annals of the Association of American Geographers* 80, no. 4 (December 1990): 531–48.

[16] Part of this section includes text originally included in a paper submitted for Academic Year 19 Air War College elective course *Russian and Soviet Military and its Use of Armed Force, Patterns of Change and Continuity*.

[17] *Terra nullius* refers to uninhabited land newly discovered. During the Age of Discovery and the Age of Empire, uninhabited and newly discovered meant uninhabited by civilized peoples. Such civilized peoples being regarded as only those citizens of a Christian state.

[18] No evidence is given as a basis for the differences in dates and no articles talk about proof or extracts from the Captain's logbooks.

[19] Where addressed in literature, it appears that historians agree that if land was sighted, it was the island of Alexander I Land.

[20] "200 Years on, Antarctic Hero Bransfield Finally Comes in from the Cold," Echo Live, accessed March 27, 2020, https://www.echolive.ie/nostalgia/200-years-on-Antarctic-hero-Bransfield-finally-comes-in-from-the-cold-361cbd6b-0272-47bf-8661-6dd2173d8892-ds; "Who Really Discovered Antarctica? Depends Who You Ask.," MSN, accessed March 27, 2020, https://www.msn.com/en-us/Lifestyle/lifestyle-buzz/who-really-discovered-antarctica-depends-who-you-ask/ar-BBZmrEf.

[21] No territorial claim was made by Russia at the time of discovery or any time thereafter until after World War II, though it did remonstrate a Norwegian claim in 1939.

[22] BNS | ERR, "President: Admiral Bellingshausen Is Our Man," ERR, January 26, 2020, https://news.err.ee/1028158/president-admiral-bellingshausen-is-our-man.

[23] "Uti Possidetis Law and Legal Definition | USLegal, Inc.," accessed March 25, 2020, https://definitions.uslegal.com/u/uti-possidetis/.

[24] "Uti Possidetis Law and Legal Definition | USLegal, Inc."

[25] Janis, *International Law*, 371.

[26] "Russian Warships Arrive in Antarctica for 200th Discovery Anniversary Celebration," TASS, accessed March 27, 2020, https://tass.com/society/1113503.

[27] Joanna Hosa, "Has Russia Already Won the Scramble for the Arctic?," The Maritime Executive, October 28, 2018, https://www.maritime-executive.com/editorials/has-russia-already-won-the-scramble-for-the-arctic; Mary Ilyushina and Frederik Pleitgen CNN, "Inside the Military Base at the Heart of Putin's Arctic Ambitions," CNN, accessed March 27, 2020, https://www.cnn.com/2019/04/04/europe/russia-arctic-kotelny-island-military-base/index.html.

[28] Tom Parfitt, "Russia Plants Flag on North Pole Seabed," *The Guardian*, August 2, 2007, sec. World news, https://www.theguardian.com/world/2007/aug/02/russia.arctic; Hosa, "Has Russia Already Won the Scramble for the Arctic?"

[29] The US objects to the Russian North Pole claim not because of an interest in a potential competing claim, rather because of a technical definition of a submarine ridge vs extension of continental shelf. Regardless, the US perspective is likely to not be considered by the Commission on the Limits of the Continental Shelf as the US is nto a signatory nation.

[30] "Evolution of Arctic Territorial Claims and Agreements: A Timeline (1903-Present) • Stimson Center," *Stimson Center* (blog), September 15, 2013, https://www.stimson.org/2013/evolution-arctic-territorial-claims-and-agreements-timeline-1903-present/.

[31] "UN Convention on the Law of the Sea - Full Text," Article 60, International Organization, UN Oceans & Law of the Sea, accessed March 27, 2020, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

[32] Benedetto Conforti, "Territorial Claims in Antarctica: A Modern Way to Deal with an Old Problem," *Cornell International Law Journal* 19, no. 2 (Summer 1986): 249–58.

[33] Janis, *International Law*, 742.

[34] Melissa Renee Pegna, "US Arctic Policy: The Need to Ratify a Modified UNCLOS and Secure a Military Presence in the Arctic," *J. Mar. l. & Com.* 44 (2013): 169; Brian Finneran, "US Policy in the Arctic: The Implications of the South China Sea Arbitration Award on American Policy and UNCLOS," *Penn St. JL & Int'l Aff.* 6 (2018): 290.

[35] A5 – the Arctic 5 countries are those countries with territory waters in the Arctic Ocean: Canada, United States Denmark(Greenland), Norway, and Russia.

[36] Article 1(1) of the Antarctic Treaty prohibits activities of a military nature, and Article 1(2) continues and states that the "Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose.

[37] "Operation Deepfreeze," Educational, Seabee Museum, February 26, 2020, http://public1.nhhcaws.local/content/history/museums/seabee/explore/civil-engineer-corps-history/the-civil-engineer-corps-at-the-other-pole--operation-deepfreeze.html; Dr. Frank A. Blazich, Jr., "Rendezvous with Penguins: Seabee Construction of the South Pole Dome | Seabee Online," Periodical, Seabee Magazine, August 27, 2014, https://seabeemagazine.navylive.dodlive.mil/2014/08/27/rendezvous-with-penguins-construction-of-the-south-pole-dome/.

[38] Ellie Fogarty, *Antarctica: Assessing and Protecting Australia's National Interests* (Lowy Institute for International Policy, 2011).