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## THE PRINCIPALITY OF SEALAND: NATION BUILDING BY INDIVIDUALS

*Trevor A. Dennis*<sup>†</sup>

### I. INTRODUCTION

Have you ever wanted to simply get away from the hustle and bustle of the everyday world? Many writers dream and write about secluded islands with no buildings, traffic, or even people. *Robinson Crusoe* and *Swiss Family Robinson* describe two of many locations writers have dreamed up. The heroes of these novels escape modern civilization and start over, creating a new nation as they see fit. However, finding these tropical paradises is much more elusive than it is in their fictitious counterparts. Almost all of the inhabitable land on earth is claimed by one, and sometimes more than one, nation states. Individuals who truly want to get away and start their own version of paradise run smack into existing rules and governments that interfere in their plans. However, one family may have succeeded in creating their own country by slipping through the cracks of international law and settling upon artificial territory.

This comment explicates the rules governing the acquisition of territory by private individuals for the purpose of establishing a state. International law is settled as to when existing states may expand their territory, but is silent on the question of whether or not an individual may acquire territory to set up a new state.

This comment also explores the traditional requirements of statehood by applying them to the currently styled Principality of Sealand. Part II tells the story of how the Principality of Sealand came into existence. Part III examines the legality of an individual's claim of sovereignty over unclaimed territory. Next, Part IV examines the legal status of artificial

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islands. Part V examines the traditional definition of statehood and its application to the Principality of Sealand. Finally, Part VI looks to the future of the Principality of Sealand and possible international response.

## II. HISTORY OF THE PRINCIPALITY OF SEALAND

### A. *Creation of the Principality of Sealand*

#### 1. Life as the Rough Towers Navy Fortress

The Principality of Sealand began life as the Rough Towers navy fortress.<sup>1</sup> During World War II, Britain established four sea forts in the

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1. The Harwich Society, *Rough Towers*, at [http://users.quista.net/farnell/info\\_rough\\_towers.htm](http://users.quista.net/farnell/info_rough_towers.htm) (last visited Aug. 25, 2002).

Approx (sic) 10 miles off the Harwich seafront, the Rough Towers was the first of originally 4 naval forts designed by G. Maunsell to protect the Thames Estuary. The forts consisted of 2 re-enforced concrete towers, topped with a steel platform. The whole fort was constructed on a re-enforced concrete pontoon, which was floated into position and then sunk onto an unprepared seabed.

The forts were all constructed to the same specifications consisting of 2 towers standing 18 metres in height, 7 metres in diameter. Each tower was split into 7 floors of which 4 of these floors were used for crews quarters. The wall thickness of the reinforced concrete towers was 9 centimeters. On top of the towers there was a main deck consisting of anti-aircraft guns one positioned at each end of the deck. In the centre of the deck was the officers quarters, medical room & kitchen. Mounted on the floor of this living area were 2x 40 mm Bofors anti-aircraft guns also in the center of the roof the operations control room was sited. On the roof of this 2 forms of radar were installed.

In addition to this equipment the forts were self sufficient of freshwater this being housed in tanks mounted within the 2 towers. For electricity the forts were supplied with 3 diesel generators, 2 of these being used as the main power supply & the 3rd as a backup generator. Each fort was supplied with its own heating & forced ventilation air supply.

The total height of the fort was 33.5 metres, weighing approximately 4500 tons & having a crew of 120 personnel although during the course of the war this number was reduced. To assist with the landing of [the] crew & provisions each fort was equipped with its own wooden landing stage called a Dolphin.

Pontoon dimension 168' loa, 88' beam, 14' keel to deck. approx 2000 tons. Towers 24' diam 60' above pontoon deck.

Rough Towers sunk 11th Feb 1942 in 37' water.

A 4' temp. wooden wall to stop excessive flooding during tow was not removed completely prior to flooding, the port side wall still being intact at the time of influx, causing the pontoon to flood to stbd [starboard].

Thames Estuary to protect the coastal areas and London from Nazi air attacks.<sup>2</sup> The forts mostly provided early warning of air raids with the radar equipment stationed on the fort, and prevented mines from being laid in the sea route to London.<sup>3</sup> The forts were successful in their mission, shooting down a combined twenty-two enemy aircraft and twenty-five flying bombs.<sup>4</sup>

The Rough Towers sea fort was originally built in international waters, being located approximately seven nautical miles from the coast of Britain.<sup>5</sup> At the time Rough Towers was established in 1942, Britain claimed the territorial waters out to three nautical miles, leaving the Rough Towers located in international waters.<sup>6</sup> Britain demolished and abandoned the forts after the war, except for Rough Towers.<sup>7</sup> Rough Towers was apparently not torn down because, being located in international waters,<sup>8</sup> the British Government could abdicate responsibility and avoid the expense of tearing it down.

## 2. From Rough Towers to the Principality of Sealand

Paddy Roy Bates, a former Major in the British Army and millionaire-fishing magnate, saw a commercial opportunity in the abandoned Rough Towers fort.<sup>9</sup> In 1965, Bates occupied Fort Rough Tower in hopes of making it his base for his pirate radio station, Radio Essex.<sup>10</sup> The British Broadcasting Corporation was Britain's only

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This caused the pontoon to sink stbd side first as opposed to bow first. The stbd bow hit the sea bed with the tower listed 30 degrees to stbd, before correcting herself. There were 100 men aboard at the time!

*Id.*

2. *The Sea Forts*, at [http://freespace.virgin.net/line.design/forts/sea\\_forts.htm](http://freespace.virgin.net/line.design/forts/sea_forts.htm) (last visited Aug. 25, 2002). The other Navy forts were situated at Knock John, Sunk Sand, and Tongue Sands and were known by those names. *Id.*

3. *Id.*

4. *Id.*

5. *History of Sealand*, at <http://www.sealandgov.com/history.html> (last visited Aug. 25, 2002) [hereinafter *History*]. The Rough Towers sea fort is located at latitude 51.53 N, longitude 01.28 E. *Id.*

6. *Id.*

7. *Id.*

8. *Profile: Sovereign Principality of Sealand* (NPR Weekend Edition radio broadcast, Aug. 11, 2001) [hereinafter *Profile*].

9. *Id.* The idea of turning Rough Towers into a sovereign nation was hatched in a British bar, presumably over drinks. See *infra* note 24 and accompanying text.

10. Scott Simon, *Another Country*, NATIONAL PUBLIC RADIO, at <http://www.npr.org/programs/wesat/features/2001/sealand/081101.sealand.html> (last visited Aug. 25, 2002).

authorized radio broadcaster at the time,<sup>11</sup> making private radio stations very profitable. Bates located his radio transmitter on Rough Towers because it was beyond what was then England's three-mile territorial limit.<sup>12</sup> Bates broadcast his pirate radio station unmolested until Britain legalized private radio stations, and pirate stations lost their commercial appeal.<sup>13</sup> Bates then decided he could make money by declaring Rough Towers a nation.<sup>14</sup>

On September 2, 1967, Bates claimed the Rough Towers as his own state and changed its name to the Principality of Sealand.<sup>15</sup> Mr. Bates bestowed upon himself the title of Prince and upon his wife, Joan, Princess of the Principality of Sealand.<sup>16</sup> On September 25, 1975, the newly titled Prince Roy of Sealand proclaimed the Constitution of the Principality of Sealand.<sup>17</sup> The Prince of Sealand subsequently issued other trappings of a country. Sealand stamps have been in circulation since 1969.<sup>18</sup> The Sealand flag is red, white and black.<sup>19</sup> English is the official language of Sealand and the law of Sealand is founded upon British common law.<sup>20</sup> Sealand even coined its own money with a portrait of the Princess of Sealand on one side and the coat of arms of the royal family on the other.<sup>21</sup> One Sealand dollar is equivalent to one United States Dollar.<sup>22</sup> Sealand even issued its own passports,<sup>23</sup> which have been found at the center of several worldwide criminal conspiracies.<sup>24</sup>

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11. *Profile*, *supra* note 8.

12. *Id.*

13. Simon, *supra* note 10.

14. *Profile*, *supra* note 8.

15. *History*, *supra* note 5.

16. *Id.*

17. *Id.*

18. *Principality of Sealand*, at <http://www.fruitofthesea.demon.co.uk/sealand/factfile.html> (last visited Oct. 15, 2001). Sealand does not belong to the Universal Postal Union, thus mail with Sealand stamps cannot be sent elsewhere. The result being Sealand's stamps only have value to collectors. Matt Rosenberg, *Sealand is Not a Country*, at <http://geography.about.com/library/weekly/aa081100a> (last visited Oct. 15, 2001).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Adela Gooch, *Storm Warning*, GUARDIAN UNLIMITED, at <http://www.guardian.co.uk/Archive/Article/0,4273,3979326,00.html> (last visited Oct. 15, 2001). "[T]he Spanish civil guard is investigating a gang that is involved in arms trafficking, drug smuggling and money laundering—all of which, it seems, is being conducted with fake passports supposedly issued by the Principality of Sealand." *Id.*

He [Prince Roy] reckons someone got hold of one of his passports and copied it to make huge numbers of forgeries. "We have issued passports - several hundred. We have given them to people who work for us or people who need them. But we have never given passports [for] illegal entry."

By contrast, the "fake" website under investigation says "the Principality of Sealand has approximately 160,000 citizens." In parts of the Spanish version, it reads, "160,000 inhabitants," quite difficult on an island 932 yards square.

"The population of the Principality of Sealand is primarily made up of businessmen. They live in the countries they originate from," the unofficial site says. "From a political point of view, a micro-state like the Principality of Sealand is not very influential," it concedes. "This is why the government of the Principality of Sealand founded the Sealand International Business Foundation (SIBF) as an instrument to efficiently safeguard the economic interests of the citizens organised in its network."

"Irrespective of his/her origin, race and his/her religion, anyone can become a citizen of the Principality if he is prepared to make use of his/her talents to establish and boost the acceptance of an emerging state."

In the Spanish-language version of the site, respondents are asked to say what they are interested in: citizenship, ID cards, passports or driving licences. According to investigators from the civil guard, Spain's paramilitary police force, yesterday, those privileges are on offer to anyone willing to pay between £5,500 and £35,000 for a range of documents that includes titles, academic degrees and full Principality of Sealand diplomatic passports.

They allege that a Spaniard from the southern province of Almeria, Francisco Trujillo Ruiz, is presenting himself as the "Prince Regent of Sealand." He drives around Madrid with diplomatic number plates and refers to his office, in a luxury building on Calle Serrano, one of the smartest streets in Madrid, as Sealand's embassy.

The Spanish foreign ministry, like the British government, takes quite a different view. It does not recognise passports issued by the Principality of Sealand and says they do not comply with criteria laid down by the Schengen Treaty for international documents. But according to the investigation, several countries have been taken in by "ambassadors" who claim to represent Sealand and use their prestige in business deals.

The embassies of Gabon, Paraguay, Nepal, Syria, Haiti, Liberia, Honduras, Jamaica, Pakistan, Cyprus, Ethiopia, Jordan and Turkey all responded to requests for information from Sealand representatives who claim to be preparing lucrative investments in those countries.

Access to other Sealand privileges does not come cheap. There is a basic "goodwill" charge of £300 for the first contact. Membership of "Mare Libertas," described as Sealand's exclusive international business foundation, costs £25,000. Its main project was described as the

### 3. Sealand's Independence from the United Kingdom

Not everyone was as enamored with the idea of an independent state off of the coast of Britain as Prince Roy. Soon after Prince Roy's occupation of Rough Towers, the British Ministry of Defense dispatched the Royal Maritime auxiliary vessel *Golden Eye*, along with several naval helicopters, to evict Prince Roy and his family from the Principality of Sealand.<sup>25</sup> In response, Prince Roy threw Molotov cocktails and fired several warning shots at the approaching naval force.<sup>26</sup> The British forces retreated without returning fire.<sup>27</sup>

The British Government arrested Prince Roy when he came back on shore for supplies and charged him with possessing a .22 caliber pistol without a firearm certificate in connection with the *Golden Eye* incident.<sup>28</sup> Prince Roy's hearing was held on October 21, 1968 in Chelmsford, Essex before Judge Chapman.<sup>29</sup> Judge Chapman dismissed the case against Prince Roy, holding that his court did not have jurisdiction to hear the matter since it took place outside of British territorial limits.<sup>30</sup> Britain's territorial waters only extended three miles from the coast at the time,

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construction of a micro-city in Sealand, with ports, sports complexes, a medical centre, a cathedral, heliports and universities.

Trujillo Ruiz's team all hold "official" titles. His legal adviser is described as the "secretary general of the state," and there is a "foreign affairs minister" and a "chief political adviser." The civil guard is investigating the group, which appears to be "an organised crime ring" concentrating its activities on falsification and swindling. Documents supposedly issued by Sealand have been passed to investigating magistrates, who will decide whether to order arrests.

This is not the first time that passports from Sealand have found their way into the news. One was found on the killer of Gianni Versace, Andrew Cunanan, and he was said to have a car with Sealand diplomatic plates. In 1997 forged Sealand passports were used to launder drug money in Slovenia, and there were reports that 4,000 forged passports were sold at £1,000 a head before China's takeover of Hong Kong. People involved in an illegal pyramid-selling scheme in eastern Europe had Sealand papers; one had border stamps from Libya, Iraq, and Iran.

*Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Genie Baskir, *The Bates Family is Trespassing: Here is the Legal and Factual Proof!*, *ROUGH SANDS GAZETTE*, available at <http://www.freebornjohn.com/RSG-Law-1.htm> (last visited Aug. 25, 2002).

29. *Id.*

30. *Id.*

while Sealand is located outside that limit at seven miles.<sup>31</sup> The British Government did not appeal the ruling, possibly concerned that a higher court would validate Prince Roy's claim to Sealand.<sup>32</sup> Prime Minister Harold Wilson's Cabinet met to review the outcome of Prince Roy's case and issued the following statement:

On 21st October (1968), Mr. Bates had been discharged from Essex Assizes on the grounds that the court had no jurisdiction over Rough Tower (sic) and could not deal with the alleged offences under the Firearms Act. The purpose of the present meeting was to establish what new problems were raised by the court's decision; what old problems maintained unsolved; whether officials maintained their earlier opinion that the situation over Rough Tower (sic) must be accepted; and whether the final report to the Prime Minister should be made at Ministerial or office level.<sup>33</sup>

The result of the Cabinet meeting was another statement:

Mr. Bates' continued occupation of the Tower was undesirable, because of the shooting incident and the possibility of further violence, and also because of the small but continuing threat that the Tower could be used for some illegal activity not at present foreseen. Nevertheless, he was doing no actual harm, so far as was known, and the Ministry of Defence had no need of the Fort themselves. There were no pressing reasons for evicting Mr. Bates, certainly none that would justify the use of force or the passage of special legislation.<sup>34</sup>

The British Government's response was to simply ignore Prince Roy and hope that he would soon go away.

## *B. The Workings of a New State*

### 1. Commercial Development

Prince Roy's acquittal in court left him at least in de facto control of Sealand. He moved back to Sealand with his wife and son and set about finding a way to make his new country profitable. Sealand was created with a commercial purpose from the beginning.<sup>35</sup> The only problem was coming up with a way to make money from a rusty steel and concrete platform in the middle of the North Sea. To help develop a business plan

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31. *History*, *supra* note 5.

32. *Profile*, *supra* note 8.

33. Baskir, *supra* note 28.

34. *Id.*

35. *Profile*, *supra* note 8.



for Sealand, Prince Roy consulted a German tax lawyer by the name of Mr. Gernot Putz as well as a number of Dutch businessmen.<sup>36</sup> The group came up with a plan to turn Sealand into a \$70 million hotel and gambling complex.<sup>37</sup> However, Mr. Putz as well as the Dutch businessmen believed Sealand would be more profitable for them if they overthrew Prince Roy.<sup>38</sup>

## 2. Sealand's First War

The failed business venture resulted in the first and only Sealand war in August of 1978.<sup>39</sup> Mr. Gernot Putz, Prince Roy's German lawyer, arranged a meeting in Austria to discuss their business plans for Sealand.<sup>40</sup> The proposed meeting was actually a ruse to get Prince Roy and Princess Joan off of Sealand, leaving only their son Michael guarding the fort.<sup>41</sup> While Prince Roy and Princess Joan were in Austria, Mr. Putz as well as several of the now armed Dutch businessmen arrived in Sealand in a KLM helicopter.<sup>42</sup> Michael would not allow the helicopter to land so Mr. Putz slide down to the platform on a winch wire and handed Michael what purported to be a contract signed by Prince Roy turning control and possession of Sealand over to Mr. Putz.<sup>43</sup> Michael of Sealand was not convinced so Mr. Putz took Sealand over and imprisoned Michael in a small steel room for three days before releasing him onto a passing fishing trawler bound for the Netherlands.<sup>44</sup>

Prince Roy soon learned of the invasion of his country and gathered up a security force to liberate the Principality of Sealand.<sup>45</sup> Prince Roy's friend, who had flown helicopters for James Bond movies, provided the transportation.<sup>46</sup> The Sealanders attacked at dawn, sliding down ropes to storm the platform.<sup>47</sup> Prince Roy said the two armed groups came "[v]ery, very close to a fire fight. It was that close, you know. But anyway, the situation was defused."<sup>48</sup> Prince Roy defused the situation when he fired

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36. Gooch, *supra* note 24.

37. Declan McCullagh, *A Data Sanctuary is Born*, WIRED, at [www.wired.com/news/business/0,1367,36749,00](http://www.wired.com/news/business/0,1367,36749,00) (last visited Aug. 25, 2002) [hereinafter *Data Sanctuary*].

38. *Profile*, *supra* note 8.

39. *History*, *supra* note 5.

40. *Profile*, *supra* note 8.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Profile*, *supra* note 8.

47. *Id.*

48. *Id.*

his shotgun into the air and the Sealand occupiers surrendered, fortunately with no casualties.<sup>49</sup>

Prince Roy secured Sealand and held the invaders as prisoners of war.<sup>50</sup> Prince Roy then decided to put the invaders on trial.<sup>51</sup> According to Prince Roy, "I elected one of my men there to represent them. I don't think he tried very hard, but it was a pretty open-and-shut case, you know. They were there with weapons in their hands, and they'd taken their fate, and we took it back off them. And they didn't refuse it, either."<sup>52</sup> While the trial was in progress, the Governments of Norway and Germany petitioned the British Government for the release of the Dutch businessmen and German lawyer.<sup>53</sup> The British Government, citing the earlier court decision, disavowed any claim of control over Sealand.<sup>54</sup> Germany then sent a diplomat directly to Sealand to obtain the release of Mr. Putz, a German citizen.<sup>55</sup> Prince Roy released the Dutch businessmen as they were only hired muscle and the war was over.<sup>56</sup> Mr. Gernot Putz, the German tax attorney who orchestrated the takeover of Sealand, held a Sealand passport at the time of the invasion and was charged with treason and sentenced to six weeks imprisonment and then released.<sup>57</sup> Prince Roy, a former British Major who served in the Second World War, when asked if he considered imposing the traditional punishment for treason, the death penalty, replied: "[y]es, I did think of it. You know, it was a long war. I've killed a lot of Germans in my time. Another one wouldn't have made much difference, I suppose, but I didn't want to kill anything else, really."<sup>58</sup>

Things quieted down at Sealand after the first and only Sealand war. Prince Michael even consulted Mr. Putz for legal advice since the attempted invasion.<sup>59</sup> The Prince and the Royal family lived quietly on Sealand without drawing the attention of the British authorities until July of 2000 with the launching of their new business of internet server hosting.<sup>60</sup>

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49. *Id.*

50. *History, supra* note 5.

51. *Profile, supra* note 8.

52. *Id.*

53. *History, supra* note 5.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Profile, supra* note 8.

58. *Id.*

59. *Id.*

60. *HavenCo*, at <http://www.havenco.com/index.html> (last visited May 21, 2002).

### 3. Sealand in Cyberspace

Prince Roy and Princess Joan lived the past thirty years on Sealand, but were looking to retire in Florida because the North Sea salt air was not good for their health. Prince Michael took over the day-to-day operations of Sealand and was looking for another commercial opportunity for Sealand. Prince Michael found his opportunity in Ryan Lackey, a 21 year-old MIT dropout, who approached Prince Michael about letting his company, HavenCo, establish an internet server hosting business on Sealand.<sup>61</sup> HavenCo founders Ryan Lackey and Sean Hastings previously tried to create an offshore data haven in Anguilla, a small country in the British West Indies.<sup>62</sup> HavenCo believed that a large number of potential customers from around the world were willing to pay to keep their e-mail systems as well as electronic commerce, banking, and gambling sites secure from the prying eyes of government.<sup>63</sup> However the country of Anguilla could not guarantee that subpoenas for the clients' information stored on the server would not be honored.<sup>64</sup> In 1999, HavenCo began a search for a more sympathetic state that would provide the physical protection demanded by the start-up company demanded.<sup>65</sup> In his search, Sean Hastings came across a book titled *How to Start Your Own Country* and learned about Sealand.<sup>66</sup>

HavenCo found the perfect host country in Sealand, a country with no laws governing the internet. HavenCo's founders were inspired to develop physically secure servers because

“[t]he countries that currently have the best infrastructure for eCommerce are suppressing the growth of profitable internet business through ill conceived, constantly changing regulation and poor enforcement policies. The United States' ‘Digital Millennium Copyright Act’ and Britain's aptly named RIP (Regulation of Investigatory Powers) Bill are two such examples. HavenCo's operation in Sealand offers a haven from such intrusive legislation.”<sup>67</sup>

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61. *Data Sanctuary*, *supra* note 37.

62. John Markoff, *Rebel Outpost on the Fringes of Cyberspace*, N.Y. TIMES, June 4, 2000, available at <http://query.nytimes.com/search/abstract?res=F10912FB34580C778CDDAF0894D8404482>.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *HavenCo*, *supra* note 60.

HavenCo succeeded in making its servers on Sealand the most secure in the world.<sup>68</sup> HavenCo's onboard staff travels to Sealand by helicopters and speedboats.<sup>69</sup> At least four armed security guards are on duty at all times to keep unauthorized aircraft and boats away from Sealand.<sup>70</sup> The machine rooms where the servers are stored are filled with an unbreathable pure nitrogen atmosphere rather than oxygen, a design that is hoped to inhibit rust, reduce the risk of fire, and keep out snoopers.<sup>71</sup>

### III. LEGALITY OF PRINCE ROY'S CLAIM OVER THE PRINCIPALITY OF SEALAND

#### A. *An Individuals Right to Claim Territory Under International Law*

Individuals do not have a right under international law to acquire sovereignty over a territory for their own personal benefit.<sup>72</sup> Neither does an individual have an exclusive right to acquire a country or empire.<sup>73</sup> However, international law may take into account an individual's de facto control of a territory and subsequent creation of a new state.<sup>74</sup> E. De Vattel's analysis of an individual's acquisition of territory is helpful for determining Sealand's position:

An independent individual, whether he has been driven from his country, or has legally quitted it of his own accord, may settle in a country which he finds without an owner, and there possess an independent domain. Whoever would afterwards make himself master of the entire country, could not do it with justice without respecting the rights and independence of his person. But, if he himself finds a sufficient number of men who are willing to live under his laws, he may form a new state within the country he has discovered, and possess there both the domain and the empire. But, if this individual should arrogate to himself alone an exclusive right to a country, there to reign monarch

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68. *Data Sanctuary*, *supra* note 37.

69. *Id.*

70. *Id.*

71. *Id.*

72. M.F. LINDLEY, *THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY* 84 (1969).

73. T. TWISS, *THE OREGON QUESTION EXAMINED* 151 (1846).

74. LINDLEY, *supra* note 72, at 84.

without subjects, his vain pretensions would be justly held in contempt:- a rash and ridiculous possession can produce no real right.<sup>75</sup>

Sealand probably fulfills Vattel's requirements because Sealand has found a number of people who have agreed to live under the Principality of Sealand's law and thus would not qualify as "rash and ridiculous" in nature.

Sealand has the additional difficulty of having its founder, Prince Roy, a subject of the U.K., an existing member of the international community. Under English law, any sovereignty acquired by a subject is acquired for the U.K.<sup>76</sup> In such a case, international law accepts the municipal law of the founding individual's country and recognizes the state, rather than the individual, as the rightful sovereign of the claimed territory.<sup>77</sup> This is what happened in the case of Sir James Brooke, Rajah of Sarawak and subject of Britain.<sup>78</sup> Rajah Brooke was granted the government of Sarawak in consideration for his service to the Sultan of Borneo in repressing a rebellion in Sarawak.<sup>79</sup> The British Government sent two commissioners to determine Rajah Brooke's status, either as an independent sovereign, or simply the holder of Sarawak for the Sultan of Borneo.<sup>80</sup> The commissioners found that:

[i]n the face of the Act of 1813, 53 Geo. III. c. 155, declaring 'the undoubted sovereignty of the Crown over the territorial acquisitions of the East India Company,' he was not inclined to uphold the opinion that Sir James Brooke, or any other British subject, could attain to the position of being an independent ruler of a foreign territory.<sup>81</sup>

However, a country may refuse to accept international responsibility for a territory, even if claimed by an existing sovereign's citizen.<sup>82</sup> As Lord Halsbury noted, no one can force a sovereign to take territory.<sup>83</sup> Since Britain has rejected sovereignty over Sealand three times in the last thirty years and Prince Roy proclaimed himself sovereign, Sealand will be denied

75. 2 E DE VATTEL, *THE LAW OF NATIONS* § 96 (1834), *quoted in* L.A. Horn, Comment, *To Be or Not to Be: The Republic of Minerva: Nation Founding by Individuals*, 12 COLUM. J. TRANSNAT'L L. 520, 531 (1973).

76. LINDLEY, *supra* note 72, at 85.

77. *Id.*

78. *Id.* at 86.

79. *Id.*

80. *Id.*

81. *Id.* at 88.

82. *Rex v. Crew*, [1910] 2 K.B. 576, at 623, *noted in* Horn, *supra* note 75, at 531.

83. LINDLEY, *supra* note 72, at 85.

the protection of British law against actions by other states.<sup>84</sup> On the other hand, states wronged by Sealand will have to deal directly with the de facto sovereign of Sealand. Some situations can develop where the de facto sovereign's dual role as an independent sovereign and subject can result in conflicting duties.<sup>85</sup>

International law provides no satisfactory answers as to whether or not an individual may acquire territory for him or herself because individuals have no international legal personality.<sup>86</sup> Professor Jennings notes that acquisition of territory requires both the creation of title and effective control. Considering the paltry law on an individual's right to acquire territory, it may be more useful to investigate who actually possesses Sealand. Sometimes the actual possession of the territory can act as both the creation of title and effective control.

### *B. Modes of Territorial Acquisition*

The arbitration of the Island of Palmas case provides a good example of when occupation of a territory is sufficient to override a competing claim of ownership based upon discovery.<sup>87</sup> Palmas is an island located between the Philippine island of Mindanao and the island of Nanusa in the Netherlands Indies.<sup>88</sup> Palmas had about 750 inhabitants in 1928 and was only two miles long and three-quarters of a mile wide.<sup>89</sup> The island had little strategic or economic value.<sup>90</sup> Spain considered Palmas located inside the boundaries of the Philippines and thus ceded to the United States from Spain in 1898 at the end of the Spanish-American War.<sup>91</sup> When the U.S. sent General Leonard Wood to visit the island in 1906, he found that the Netherlands claimed the island as well.<sup>92</sup> The U.S. and the Netherlands agreed to submit their dispute over Palmas to binding arbitration before the Permanent Court of Arbitration with the Swiss jurist Max Huber acting as arbitrator.<sup>93</sup>

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84. Horn, *supra* note 75, at 531.

85. LINDLEY, *supra* note 72, at 85.

86. Horn, *supra* note 75, at 533.

87. The Island of Palmas (Neth. v. U.S.), Hague Ct. Rep. 2d (Scott) 83 (Perm. Ct. Arb. 1928), available at <http://www.gwu.edu/~jaysmith/Island.html> (last visited Aug. 25, 2002).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. The Island of Palmas, *supra* note 87.

Judge Huber was charged with determining whether Palmas belonged to the Netherlands or to the United States.<sup>94</sup> The U.S. based its claim of title on discovery because the U.S. received Palmas from Spain, which originally based its claim upon discovery.<sup>95</sup> The U.S. claimed that sovereignty based upon Spain's discovery was confirmed by the 1648 Treaty of Monster to which Spain and the Netherlands were parties.<sup>96</sup> According to the U.S., since nothing occurred through international law to extinguish Spain's title, the title could be transferred to the U.S. when Spain ceded it.<sup>97</sup> Huber rejected the position of the U.S. and found that mere discovery of an island without any act, symbolic or actual, of taking possession does not result in obtaining good title to the territory.<sup>98</sup>

Huber recognized that occupation did not require the exercise of sovereign power everywhere in the territory at every moment.<sup>99</sup> However, the occupation must be effective.<sup>100</sup> Effective occupation means the sovereign offers other states and citizens guarantees of protection while in the occupied territory.<sup>101</sup> It did not make sense to Huber that there should be regions that are not under the effective control of a sovereign state and without master but are kept off limits to all but one state that has not acquired a recognized title.<sup>102</sup>

On the other hand, Huber noted that "practice, as well as doctrine, recognizes-though under different legal formulae and with certain differences as to the conditions required-that the continuous and peaceful display of territorial sovereignty (peaceful in relation to other states) is as good as title."<sup>103</sup> The Netherlands did not display many direct or indirect acts of sovereignty on Palmas, but that was not required.<sup>104</sup> All the Netherlands had to do was show they had some control in 1898.<sup>105</sup>

Similarly, Prince Roy has demonstrated continued and effective control over Sealand for the past thirty years. Although Britain's claim to Sealand may be stronger than the claim of the U.S. to Palmas, Britain's

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94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. The Island of Palmas, *supra* note 87.

100. *Id.*

101. *Id.*

102. *Id.*

103. R.Y. JENNINGS, THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW 4-5 (1969).

104. The Island of Palmas, *supra* note 87.

105. *Id.*

building and then abandonment of Sealand is analogous to discovering an island but then not effectively occupying it. However, occupation is only one of several methods of acquiring territory.

International law has six modes through which territory may be acquired: occupation, prescription, cession, accession, and subjugation or conquest.<sup>106</sup> None of these modes of acquisition address how a new state can acquire territory; they all address circumstances when an existing state acquires more territory.<sup>107</sup> Professor Jennings summarizes the situation:

For transfers of territory between existing States the law lays down a series of modes through which alone a valid title to the sovereignty may be passed from one to the other; but for a territorial change coincident with the birth of a new State the law apparently not only fails to provide any modes of transfer but appears to be actually indifferent as to how the acquisition is accomplished.<sup>108</sup>

It is safe to say that international law is indifferent to how a new state acquires its territory so long as it asserts effective control over the territory.<sup>109</sup>

Assuming that an individual has a right to claim new territory, the acquisition of Sealand most closely resembles acquisition through occupation. Acquisition through occupation can only be done with territory that belongs to no state.<sup>110</sup> Acquisition through occupation was historically used by European states to claim territory in the New World and in Africa.<sup>111</sup> Occupation in international law means the settlement of an unappropriated territory with the purpose of exercising sovereignty over it.<sup>112</sup> However, the territory appropriated must be classified as *res nullius* which literally means "no man's land."<sup>113</sup> *Res nullius* has been interpreted to require the territory to not be occupied by a political organization with a recognized right of occupancy, however, it does not require the territory to be totally unoccupied.<sup>114</sup> What constitutes effective occupation will differ based upon the circumstances.<sup>115</sup> If there is a large population on the territory, then an elaborate administrative presence may

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106. JENNINGS, *supra* note 103, at 6-7.

107. *Id.* at 7.

108. *Id.* at 8.

109. *Id.*

110. *Id.* at 20.

111. CHARLES G. FENWICK, INTERNATIONAL LAW 344 (3d ed. 1948).

112. *Id.* at 345.

113. *Id.*

114. *Id.*

115. LINDLEY, *supra* note 72, at 159.



be necessary.<sup>116</sup> However, if the territory is small and used for a particular business, a few officials may be sufficient to effect occupation.<sup>117</sup>

The Principality of Sealand would probably qualify as effectively occupied. Sealand was not occupied by any political organization at the time Prince Roy claimed title. The island engages in the singular business of internet hosting. There is a permanent population of at least fifty people who live and work on the island and there is an effective display of governmental force through the presence of security guards.

Territory may also be claimed as *res nullius* if abandoned.<sup>118</sup> For example, native tribes massacred a British colony on the Caribbean island of Santa Lucia in 1640.<sup>119</sup> The British made no further attempt to occupy the island and in 1650 the French occupied it as *res nullius* territory.<sup>120</sup> The Treaty of Utrecht assigned Santa Lucia to France, recognizing Santa Lucia as abandoned and properly occupied by France as *res nullius* territory.<sup>121</sup> In contrast, in 1875 the French Government, acting as arbitrator between Great Britain and Portugal, awarded Delagoa Bay to Portugal even though Portugal had abandoned the island for over a year.<sup>122</sup> The arbitrator found that the island was discovered by Portugal who occupied the territory off and on from the 17th to the 18th centuries.<sup>123</sup> Even though Portugal did not occupy the island at the time the British took control, Portugal clearly intended to return to the island, therefore it was not truly abandoned.<sup>124</sup> Discovery of the land is not enough to take possession under *res nullius*.<sup>125</sup> Discovery of the territory must be coupled with a formal declaration of occupancy as well as an effective occupation of the territory.<sup>126</sup>

Sealand may be considered abandoned territory that reverted back to *res nullius* because Britain abandoned Sealand in addition to making it clear that they would not return. Occupied territory becomes *res nullius* if it is abandoned, forfeited, or a good title is not secured.<sup>127</sup> Abandonment is the actual termination of possession of a territory with the intention of

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116. *Id.*

117. *Id.*

118. FENWICK, *supra* note 111, at 347.

119. *Id.*

120. *Id.*

121. LINDLEY, *supra* note 72, at 49.

122. FENWICK, *supra* note 111, at 347.

123. LINDLEY, *supra* note 72, at 49.

124. *Id.*

125. N.A. MARYAN GREEN, INTERNATIONAL LAW 195 (3d ed. 1987).

126. *Id.*

127. LINDLEY, *supra* note 72, at 48.

giving up dominion.<sup>128</sup> The termination of possession can be effected voluntarily or by force.<sup>129</sup> No definite time period of abandonment has been set, but scholars agree that a state that has occupied a territory cannot withdraw from the territory and then prevent another state from acquiring that territory by simply stating they plan to return.<sup>130</sup> Occupation of such an abandoned territory should be effective after a period of at least seven years.<sup>131</sup> No absolute set time of occupation can be determined as it will vary based upon the circumstances of the individual territory.<sup>132</sup>

#### IV. LEGAL STATUS OF ARTIFICIAL ISLANDS

##### A. *Artificial Islands Generally*

Prince Roy's acquisition of Sealand may turn more on the question of whether or not Sealand qualifies as territory. Sealand is clearly not territory in the traditional sense. It is an artificial structure constructed upon the seabed of the open sea. The accepted rule is that the open sea is classified as *territorium nullius*, not subject to sovereignty by any country.<sup>133</sup> Freedom from being subject to the coercive jurisdiction of other states on the ocean is freedom of the high seas.<sup>134</sup> Prior to 1945, the freedom of the high seas meant that any state could use the seabed of the high seas,<sup>135</sup> however no state had any exclusive right to any portion of the seabed of the high seas.<sup>136</sup> This changed when the U.S. proclaimed in 1945 that it had the right to the exclusive use the seabed of the continental shelf off of the coast of the U.S.<sup>137</sup> Other countries followed suit and in 1958 the Geneva Convention on the Continental Shelf gave all countries exclusive control of their continental shelf.<sup>138</sup> Article 1 defines the continental shelf as "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres, or, beyond that limit, to where the depth of the superjacent waters admits of the

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128. *Id.*

129. *Id.*

130. *Id.* at 51.

131. *Id.*

132. *Id.*

133. LINDLEY, *supra* note 72, at 54.

134. GREEN, *supra* note 125, at 183.

135. PETER MALANCZUK, *AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW*, 191 (7th ed., Routledge 1997).

136. *Id.*

137. *Id.*

138. *Id.*

exploitation of the natural resources of the said areas.”<sup>139</sup> Article 2 provides:

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 of this Article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or any express proclamation.<sup>140</sup>

Located seven miles off of the coast of England and in only thirty feet of water, Sealand is located upon the continental shelf that Britain has exclusive control over. There was no question whether Britain had a right to build Sealand upon its continental shelf, but whether or not the artificial island qualifies as British territory is far from certain. Under the Geneva Convention on the Continental Shelf, an island is defined as a “naturally formed area of land, surrounded by water, which is above water at high tide.”<sup>141</sup> Artificial islands are accorded a safety zone around them of 500 metres but have no right to the surrounding territorial sea or air space.<sup>142</sup> Article 5, paragraph 3 of the United Nations Law of the Sea Convention states that artificial islands “do not possess the status of island.”<sup>143</sup> The conclusion drawn by Green is that the seabed qualifies as territory, but structures built upon that territorial seabed do not.

#### B. *Exceptions to the General Rule*

There are recognized exceptions to the general rule that artificial structures do not qualify as territory. For example, a fort erected upon an isolated rock would not seem to qualify as territory but Chief Justice Cockburn in *Regina v. Keyn* took the opposite position, stating:

It does not appear to me that the argument for the prosecution is advanced by reference to encroachments on the sea, in the way of

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139. Convention on the Continental Shelf, June 10, 1964, art. 1, 499 U.N.T.S. 312.

140. Convention on the Continental Shelf, *supra* note 139, art. 2, at 312.

141. GREEN, *supra* note 125, at 188.

142. *Id.*

143. *Id.* at 189.

harbours, piers, breakwaters, and the like, even when projected into the open sea, or of forts erected in it, as is the case in the Solent. Where the sea, or the bed on which it rests, can be physically occupied permanently, it may be made subject to occupation in the same manner as unoccupied territory. In point of fact, such encroachments are generally made for the benefit of the navigation; and are therefore readily acquiesced in. Or they are for the purposes of defence, and come within the principle that a nation may do what is necessary for the protection of its own territory.<sup>144</sup>

Sir Charles Russell would allow “the case of a fort standing out of the water in the territorial belt” of a country to qualify as territory, the same position occupied by Sealand.<sup>145</sup> Westlake would allow an artificial island in the open sea to have its own territorial waters.<sup>146</sup> The occupation of the island would have to be for some useful purpose or it would simply have the same standing as an armed vessel positioned at the same point in the sea.<sup>147</sup> Surrounding the artificial island with a territorial sea would be necessary for its protection.<sup>148</sup>

A similar situation would be a lighthouse upon the open sea.<sup>149</sup>

If a lighthouse is built upon a rock or upon piles driven into the bed of the sea, it becomes, as far as that lighthouse is concerned, part of the territory of the nation which has erected it, and, as part of the territory of the nation which has erected it, it has, incident to it, all the rights that belong to the protection of territory—no more and no less. The right to acquire by the construction of a lighthouse on a rock in mid-ocean a territorial right in respect of the space so occupied is undoubted.<sup>150</sup>

Although Prince Roy has a possible claim to Sealand if found to be abandoned British territory, claims to new land could conceivably be barred by analogy to the Antarctic Treaty of 1959 as well as the Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.<sup>151</sup>

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144. *Regina v. Keyn*, [1876] 2 Ex. D. 63, 198-99, quoted in LINDLEY, *supra* note 72, at 84.

145. LINDLEY, *supra* note 72, at 65.

146. *Id.* at 66.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 67.

151. See Antarctic Treaty, Dec. 1, 1959, 12 U.S.T. 794, 402 U.N.T.S. 71; see also Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Oct. 10, 1967, 18 U.S.T. 2410, T.I.A.S. No. 6347 [hereinafter Space Treaty].

There is a trend in international law to limit the acquisition of new territory.<sup>152</sup> The Antarctic Treaty provides that:

No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the Present Treaty is in force.<sup>153</sup>

States are not allowed to acquire sovereignty over space either.<sup>154</sup>

"Art. 1 . . . Outer Space, including the moon and other celestial bodies, shall be free from exploration and use by all states . . . and there shall be free access to all areas of celestial bodies."<sup>155</sup>

With most if not all inhabitable territory on earth already being claimed by a state, it may be argued that the trend in international law is to outlaw the acquisition of new territory all together.

## V. DEFINITION OF STATEHOOD

### A. *The Problem of Defining A State*

International law only applies to those entities that have achieved international legal personality.<sup>156</sup> Legal personality is recognition by the law that an entity possesses "rights and duties enforceable at law."<sup>157</sup> A dog, for example, does not have the right to sue its owner for assault and battery because the law does not recognize the dog as a legal person. Only a limited number of entities have international legal personality. 'Nation States' are the most important actors with legal personality on the world stage.<sup>158</sup> Although international law has expanded to confer international personality on entities other than states,<sup>159</sup> states remain the most

152. Horn, *supra* note 75, at 544-545.

153. Antarctic Treaty, *supra* note 151, art. IV, 12 U.S.T. at 794, 402 U.N.T.S. at 74.

154. Space Treaty, *supra* note 151, 18 U.S.T. 2410, T.I.A.S. No. 6347.

155. Space Treaty, *supra* note 151, art. 1, 18 U.S.T. at 2410, T.I.A.S. No. 6347.

156. GEORG SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 3 (George W. Keeton & Georg Schwarzenberger eds., 5th ed. 1967); MALCOLM N. SHAW, INTERNATIONAL LAW 136 (3d ed. 1991).

157. SHAW, *supra* note 156, at 135.

158. LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW A POLICY ORIENTED PERSPECTIVE 25 (2d ed. 2000).

159. SHAW, *supra* note 156, at 137.

important legal personality.<sup>160</sup> For example, statehood is a requirement to participate in the most important international organizations such as the United Nations and the Court of International Justice.<sup>161</sup>

However, even though it is accepted that a state needs international personality,<sup>162</sup> there is no generally accepted definition of what constitutes a state.<sup>163</sup> Very few scholars even tackle the problem of defining the state.<sup>164</sup> Scholars who try to define the state write about the broad subjects of state sovereignty and equality of states, but rarely examine the criteria required for statehood.<sup>165</sup> There are even fewer legal sources that define the state.<sup>166</sup> In fact, no international work has been done to try to codify a definition of the state.<sup>167</sup> This is due in part to the concept of the state originating out of the specific religious and political context of Europe in the Middle Ages.<sup>168</sup> This contextual conception of a state carried over into modern definitions of a state.

Many scholars theorize that there will never be a generally accepted definition of statehood because the concept of statehood is too dependant upon the context in which it is used.<sup>169</sup> The term state is so loosely used that it does not have any real meaning other than a general reference to the general theory of a state.<sup>170</sup> This contextual definition simply defines an entity as a state because in its particular context it is a state. This definition of state is useless because it defines the state in terms of itself.

160. Thomas D. Grant, *Defining Statehood: The Montevideo Convention and Its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403, 407 (1999); ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 39 (1994).

161. James Crawford, *The Criteria for Statehood in International Law, in 1976-1977 BRIT. Y.B. INT'L L.* 93 (R.Y. Jennings & Ian Brownlie eds., 1978); U.N. CHARTER art. 4, para. 2, 32; MICHAEL ROSS FOWLER & JULIE MARIE BUNCK, LAW, POWER, AND THE SOVEREIGN STATE: THE EVOLUTION AND APPLICATION OF THE CONCEPT OF SOVEREIGNTY 12 (1995).

162. See sources cited *supra* note 156.

163. Crawford, *supra* note 161, at 107; J.H. W. VERZIJL, INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE 267(1968); CHEN, *supra* note 158, at 39.

164. Crawford, *supra* note 161, at 94.

165. IAN BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW 72 (4th ed. 1990).

166. VERZIJL, *supra* note 163, at 268; Grant, *supra* note 160, at 457 n.44. International law sources include the "teachings of the most highly qualified publicists of the various nations" although they are considered a secondary source. *Id.*

167. HERSCH LAUTERPACHT, INTERNATIONAL LAW BEING THE COLLECTED PAPERS OF HERSCH LAUTERPACHT 478 (E. Lauterpacht ed., 1970).

168. THOMAS G. WEISS ET AL., THE UNITED NATIONS AND CHANGING WORLD POLITICS, 3 (1994).

169. HIGGINS, *supra* note 160, at 39; Grant, *supra* note 160, at 408; VERZIJL, *supra* note 163, at 269; SHAW, *supra* note 156, at 137; FOWLER & BUNCK, *supra* note 161, at 6-7.

170. VERZIJL, *supra* note 163, at 267.

The most useful working description of a state comes from D.P. O'Connell.<sup>171</sup> Although conceding that the term state is dependent upon the context in which it is used, O'Connell suggests that a description of the acts and qualities of a state be listed and then compared against an entity wanting to be a state.<sup>172</sup> The term state thus becomes shorthand for an entity that engages in certain activities.<sup>173</sup> Applying O'Connell's definition of the state is useful because scholars have been able to describe the characteristics of the state.<sup>174</sup> However, the characteristics listed do not all have to be satisfied in order for the entity in question to qualify as a state.<sup>175</sup> Many states admitted into the U.N. have not fulfilled even a majority of the criteria. In this sense, the definition of statehood is dependent upon the context of the individual entity claiming statehood. Yet having some characteristics to determine whether or not a new entity may join the community of states provides a useful starting point.

### B. *Montevideo Criteria of Statehood*

The Montevideo Convention may be the most well-known list of characteristics needed for statehood.<sup>176</sup> The Montevideo Convention requires that a new state have a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.<sup>177</sup> The criteria of the Convention have been described as the accepted view of statehood,<sup>178</sup> the traditional criteria for statehood,<sup>179</sup> and the only serious attempt at a definition of statehood.<sup>180</sup> Many other noted scholars use the Montevideo criteria when trying to define a state but do not directly cite the Montevideo Convention.<sup>181</sup>

171. D.P. O'CONNELL, *INTERNATIONAL LAW* 303 (1965).

172. *Id.*

173. *Id.*

174. Grant, *supra* note 160, at 414.

175. O'CONNELL, *supra* note 171, at 303.

176. JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 36 (1979).

177. Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, art. I, 49 Stat. 3097, 165 L.N.T.S. 19. The signatories were Honduras, the United States of America, El Salvador, the Dominican Republic, Haiti, Argentina, Venezuela, Uruguay, Mexico, Panama, Bolivia, Guatemala, Brazil, Ecuador, Nicaragua, Colombia, Chile, Peru, and Cuba. Grant, *supra* note 160, at 414 n.50.

178. SHAW, *supra* note 156, at 138.

179. O'CONNELL, *supra* note 171, at 304.

180. HIGGINS, *supra* note 160, at 39.

181. Grant, *supra* note 160, at 414; ROBERT H. JACKSON, *QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS, AND THE THIRD WORLD* 38 (1990); WEISS ET AL., *supra* note 168, at 1; L.F.L. OPPENHEIM, *OPPENHEIM'S INTERNATIONAL LAW* (Sir Robert Jennings & Sir Arthur Watts eds., 9th ed. 1992); LAUTERPACHT, *supra* note 167, at 316.

Although widely accepted, scholars such as Ian Brownlie believe the Montevideo criteria only provide a starting point for the definition of statehood that requires further investigation and criteria.<sup>182</sup> Some scholars add territorial effectiveness as an additional criterion.<sup>183</sup> Other criteria cited are a degree of state permanence, a willingness to obey international law, a degree of civilization, recognition by other states, legal order, and the declaration by the entity that they wish to be a state.<sup>184</sup> Still others would add the requirements of being a free agent in the world and having a permanently organized political society.<sup>185</sup> The Restatement of the Law, Third, Foreign Relations Law of the United States has the exact criteria as the Montevideo with the additional requirement that the entity in question must claim to be a state.<sup>186</sup> These additional requirements are useful in that they help to clarify the Montevideo criteria for statehood. However, the Montevideo criteria are the most widely accepted<sup>187</sup> and are the ones that will be applied to determine whether or not an entity is a state.

The major controversy over the criteria for statehood is not what the criteria should be, but rather in its application.<sup>188</sup> There is no agreed upon meaning of the Montevideo criteria in practice and the conditions are not applied as rigidly in practice as they are made to sound in theory.<sup>189</sup> For example, the requirement of a permanent population does not depend upon the size of the population or the make of that population,<sup>190</sup> nor does it require a common culture, religion, or language.<sup>191</sup> The population does not have to be of a particular nationality either.<sup>192</sup> The permanent population requirement is easily satisfied.

The second Montevideo criterion of a territory is no more rigorous than the requirement of a permanent population. However, territory is special in that it distinguishes a state from other international entities.<sup>193</sup> A

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182. BROWNLIE, *supra* note 165, at 72.

183. SHAW, *supra* note 165, at 138.

184. BROWNLIE, *supra* note 165, at 77-78; Crawford, *supra* note 163, at 140-142.

185. CHARLES G. FENWICK, INTERNATIONAL LAW 104 (3d ed. 1948).

186. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 (1987).

187. CHEN, *supra* note 158, at 40.

188. *Id.*

189. *Id.* at 26.

190. FOWLER & BUNCK, *supra* note 161, at 35. "The wealthy island of Nauru encompasses eight square miles and contains a population of about 8,400." *Id.* at 34-5 n.7.

191. GREEN, *supra* note 125, at 42.

192. Crawford, *supra* note 163, at 114.

193. INGRID DETTER DE LUPIS, INTERNATIONAL LAW AND THE INDEPENDENT STATE 4 (2d ed. 1987).



state must have a fixed territory; otherwise there would be no place for the state to exercise the power of the state.<sup>194</sup> Territory also provides a physical place that is solely under the control of a single power and provides an area where governmental powers and independence can be exercised.<sup>195</sup> Even though territory is a requirement, no set minimum size, area, or extent of territory has been established that a state needs in order to fulfill the territory requirement.<sup>196</sup> The requirement is simply that “[t]here must be some portion of the earth’s surface which its people inhabit and over which its government exercises authority.”<sup>197</sup> In fact, an entity qualifies as a legal personality even if its borders are disputed,<sup>198</sup> although some area of territory must be under the entity’s governmental control.<sup>199</sup> Territorial boundaries often change<sup>200</sup> and the territorial requirement in practice at the U.N. allows states with territorial boundary disputes to become members of the U.N.<sup>201</sup>

Territory is a much larger idea than just land. As a requirement for statehood, territory is any portion of the earth that is subject to the rights and interests of an independent state.<sup>202</sup> It should also be noted that there is no theoretical reason that a state must have territory to qualify for statehood, it has simply been the way the international community has been set up until now.<sup>203</sup> James Crawford does not believe that there is any principle of law that precludes internationalized territories, such as the seabed, from being a state in the legal sense.<sup>204</sup> However, N.A. Maryan Green believes that the territory requirement for a state would exclude artificial constructions built upon the sea floor,<sup>205</sup> and that Article 5 of the Geneva Convention on the Continental Shelf denies artificial constructions the status of island.<sup>206</sup> No international court has ruled upon this yet.

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194. FENWICK, *supra* note 185, at 105.

195. GREEN, *supra* note 125, at 191.

196. *Id.* at 42; CRAWFORD, *supra* note 163, at 111.

197. CRAWFORD, *supra* note 176, at n.5, *quoting* Security Council, Official records, 383d Meeting, 2 December 1948, 41.

198. *Id.* at n.3 (citing the examples of Kuwait, Israel, and Mauritania as qualifying as states despite serious border disputes).

199. SHAW, *supra* note 156, at 139.

200. FOWLER & BUNCK, *supra* note 161, at 34.

201. HIGGINS, *supra* note 160, at 40.

202. O’CONNELL, *supra* note 171, at 463.

203. FENWICK, *supra* note 185, at 105.

204. Crawford, *supra* note 163, at 139.

205. GREEN, *supra* note 125, at 43.

206. *Id.* at 188.

There is also flexibility in the application of the third Montevideo requirement of government. International law defines government in terms of the extent and ability of an organized political authority to exercise power over a territory with a population.<sup>207</sup> Government can be thought of as the internal control of an area and population, as opposed to external relations with other states.<sup>208</sup> This internal control requires the actual demonstration of maintaining a government of the people of a territory to the exclusion of rival groups in the same territory or of outside governments.<sup>209</sup> N.A. Green provides the most usable definition of government.

The government must satisfy three conditions:

- (1) it must represent the state, in the sense that it speaks in the name of the population;
- (2) it must be able to govern this population, in the sense that it can impose its will;
- (3) it must have some likelihood of permanence, in that, even if the actual government loses office it will be replaced by another. It is the institution of government, not the members of any particular government, which must have the appearance of being firmly established.<sup>210</sup>

However, as with the other Montevideo criteria, the requirement of government is not as straight forward in practice as it is in principle. Rwanda, Burundi, and the Congo all had governments that were unable to impose their will on their population and did not have control of their territory when admitted into the U.N. as member states.<sup>211</sup> In this sense, the requirement of a government may be seen as evidence that a stable community with a centralized political structure exists, rather than a government being a condition in and of itself.<sup>212</sup>

The fourth criterion of capacity to enter into relations with other states does not, in and of itself, need to be met for an entity to qualify for statehood. International organizations, while not considered states, enter into relationships with states on a regular basis. This capacity is important because it indicates whether or not the entity has the legal capacity to

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207. CRAWFORD, *supra* note 176, at 116.

208. *Id.*

209. FOWLER & BUNCK, *supra* note 161, at 37.

210. GREEN, *supra* note 125, at 43.

211. HIGGINS, *supra* note 160, at 40.

212. SHAW, *supra* note 156, at 139.

engage in this behavior. It is evidence of independence.<sup>213</sup> "Capacity to enter into relations with other states" is a consequence of statehood, or rather a consequence of government and independence.<sup>214</sup> The Montevideo criterion of capacity to enter into relationships with other states has been interpreted to mean independence.<sup>215</sup> Indeed, the very definition of independence is the capacity of an entity to conduct its affairs free from external influence.<sup>216</sup> Some demonstration of real independence must be shown for entities to meet the Montevideo criteria for statehood.<sup>217</sup>

In the past, states permitted full participation in international affairs were referred to as sovereign. A sovereign state was defined as "one which exercised undivided authority over all persons and property within its borders and was independent of direct control by any other power."<sup>218</sup> Sovereignty is composed of the internal power over subjects in a defined territory and the right to noninterference in its affairs by other states.<sup>219</sup> These are the exact same requirements for independence, so for simplicities sake, this internal and external power will be referred to as internal and external independence.<sup>220</sup>

Malcolm N. Shaw claims that in addition to internal and external independence, independence requires that a state declare that it is "subject to no other sovereignty and is unaffected either by factual dependence upon other states or submission to the rules of international law."<sup>221</sup> This claim that a state must be free from all outside authority in the realm of its external affairs<sup>222</sup> does not reflect the reality of modern international law.<sup>223</sup> International treaties and conventions constantly restrain states in how they may relate to one another.<sup>224</sup> States are subordinate to international law and organizations,<sup>225</sup> so a state need only exercise plenary rather than absolute power in international relations.<sup>226</sup> States are states despite being

213. *Id.* at 140.

214. Crawford, *supra* note 163, at 119.

215. BROWNLIE, *supra* note 165, at 73-4.

216. *Id.* at 74.

217. FENWICK, *supra* note 185, at 106.

218. *Id.*

219. DE LUPIS, *supra* note 193, at 3.

220. OPPENHEIM, *supra* note 181, at 382.

221. SHAW, *supra* note 156, at 140-41.

222. FOWLER & BUNCK, *supra* note 161, at 36-7.

223. *Id.* at 48-9.

224. FENWICK, *supra* note 185, at 251.

225. O'CONNELL, *supra* note 171, at 304.

226. *Id.*

subject to control by another entity; in other words, entities are accepted as states even though they do not fulfill the independence requirement.<sup>227</sup> Either way, the requirement of independence is not absolute in its application.

However, a state must possess both internal and external independence to qualify as independent.<sup>228</sup> A state must be free from outside authority in external affairs and demonstrate control over all other potential authorities in the state's territory and population.<sup>229</sup> Independence is defined by the absence of foreign interference and may be thought of as a negative power.<sup>230</sup> The Island of Palmas arbitration defined independence as "[i]ndependence in regard to a portion of the globe to exercise the rights of a State to the exclusion of any other state."<sup>231</sup> The Permanent Court of International Justice defined independence in the *Austro-German Customs Union Case* as "the [s]tate has over it no other authority than that of international law."<sup>232</sup> The independence of a territory is an all or nothing proposition in that an entity is either the highest level of authority in a territory or it is not.<sup>233</sup>

Independence has, in addition to internal and external aspects, a legal and de facto aspect.<sup>234</sup> Scholars disagree whether or not both are required for a state to qualify as independent.<sup>235</sup> Scholars do not even agree upon the characteristics of independence.<sup>236</sup> De facto independence is whether or not the situation in the territory is such that the states' government is free from outside control and controls any competing internal groups.<sup>237</sup> Legal independence is whether or not the entity in question is part of a larger constitutional system.<sup>238</sup>

Although a working definition of independence is easily formulated, no general rule has been created for independence.<sup>239</sup> Since World War I, independence for any single entity could only be determined by looking at

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227. FENWICK, *supra* note 185, at 106.

228. FOWLER & BUNCK, *supra* note 161, at 37.

229. *Id.*

230. DE LUPIS, *supra* note 193, at 4.

231. Crawford, *supra* note 161, at 119.

232. *Austro-German Customs Union Case* (Aus. v. F.R.G.), 1931 P.C.I.J. (ser. A/B) No. 68 (Sept. 5).

233. JACKSON, *supra* note 181, at 32.

234. FOWLER & BUNCK, *supra* note 161, at 47.

235. *Id.* at 55.

236. *Id.* at 45.

237. *Id.* at 50.

238. Crawford, *supra* note 161, at 120.

239. FENWICK, *supra* note 185, at 106.

the individual circumstances.<sup>240</sup> Some helpful characteristics to apply in determining a state's independence are sending and receiving diplomatic representatives, creating treaties in the state's own name, immunity from suit in foreign jurisdictions, and the right to make war.<sup>241</sup> In fact, the independence of a state is assumed if that "entity is formally independent and its creation was not attended by any serious illegality."<sup>242</sup> However, independence is doubtful if an entity has not declared itself to be formally independent, was created illegally, or was created under foreign occupation.<sup>243</sup> Actual independence is the minimum amount of government power needed to meet the definition of independence.<sup>244</sup> "As a matter of general principle, any territorial entity formally separate and possessing a certain degree of actual power is capable of being, and *ceteris paribus* should be regarded as, a state for general international law purposes."<sup>245</sup>

On the other hand, an entity may be shown not to be independent if there is significant external control of the state, the state was formed under foreign occupation, or the state was illegally founded.<sup>246</sup> It is difficult to prove an actual lack of independence in that it can only be shown by the actual control of the decision-making process of the state in a large number of areas and on a permanent basis by an entity other than the state.<sup>247</sup> Independence is doubtful where another state claims the right to exercise the power of government over the same territory as the entity claiming statehood.<sup>248</sup> This outside formal control should be contrasted against dependence on aid from other states, which does not affect the independence of a state.<sup>249</sup>

### C. *Special Problems of Island States*

Applying the traditional requirements of statehood presents special problems for sovereign island nations.<sup>250</sup> The difficulty of the term 'island nations' comes from being composed of the two distinct legal concepts of

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240. *Id.*

241. *Id.*

242. Crawford, *supra* note 161, at 139.

243. *Id.*

244. *Id.* at 126.

245. *Id.* at 139.

246. *Id.* at 129.

247. *Id.* at 133.

248. Crawford, *supra* note 161, at 139.

249. SHAW, *supra* note 156, at 146.

250. James Crawford, *Islands as Sovereign Nations*, 38 INT'L & COMP. L.Q. 277 (Apr. 1989).

island and nation.<sup>251</sup> Islands are generally classified by their relatively small size instead of being surrounded by water.<sup>252</sup> Australia, for example, is not usually considered an island.<sup>253</sup> The current system of international relations provides a structure for states to relate to one another that is difficult to implement for island states.<sup>254</sup>

For island states, being the smallest states in the international system, there has traditionally been some doubt of their capacity to achieve and keep up a minimum amount of independence necessary to achieve statehood.<sup>255</sup> For the U.N., it is most important that the international community accept the smaller territories as states.<sup>256</sup> The declaration of independence has been the typical route for a territorial group seeking self-government.<sup>257</sup> The typical scenario for islands achieving independence has been when their former colonial power grants them independence.<sup>258</sup> The U.N. believes independence should be granted after the former colonial power grants independence and is reflected in paragraph 3 of General Assembly Resolution 1514 (XV).<sup>259</sup> The Declaration on the Granting of Independence to Colonial Countries and Peoples states “[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”<sup>260</sup> Sixty of eighty-four colonial territories ended their colonial status through declaring independence.<sup>261</sup>

Sealand may have achieved independence through its declaration in 1975 that it constituted a new country. Although Britain did not recognize Sealand as independent at the time, not all of the former colonial territories that have declared independence were recognized by their colonial power either. However, Sealand would probably have a difficult time claiming that it was a colonial possession because the British built it.

Small island states traditionally have a problem being considered equal with other states.<sup>262</sup> States are defined as equal in the Charter of the U.N. much in the same way citizens within some states are considered born

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251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.* at 279.

255. *Id.* at 279-80.

256. Crawford, *supra* note 250, at 281.

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. Crawford, *supra* note 250, at 284.

equal.<sup>263</sup> However, this is only considered a formal equality.<sup>264</sup> All states are obviously not the same in terms of resources, power, or their actual international rights.<sup>265</sup> Under the current international system, states are supposed to have equal rights under international law, such as having an equal voice while voting in international organizations.<sup>266</sup> The problem for most small island states is that they will be led to act as if actual power, influence, or resources backed their formal equality.<sup>267</sup>

Very small states, such as Sealand, also pose the additional problem of not being welcome into the U.N. as full members.<sup>268</sup> The Secretary-General of the U.N. first referred to the problem of Micro-States in his annual report to the U.N. in 1965.<sup>269</sup> The U.N. had many potential candidates for U.N. membership that had a small territory and small population due to the decolonization process.<sup>270</sup> If in 1965 all of the potential Micro-States became admitted U.N. members, the Micro-States would constitute over two-thirds of the U.N. General Assembly but only contribute ten percent of the U.N.'s operating budget and represent only four percent of the world's population.<sup>271</sup>

The U.S. suggested that Micro-States wishing to become U.N. members should not only want but be required to carry out the Charter obligations.<sup>272</sup> The U.S. took the position that many of the small states would not have the resources to actually carry out their obligations as U.N. members.<sup>273</sup> In response, the Security Council established a Committee of Experts to study the problem and prepare a study on possible alternative memberships.<sup>274</sup> Micro-States were generally classified as those states with a population of less than 100,000 or states that lacked the human and economic resources to maintain some level of representation at the U.N.<sup>275</sup>

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263. *Id.*

264. *Id.*

265. *Id.* at 285.

266. *Id.*

267. *Id.* at 286.

268. JORRI DUURSMA, FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES 134 (1999).

269. *Id.* at 135.

270. *Id.*

271. *Id.*

272. *Id.* at 136.

273. *Id.*

274. DUURSMA, *supra* note 268, at 136.

275. *Id.*

The Committee of Experts only met eleven times and produced one report.<sup>276</sup> The committee was not able to articulate specific recommendations but did endorse a proposal from the U.S. and one from the U.K.<sup>277</sup> The U.S. proposed that Micro-States be offered an associate member position to the U.N.<sup>278</sup> Associate members would not be able to vote or hold any U.N. office, but would also be relieved from paying any U.N. dues.<sup>279</sup> The U.S. plan provided Micro-States with an opportunity to contribute to the broad objectives of the U.N. but without the financial obligation.<sup>280</sup>

The U.K. proposal would have resulted in Micro-States not having a real say in the U.N. but would accomplish that goal in a different way.<sup>281</sup> Micro-States would become full-fledged members of the U.N. but would voluntarily give up the right to vote in the General Assembly and to be considered for election to certain U.N. bodies.<sup>282</sup> Micro-States would be required to supply a minimal level of financial support to the U.N.<sup>283</sup> The committee finally concluded that neither the U.S. nor the U.K. proposal could be implemented without amending the U.N. charter.<sup>284</sup> In addition, the committee was concerned that the definition of a Micro-State would be arbitrary and states would abuse the provisions of associated membership to avoid paying their dues.<sup>285</sup>

The Micro-State question is not presently a problem.<sup>286</sup> U.N. opposition to admission of Micro-States disappeared once it became clear that the Micro-States would not be joining in large numbers.<sup>287</sup> However, the international community is still unwilling to give Micro-States political influence in international affairs disproportionate to their size through membership in the U.N.<sup>288</sup>

In addition to the difficulty in joining the U.N., Micro-States are not readily recognized by other states. The constitutive theory of the state holds that a new state is created only when current states give the new

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276. *Id.*

277. *Id.* at 137.

278. *Id.*

279. *Id.*

280. DUURSMA, *supra* note 268, at 137.

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.* at 138.

285. *Id.*

286. DUURSMA, *supra* note 268, at 138.

287. *Id.*

288. *Id.* at 139.



state personality.<sup>289</sup> Current states give the new state personality through recognition.<sup>290</sup> Recognition is the decision by an existing state to accept a territorial entity as a state with all the rights and responsibilities that go with statehood.<sup>291</sup> The act of recognition of a new state is composed of two separate acts: a political act and a legal act.<sup>292</sup> Many scholars reason that since there is no international mechanism to determine if an entity is a state it is left up to existing states to make that determination.<sup>293</sup> Unrecognized states do not have any rights or obligations under existing law.<sup>294</sup>

The other school of thought is the declarative theory of statehood. The declarative theory holds that recognition is a political, rather than legal act and an entity is a state once the criteria of statehood are met.<sup>295</sup> Recognition only acts as a declaration that the objective criteria of statehood are met.<sup>296</sup> Declaratory theory holds that a state is created by its own efforts and the existence of a certain factual situation.<sup>297</sup>

#### *D. Additional Criteria for Statehood*

The constitutive theory of the state fell out of favor because it is too relative.<sup>298</sup> An entity can be a state even if it is unrecognized.<sup>299</sup> A state that only exists in relation to other states has no definite existence.<sup>300</sup> In addition, recognition is highly dependent upon the context of the state in question and the political conditions present.<sup>301</sup> Recognition is subject to abuse as evidenced through the U.S. use of recognition as a method of showing disapproval of other countries. Recognition is a tricky field because it is a unilateral rather than collective decision.<sup>302</sup> Recognition is a political act made to look like a legal act. Political rather than legal

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289. SHAW, *supra* note 156, at 243; JACKSON, *supra* note 181, at 36; FOWLER & BUNCK, *supra* note 161, at 57.

290. SHAW, *supra* note 156, at 144.

291. CHEN, *supra* note 158, at 40; SHAW, *supra* note 156, at 244

292. Hans Kelsen, *Recognition in International Law: Theoretical Observations*, 35 AM. J. INT'L L. 605 (1941).

293. LAUTERPACHT, *supra* note 167, at 320; FOWLER & BUNCK, *supra* note 161, at 62.

294. SHAW, *supra* note 156, at 243.

295. *Id.* at 143-4.

296. CHEN, *supra* note 158, at 40.

297. SHAW, *supra* note 156, at 243-44.

298. Crawford, *supra* note 163, at 102.

299. SHAW, *supra* note 156, at 143-44.

300. Crawford, *supra* note 163, at 102.

301. CHEN, *supra* note 156, at 41.

302. *Id.* at 48.

considerations are given weight because a state may not like the consequences of applying the legal criteria and finding a state to exist.<sup>303</sup>

## VI. SEALAND, HAVENCO, AND THE POSSIBLE BRITISH RESPONSE

### A. *The Trouble with HavenCo*

Britain did not seem to be very interested in getting involved in a dispute over the territory of Sealand until HavenCo contracted Sealand to establish computer servers on the island. Britain has several options available if it decides not to pursue a legal remedy against Sealand. However, Britain's animosity toward the internet activity on Sealand must be explored.

HavenCo began providing internet service from Sealand in May of 2000.<sup>304</sup> CEO of HavenCo, Sean Hastings, believes that his customers will include "companies that want to have email servers in a location in which they can consider their email private and not open to scrutiny by anyone capable of filing a lawsuit."<sup>305</sup> HavenCo's website boasts that "Sealand has no laws governing data traffic, and the terms of HavenCo's agreement with Sealand provide none shall ever be enacted."<sup>306</sup> However, Sealand made it clear that it will not tolerate any activity considered generally unacceptable and in response, HavenCo has its customers sign an acceptable use policy.<sup>307</sup> While Sealand does not have any laws governing the use of the internet, HavenCo's acceptable-use policy prohibits the use of its servers in mailing bulk email commonly called spam.<sup>308</sup> In addition, HavenCo prohibits the use of its server space to gain unauthorized access to other computers through hacking.<sup>309</sup> HavenCo also bans the storage of unacceptable material from its server space. Child pornography is the only material that is currently deemed unacceptable by HavenCo.<sup>310</sup> According to HavenCo co-founder Ryan Lackey, "the general idea is to allow a little naughtiness, while forbidding criminal activity that could generate international outrage."<sup>311</sup>

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303. SHAW, *supra* note 156, at 242-43.

304. *HavenCo*, *supra* note 60.

305. McCullagh, *supra* note 37.

306. *HavenCo*, *supra* note 60.

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. Simson Garfinkel, *Welcome to Sealand. Now Bugger Off*, WIRED, at [www.wired.com/wired/archive/8.07/haven.html](http://www.wired.com/wired/archive/8.07/haven.html).

According to HavenCo's acceptable-use policy, when a customer is found violating any part of the acceptable use policy, HavenCo has the option to take any number of the following actions: installing a permanent filter on a customer's network connection, disconnection of the customer's account, and recovery of any costs of the investigation of the violation of the acceptable use policy.<sup>312</sup> However, HavenCo has a corporate policy of protecting its customer's privacy and Sealand has stated it will not honor any foreign state's request for a customer's data.<sup>313</sup>

A company doing business would have a hard time refusing to turn over subpoenaed information kept on HavenCo's servers. As Michael D. Mann, former director for the international enforcement for the Securities and Exchange Commission put it "[o]ffshore markets have become a focus of attention recently among the G-7. You can have all the secrecy and protection in the world as long as you don't need to write a check or wire a dollar."<sup>314</sup>

Britain, as well as other countries that are concerned with websites hosted by HavenCo's servers, have several options for shutting down the servers outside of a court or international tribunal. The very nature of the internet makes it possible for Britain to stop Sealand's activities without having to disprove its statehood. A brief description of the internet is helpful in understanding how Britain may impose its internet laws even if Sealand remains a defacto State.

### *B. Problems of Regulating the Internet*

The Internet is really a network of computer networks linked together to international high-traffic backbone systems.<sup>315</sup> Each of the computer networks communicate with one another through a machine language know as IP, or Internet Protocols.<sup>316</sup> The Internet reduces information sent through the network into little packets of data that can be transmitted over the network in the most efficient manner.<sup>317</sup> The packets are individually addressed to their final destination and can follow any number of routes on the network before reaching their final destination and being reassembled by the recipient machine.<sup>318</sup> In addition, the network has no centralized control over the packet routing or any part of the internet.<sup>319</sup>

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312. *HavenCo*, *supra* note 60.

313. *Id.*

314. Markoff, *supra* note 62.

315. Dan L. Burk, *Jurisdiction in a World Without Borders*, 1 VA. J.L. & TECH. 3 (1997).

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

Access to data is provided by a system of request and reply so that when a user computer requests access from a remote server computer, the server is only restricted by its own programming.<sup>320</sup> An internet user is completely unaware of the location of the requested data.<sup>321</sup>

This architecture of the internet destroys the significance of physical location in three ways.<sup>322</sup> First, "events in cyberspace take place 'everywhere if anywhere, and hence no place in particular'; they do not cross geographical boundaries, and they ignore the existence of the boundaries altogether."<sup>323</sup> Traditional geographical borders can not be imposed upon traffic on the global network that is the internet.<sup>324</sup>

Britain's attempt to exercise jurisdiction over Sealand and thus HavenCo's internet server traffic is based upon a traditional view of sovereignty.<sup>325</sup> The realist conception of sovereignty asserts that a state has sole jurisdiction over its citizens and internal affairs within its defined territory.<sup>326</sup> Any restriction of the state's jurisdiction within this territory is an illegitimate encroachment on that state's sovereignty.<sup>327</sup> Britain's attempt to regulate the internet traffic through HavenCo relies upon this realist conception.<sup>328</sup> If Britain were in control of the territory upon which HavenCo conducted business, Britain would have the authority to regulate the exchange of information and storing of information on Sealand.<sup>329</sup> Regulation of the internet based upon the realist conception of sovereignty is seen as legitimate as demonstrated by China's regulatory program to stop detrimental information from entering its territory through the internet and Germany's enforcement of its anti-pornography laws against CompuServe's Munich office when newsgroups were found to have pornographic content.<sup>330</sup>

Individual states in the U.S. also rely on the realist conception of sovereignty in applying state law to out-of-state Internet activity.<sup>331</sup> In

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320. *Id.*

321. Burk, *supra* note 315, at 3.

322. David G. Post, *Symposium: Governing Cyberspace*, 43 WAYNE L. REV. 155, 159 (1996).

323. *Id.*

324. *Id.* at 158.

325. *Developments in the Law-The Law of Cyberspace*, 112 HARV. L. REV. 1577, 1683 (1999).

326. *Id.*

327. *Id.*

328. *Id.* at 1683.

329. *Id.*

330. *Id.*

331. *Developments in the Law-The Law of Cyberspace*, *supra* note 325, at 1684.

1999, the Minnesota Attorney General asserted jurisdiction over nonresident internet users who cause results in Minnesota.<sup>332</sup> The Minnesota Attorney General is based upon a realist conception of sovereignty in that control over a territory assumes that action taken by the state in the territory is legitimate.<sup>333</sup> Britain assumes that once it has established legitimate physical control over Sealand then it can regulate the Servers that operate there. However, physical control of a territory may not justify controlling the material placed upon the internet in the territory.<sup>334</sup>

Physical borders marking boundaries of law make sense in the physical world.<sup>335</sup> Physical borders mark the limits of a states power over a physical space.<sup>336</sup> Rule-making is dependents upon the ability to exercise physical control upon those who may violate the rules.<sup>337</sup> For example, the U.S. imposing its trademark law upon the citizens of Brazil would be illegitimate, in part because it would require the U.S. asserting physical control over the citizens of Brazil to enforce its law.<sup>338</sup> This U.S. assertion of control would invade the Brazilian government's monopoly of the use of force against its citizens.<sup>339</sup>

## VII. CONCLUSION

International law does not provide any conclusive answers as to the status of The Principality of Sealand. The creation of new states by individuals is such a rare event it has simply not been adequately addressed by the international community. However, the arrival of communications technology such as the internet should drive the international community to develop concrete standards for evaluating an entity's claim of statehood. Existing nation states cannot afford to continue to ignore super empowered individuals who create an area not clearly subject to an existing state from which business may be conducted with the entire world. The risks are too great to the current international system based upon the notion of the traditional nation state.

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332. *Id.*

333. *Id.*

334. David R. Johnson & David Post, *Symposium: Surveying Law and Borders: Law and Borders - The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1370 (1996).

335. *Id.* at 1369.

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*