

THE PRINCIPALITY OF SEALAND, AND ITS CASE FOR SOVEREIGN RECOGNITION

INTRODUCTION

The Principality of Sealand is a small platform, a remnant of World War II British defenses, occupied by a billionaire visionary whose attempts at self-determination have been hindered around every corner. The argument for Sealand's sovereignty is about more than the future of the platform-nation. It is about the international legal community's acceptance of the changing world, and the necessity of adapting certain terms and ideologies to grow alongside our changing planet. Complaints disfavoring Sealand's statehood claims range from its man-made nature, its lack of a recognizable citizenry, and England's *de jure* ownership of the territorial sea in which Sealand resides. These complaints are backed by scholarship, and neighboring nations allege that various judicial opinions support their stance. However, with the changing landscape of international law comes the inevitable recognition of Sealand's sovereignty, or at least the claims of small, artificially constructed future nations in a similar setting. The argument for Sealand is the argument for the adaptation of international legal norms, and the evolving meaning of "sovereignty" on an international scale.

I. DEVELOPMENT OF SEALAND

Sealand's evolution through time is as philosophical as it is physical. The platform, sitting a few miles off the southeast coast of England, was originally constructed to defend England's sovereignty.¹ The British government erected this platform as a form of military defense to German naval forces during World War II.² As time went on, the British military abandoned the platform and left it to rust in the English Channel.³ Once discovered by fishing-magnate Roy Bates, the physical structure adopted a new purpose, family home and territory of a fledgling nation.⁴ The physical evolution forced onto the sea-dwelling structure by its inhabitants is analogous to the disputed legal status it

¹ *About Sealand*, SEALAND, <http://www.sealandgov.org/about> (last visited Oct. 30, 2014).

² *History of Sealand*, SEALAND, <http://www.sealandgov.org/about> (last visited Oct. 30, 2014).

³ SEALAND, *supra* note 1.

⁴ *Id.*

held in the international legal theater. This section will discuss the historical underpinnings of the material construction itself, as well as illustrate the logic behind some of the original historical events that the founding father of Sealand utilized in his pioneering arguments for sovereign recognition from the international community.

A. History of Fort Roughs

To understand the complexities of categorizing Sealand's sovereign status, it is important to first understand the history of the platform itself. The origins of the idea for the platform found inspiration in the old Martello Towers of the coastal United Kingdom.⁵ Martello Towers, named after a round fortress at Mortella Point in Corsica, Spain, surround the coast of the United Kingdom.⁶ After two British naval ships spent two days attacking the tower at Mortella Point, the British navy utilized the squat, round design and incorporated it into over one hundred forty brick and mortar Martello Towers from Scotland down to East Sussex.⁷ Dating back to the Napoleonic Wars, the Martello Towers helped form the architectural basis for a group of forts designed to protect southeast England in another altercation, World War II.⁸

During World War II, Commander E.C. Shankland, Port of London Harbour Master, sought advice on a series of forts to protect and defend mainland England.⁹ Fearing harmful shipping losses in the Thames Estuary, especially from German magnetic mines, Commander Shankland commissioned Guy Maunsell to build a series of naval forts to defend the area.¹⁰ To protect the busiest port in the world, Maunsell designed "a small defensive fort that rested on the sea bed but rose above water level, with a flooded-pontoon foundation and citadel superstructure."¹¹ Maunsell proclaimed "speed of construction, ease of transport and centralisation of manufacture are the fundamental factors," and subsequently built what are now

⁵ Guy Maunsell, *World War II: Sea Forts + Harbours*, ENGINEERING TIMELINES, http://www.engineering-timelines.com/who/Maunsell_G/maunsellGuy5.asp (last visited Sept. 26, 2013).

⁶ *Martello Towers*, GEOGRAPH, <http://www.geograph.org.uk/article/Martello-Towers> (last visited Oct. 28, 2013).

⁷ *Id.*

⁸ Maunsell, *supra* note 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Navy Sea Forts, Thames Estuary*, ENGINEERING TIMELINES, <http://www.engineering-timelines.com/scripts/engineeringItem.asp?id=1168> (last visited Sept. 26, 2013) (explaining that the platform measures 51.2m long, 26.8m wide and 4.3m deep).

known as the “Maunsell Forts.”¹² The Maunsell Forts are similar to Martello Towers in that they both support a parapet platform from which firearms may be launched with 360-degree potential exposure atop stalwart bases encapsulating living quarters and storage.¹³ Unlike Martello Towers, which are built on coastal land, Maunsell Forts rest upon two robust towers anchored in the sea floor exposing little of the pedestal, while still placing the platforms at a strategically favorable position above ships and magnetic mines.¹⁴ The British found so much success using the Maunsell Fort-system of flooding the platforms to root them in the seabed during World War II that they again used the same design in the Mulberry Harbours, the D-Day landings at Normandy.¹⁵ Of the four Maunsell Forts, only two remain standing, Knock John and Roughts, or Fort Roughts.¹⁶ Between the two last standing forts, only Fort Roughts still sits in international waters, and the Bates family from Southend has occupied it since December 24, 1966.¹⁷ The Bates family eventually named Fort Roughts “The Principality of Sealand.”¹⁸

Following World War II, the British Navy decommissioned all of the forts between 1945 and 1958, including Fort Roughts.¹⁹ Located approximately seven nautical miles off the coast of England, Fort Roughts “was apparently not torn down because, being located in international waters, the British Government could abdicate responsibility and avoid the expense of tearing it down.”²⁰

B. Introduction of Roy Bates

In 1965, a fishing-magnate billionaire named Roy Bates began searching for a radio broadcast station, a hub from which he could launch an illegal radio program.²¹ Initially, Bates intended to occupy the seemingly abandoned platform Lock John in order to accommodate his pirate radio station, Radio

¹² Maunsell, *supra* note 5 (explaining that the British Navy ended up building four Maunsell forts: HM Forts Roughts Tower, Sunk Head Tower, Tongue Sands and Knock John).

¹³ Martello Towers, *supra* note 6; Navy Sea Forts, *supra* note 11.

¹⁴ Navy Sea Forts, *supra* note 11.

¹⁵ *Id.*

¹⁶ Maunsell, *supra* note 5.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Trevor A. Dennis, *The Principality of Sealand: Nation Building by Individuals*, 10 TULSA J. COMP. & INT'L L. 261, 263 (2002).

²¹ Grant Hibberd, *The Last Great Adventure of the Twentieth Century: The Sealand Affair in British Diplomacy*, 4 BRITAIN AND THE WORLD 269, 270 (2011).

Essex.²² After being issued a summons from British authorities for operating a transmitter within the three nautical mile limit of England, he set out in search of a more international, unclaimed venue.²³ In 1966, Bates and his son Michael occupied Fort Roughs, the Maunsell Fort located six nautical miles off the coast of England, in international waters.²⁴ For a while, Bates broadcasted his of-the-time outlawed 1960's rock jams to mainland England, and successfully evaded the wrath of British authorities.²⁵ Although his initial success garnered him some degree of notoriety, Britain's legalization of commercial radio programs necessitated a shift in focus for the entrepreneurially minded Bates.²⁶ With a radio station no longer considered avant-garde due to the liberalization of British radio policy, Bates' research on the property of Fort Roughs yielded what he considered the next logical, if not peculiar, step: to declare independence.²⁷

C. *Declaration of Sovereignty*

With the new goal of sovereign independence in mind, Roy Bates began laying the foundation for his platform-nation. Bates realized that his current home lay roughly seven nautical miles off the coast of England,²⁸ which, in 1967, meant outside of the United Kingdom's territorial waters.²⁹ Luckily for Roy Bates, the United Kingdom's desire to avoid the small cost of tearing down the platform at the end of World War II meant there was neither an inhabitant of the island, nor a nation willing to claim ownership over it.³⁰ Bates, the pioneer that he was, felt he could declare independence and create his own nation.³¹ The opportunity for commercialization of his sea island presented itself, and Bates seized.³² The United Kingdom's trash was Roy Bates' sovereign nation. Without wasting any time, Roy Bates established himself as principal and Sovereign; based the Law of Sealand on British common law and British law of contract; created a national flag; issued

²² *Id.* at 270.

²³ *Id.*

²⁴ *Id.*

²⁵ *Another Country*, NAT'L PUB. RADIO (Aug. 11, 2001), <http://www.npr.org/programs/wesat/features/2001/sealand/081101.sealand.html>.

²⁶ *Id.*

²⁷ Hibberd, *supra* note 21, at 270.

²⁸ SEALAND, *supra* note 1.

²⁹ Hibberd, *supra* note 21, at 281.

³⁰ SEALAND, *supra* note 1.

³¹ Dennis, *supra* note 20.

³² *Another Country*, *supra* note 25.

currency based on the U.S. Dollar; and began issuing passports and stamps in 1969.³³ The country even has a national anthem.³⁴ Bates wrote the nation's motto, "E Mare Libertas," or "From the Sea, Freedom."³⁵ Bates lived in Sealand with his wife, Joan, the declared princess, and his children, Michael and Penelope.³⁶

Although Bates declared sovereignty, his island nation's jurisdictional and legal status remained untested until May 6, 1968.³⁷ Following occasional coast guard harassment upon their new Principality, Bates and his son are said to have fired some sort of weapon towards a government vessel in order to defend their territory.³⁸ Upon their next visit to the mainland, Bates and his son were arrested and given a summons to appear in court.³⁹ In a complaint against Bates and his son, the Crown alleged that the two possessed a .22 pistol and endangered the lives of others, thereby putting them in breach of Section 22 of the Firearms Act, 1937⁴⁰ ("Penalty for possessing firearms with intent to injure").⁴¹ It was further alleged that Bates and his wife were in possession of the firearm without a permit, while inside the jurisdiction of Essex Assizes.⁴² Justice Chapman, presiding over the case, acknowledged the prosecutions argument in his judgment,⁴³ but ultimately dismissed the three charges because they took place "outside the jurisdiction of the English Courts."⁴⁴ Summarizing his judgment, Justice Chapman concluded, "[b]reaches of its provisions, even by British subjects, outside those limits are not in my judgment intended to be

³³ SEALAND, *supra* note 1.

³⁴ PRINCIPALITY OF SEALAND NATIONAL ANTHEM, <http://www.youtube.com/watch?v=M50msdlsoOM> (last visited Feb. 20, 2014).

³⁵ *The Pirate Prince of Sealand, Remembered*, NAT'L PUB. RADIO (Oct. 13, 2012), <http://www.npr.org/2012/10/13/162847229/remembering-paddy-roy-bates-prince-of-sealand>.

³⁶ Hibberd, *supra* note 22, at 270.

³⁷ Transcript of Court Decision, *Regina v. Paddy Roy Bates*, Shire Hall, Chelmsford (Oct. 25, 1968).

³⁸ James Grimmelmann, *Sealand and HavenCo Part I: The History of Sealand*, THE VOLOKH CONSPIRACY (Feb. 14, 2011, 8:46 AM), <http://www.volokh.com/2011/02/14/sealand-and-havenco-part-i-the-history-of-sealand/>.

³⁹ *Id.*

⁴⁰ Transcript of Court Decision, *supra* note 37.

⁴¹ Firearms Act, 1 Edw. 8 & 1 Geo. 6, c. 12, § 22 (1937) (U.K.).

⁴² Transcript of Court Decision, *supra* note 37.

⁴³ Prosecution's argument was based on the "Offenses at Sea Act, 1536 which first gave Common Law Courts power to deal with 'all treason, felonies, robberies, murders, and confederacies here after to be committed in or upon the sea (i.e. the High Seas, see *Leigh v. Burly* 1609 Owen 122) or in any other haven, river, creek, or place where the Admiral or Admirals have or pretend to have power, authority, or jurisdiction.'" Transcript of Court Decision, *supra* note 37.

⁴⁴ *Id.*

cogniable [sic] by the British Court.”⁴⁵ Bates understood the lack of jurisdiction as permission to continue settling his Principality, perhaps as a reaffirmation of his sovereign declarations. The ordeal even gained recognition in a House of Lords debate when Lord Goronwy-Roberts reported, “I understand that in 1968 there was a case which . . . could not be pursued since at the time of the incident then in question—which took place on Rough’s Tower—the defendant was held to be outside the area of the court’s geographical jurisdiction.”⁴⁶

The Principality of Sealand experienced another quasi-violent encounter in 1977, again the outcome of which supplying sustenance to the idea that Bates had truly established a sovereign nation.⁴⁷ A potential business opportunity presented itself to Roy and Joan Bates in the form of German and Dutch diamond merchants.⁴⁸ After traveling all the way to Austria, the couple realized they may have been duped, and began calling friends who worked on docks and ships near Sealand.⁴⁹ When a friend told the couple that he had seen a large helicopter hovering over Sealand, the Bates’ fears were confirmed.⁵⁰ In the elder Bates’ absence, Michael Bates had been tricked into letting several men board Sealand, resulting in his capture and imprisonment within the platform for three days.⁵¹ Reclaiming what Roy Bates believed to be his rightful sovereign nation, he descended upon the platform-nation via helicopter, wielding shotguns, and taking the country back by force.⁵² After imprisoning the traitors—one of whom was a dual-citizen of Sealand and Germany—and holding trials for treason, Bates declared them prisoners.⁵³ When one prisoner’s wife reached out to the German Embassy in London, the embassy sent a lawyer to Sealand to investigate.⁵⁴ In stride, Roy Bates took the German “Ambassador’s” visit as Germany’s recognition of Sealand as a sovereign nation.⁵⁵ Again, the House of Lords debate hosted commentary on the events when Lord Kennet asked, “is it not the case that the British national

⁴⁵ *Id.*

⁴⁶ 397 PARL. DEB., H.L. (5th Ser.) (198) 4–7 (U.K.).

⁴⁷ Simson Garfinkel, *Welcome to Sealand. Now Bugger Off.*, WIRED, (July 2000), available at <http://www.wired.com/wired/archive/8.07/haven-pr.html>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Grimmelmann, *supra* note 38.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

on this tower has been reported in the Press as having taken actions which, if they had been committed in a place where there was jurisdiction, would have been crimes; but that as there is no jurisdiction on this tower no action has been taken to restrain him . . . ?”⁵⁶

II. HISTORY OF SOVEREIGNTY

This section discusses the philosophical arguments for the recognition of Sealand’s sovereignty. Additionally, this section develops the notion of sovereignty as a philosophical argument. The term sovereignty has matured into a more practical, uniformly understood term of art in the legal sphere in modern times, but the idea began as a much simpler concept. Jean-Jacques Rousseau’s *The Social Contract* explores the natural inkling toward independent authority and the coalescence of certain social bonds. Additionally, American President Woodrow Wilson has spoken on the issue of sovereignty, and in comparison to colonialism.

The concept of sovereignty is by no means a modern philosophy, and Sealand is not unique in its desire to govern its own community. Jean-Jacques Rousseau posited the origins of sovereignty in his thoughts on *The Social Contract*.⁵⁷ He surmised a man circumscribing an area of the ground, and saying, “*this is mine*.”⁵⁸ Undoubtedly, the term sovereignty has come a long way to its current definition of “a person, body, or state vested with independent and supreme authority.”⁵⁹ With a notion so simple as declaring ownership over land, and as importantly convincing others of this ownership, Rousseau dubs a “real founder of civil society.”⁶⁰ The social contract describes man’s first feelings, and how they developed from the most basic of instincts into competition for resources.⁶¹ These evolutions of character, Rousseau wrote, are how humans forgot “that the fruits of the earth belong equally to us all, and the earth itself to nobody!”⁶²

Sovereignty developed as a means to declare ownership over the resources we preferred. The further development of preferences and priorities led people

⁵⁶ 05 Dec. 1978, 397 PARL. DEB., H.L. (1978) 4–7 (U.K.).

⁵⁷ JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT AND THE FIRST AND SECOND DISCOURSES* 113 (Yale U. Press 2002).

⁵⁸ *Id.*

⁵⁹ BLACK’S LAW DICTIONARY 1523 (9th ed. 2009).

⁶⁰ ROUSSEAU, *supra* note 57, at 113.

⁶¹ *Id.* at 114.

⁶² *Id.* at 113.

to “gradually flock together, coalesce into several separate bodies, and at length form in every country a distinct nation, united in character and manners, not by any laws or regulations, but by the same way of life, and alimentation, and the common influence of the climate.”⁶³ At the beginning of civil society, human beings were not bound to each other by codified statute and constitutions, their similarities in personality, preferences, and priorities cemented their communities. In fact, the differences in those groupings of similarities are what created divergent societies from the beginning.⁶⁴ It is the differences in preference, the differences in will, that make the groups depart from one another. It is also the differences in will that further solidify the social bond between the members of any one group.⁶⁵ As the groups began to grow, the collective will within the groups would grow more diverse, and split again. The development of the will within these groups began to be their defining characteristics, and as Rousseau suggests, “sovereignty, being nothing but the exercise of the general will, can never be alienated, and that the sovereign power, which is in fact a collective being, can be represented only by itself.”⁶⁶ It is important to note that the general will of a sovereign need not be unanimous, but rather must count the “vote” of each member in order to be defined as general.⁶⁷ The sovereign, by definition, contained only the commonality of will, as opposed to defined land boundaries.⁶⁸

Rousseau describes the fuel of a sovereign as the social pact of the inhabitants: “As nature gives every man an absolute power over all his limbs, the social pact gives the body politic absolute power over all its members; and it is this same power which, when controlled by the general will, bears, as I said, the same of sovereignty.”⁶⁹ Projecting an image of sovereignty that seems as natural as mankind’s most basic instincts, Rousseau discusses the issue as if it were a right, an entitlement owed to everyone who is capable of exercising their will. More importantly, the highly adaptable concept of sovereignty has “survived many premature obituaries, and the charge that it stands in the way of a system of international governance.”⁷⁰ Sovereignty, to that end, is not an

⁶³ *Id.* at 118.

⁶⁴ *Id.* at 170 (explaining that which is common to these different interests forms the social bond).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 171.

⁶⁸ *Id.* at 174.

⁶⁹ *Id.* at 173–74.

⁷⁰ Bardo Fassbender, *Sovereignty and Constitutionalism in International Law*, in *SOVEREIGNTY IN TRANSITION* 115 (Neil Walker ed., 2003).

impediment to international cooperation, but rather a guiding force empowering groups of people, a legal concept that has “fostered the rise of the modern state.”⁷¹

For Sealand, independence is a tool for prosperity rather than a weapon for disobedience. The tiny would-be-nation wishes to employ sovereignty as its natural right in order to represent the commonality of its will, to grant political power to all of its members, and to exercise one of mankind’s most basic instincts. On an ideological level, it is not simply that Sealand desires sovereignty for sovereignty’s sake, but rather because sovereignty permits the most basic of rights, and grants freedom from the enslavement of external powers not well enough situated to exert that type of authority.

Similarly, in more modern times, President Woodrow Wilson spoke of “transforming self-determination into a universal right” in his Fourteen Point Address on January 8, 1918.⁷² Specifically touching on the dissolution of colonialism, President Wilson went on to declare that a “free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of government whose title is to be determined.”⁷³ In this instance, Sealand being the population concerned, the quest for sovereign recognition deserves a level footing against the powers opposed to its claims for independence. The free, open-minded, and absolutely impartial adjustment of England’s colonial claim over Sealand requires an equal starting point in the interest of sovereign equality. In terms of Sealand’s struggle, President Wilson would have been in favor of Sealand’s arguments carrying weight equal to those of established nations, and of the conversation moving towards the topic of self-determination being viewed as a universal right. Clearly, living within a different situation from traditional British Colonialism, Sealand’s contention is analogously supported by the legal principle of equality, which is “so closely connected with that of sovereignty that the fusion in the UN Charter of the two terms into one (‘sovereign equality’, Art. 2(1)) suggested itself.”⁷⁴ The tradition of seeking sovereign recognition has been, generally, adopted by the

⁷¹ *Id.*

⁷² Robert Friedlander, *Self-Determination: A Legal-Political Inquiry*, DETROIT C. L. REV. 71, 73 (1975). See President Woodrow Wilson, *Address to a Joint Session of Congress (Jan. 8, 1918)*, in 45 THE PAPERS OF WOODROW WILSON 534–39 (Arthur S. Link ed., 1984).

⁷³ President Woodrow Wilson, *supra* note 72, at 537.

⁷⁴ Fassbender, *supra* note 70, at 120.

smaller states, and successful only when defended by larger ones.⁷⁵ International popular opinion finally swayed in favor of smaller states with the signing of the Peace of Westphalia in 1648, which “bade farewell to the medieval conception of a society of states organized hierarchically, i.e., on the basis of inequality.”⁷⁶

In the Third Book of *The Social Contract*, Rousseau discusses government, its principles, classifications, and limits.⁷⁷ Delineating between democracy,⁷⁸ where the sovereign entrusts the government to all or a majority of the people aristocracy,⁷⁹ where the sovereign restricts government to the hands of a small number, and monarchy,⁸⁰ where the sovereign concentrates the entirety of the government into a single entity, Rousseau begins his explanation “That Not All Forms of Government Are Suited to All Countries.”⁸¹ In explaining that “liberty is not a fruit of every climate, it is not within the reach of all peoples,”⁸² he is not advocating that liberty, as a concept, is not suitable for all, he is purporting that the virtues and concepts of nations depend on their inhabitants. He continues the culinary analogy to explain that the appetite and variety of diet differs greatly between a German and an Italian, based on their geographical differences.⁸³ Rousseau promotes the idea that governmental styles are not one-size-fits-all. Although he does advocate for the benefits of certain gradations of “mixed government,” such as when a single leader has subordinate magistrates that are representative of the people, he eventually takes the stance that “there are natural causes on the basis of which one can assign the form of government that the force of the climate requires”⁸⁴

Rousseau’s Social Contract supports Sealand being a sovereign nation. Allow the analogy of Roy Bates to Rousseau’s “real founder of civil society.”⁸⁵ Bates found an unoccupied and unused area, abandoned by the British

⁷⁵ *Id.*

⁷⁶ *Id.* at 121.

⁷⁷ See JEAN-JACQUES ROUSSEAU, ON THE SOCIAL CONTRACT, DISCOURSE ON THE ORIGIN OF INEQUALITY, DISCOURSE ON POLITICAL ECONOMY 54–55 (Donald A. Cress ed., trans., Hackett Publ’g Co. 1983).

⁷⁸ *Id.* at 54.

⁷⁹ *Id.*

⁸⁰ *Id.* at 55.

⁸¹ *Id.* at 63.

⁸² *Id.*

⁸³ *Id.* at 65.

⁸⁴ *Id.* at 64.

⁸⁵ ROUSSEAU, *supra* note 58, at 113.

government, and declared ownership over it.⁸⁶ Above all others, at the time, Roy Bates established his preference to this platform over all others, and declared it a new nation, accompanied by constitutions, currency, passports, among others.⁸⁷ In creating a group of citizens bound together by their preferences and priorities, Bates followed the Rousseau platform of sovereignty by collecting those people who align with the general will. Sealand also presented the opportunity for new government, one that suited the will of the inhabitants, and one that realized its own priorities were not “the fruit of every climate.” The commonality of will between those citizens of Sealand to construct a new nation, while peculiar to pre-established nations, is exactly the form of organic state growing that Rousseau explicates in *The Social Contract*.

III. INTERNATIONAL LAW AND SEALAND’S SOVEREIGNTY

For Sealand to be recognized on an international level, various international legal principles and norms must be understood. Utilizing numerous United Nations Conventions, the Montevideo Convention, and case law regarding historical secession and independence movements, the case for Sealand’s statehood grows stronger. When the United Nations drafted the Convention on the Law of the Sea, the international legal community was simply not adept in dealing with such a modern concept as artificial landmasses obtaining sovereign recognition. The laws that emanated from the Convention on the Law of the Sea are concerned with issues that do not apply in the case of Sealand, but rather are focused on piracy, natural resource extraction, and relatively arbitrary jurisdictional boundaries. No stranger to legal altercation, Sealand’s advocates employ the experiences of the platform-nation as proof that the assorted requirements, limitations, and qualifications for sovereignty are fulfilled. This section explores the United Nations Convention on the Law of the Sea, and its codifications of international law with regards to Territorial Sovereignty, the High Seas, and the Exclusive Economic Zones surrounding coastal and island nations. In turn, the Montevideo Convention’s four requirements for sovereignty are discussed in depth, and applied to the facts of the Principality of Sealand to display the winning argument for its sovereignty. Finally, the Secession of Quebec is dissected in order to analyze certain arguments against Sealand’s sovereign claims, and finally used to bolster the case for independence.

⁸⁶ Dennis, *supra* note 20, at 263.

⁸⁷ See generally SEALAND, <http://www.sealandgov.org/terms-and-conditions> (last visited Nov. 19, 2014).

A. *UN Convention on the Law of the Sea*

1. *Territorial Sovereignty*

The United Nations Convention on the Law of the Sea dictates the international legal view of territorial issues in the high seas.⁸⁸ Part II, Territorial Sea and Contiguous Zone, specifically commands, “[t]he sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea” in its general provisions.⁸⁹ This territorial sea, it continues, “[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding twelve nautical miles, measured from baselines determined in accordance with this Convention.”⁹⁰ This means that established sovereign nations inherently own everything in this “belt of sea” extending twelve nautical miles from its coast. The Convention originally entered into force in 1982, when it replaced four pre-existing treaties regarding the international law of the sea. This conference changed the “traditional claims to a three-mile territorial sea” and ended up rewriting the Convention to include a twelve nautical mile extension.⁹¹ The debate over a three-mile territorial zone and a twelve-mile territorial zone dates back to at least the 1800’s, particularly in British courts.⁹² In *Regina v. Keyn*, a German merchant ship struck a British ship within three miles of the coast, sinking it and drowning a woman on board.⁹³ In deciding one question for the court, “[h]ow far does this territory, or do these territorial waters, as they are usually called, extend?” Sir R. Phillimore answered, “I am of opinion that the Court had no jurisdiction . . . for an offense committed . . . within three miles off the coast”⁹⁴

More recently, the United Nations has discussed the issue of coastal extensions of territorial sovereignty amongst its member states, particularly

⁸⁸ See generally United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

⁸⁹ *Id.* at 400.

⁹⁰ *Id.*

⁹¹ *The United Nations Convention on the Law of the Sea, A Historical Perspective*, OCEANS AND LAWS OF THE SEA, UNITED NATIONS, http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Historical%20Perspective (last visited Oct. 31, 2013).

⁹² *The Queen v. Keyn*, (1876) 2 Exch. Div. 63 (Eng.).

⁹³ *Id.*

⁹⁴ *Id.*

with regards to this Convention.⁹⁵ Since the Convention's adoption in 1958, the United Nations has held more than a dozen sessions focused on the territorial sea, contiguous zones, continental shelves, exclusive economic zones, and the international regimes of the seabed and ocean floor.⁹⁶ Per request of the General Assembly, the Secretary-General convened a Second United Nations Conference on the Law of the Sea, where specific issues of territorial sovereignty were center stage.⁹⁷ As a consequence of the sessions, the participating member states adopted General Assembly resolution 2749, Declaration of Principles Governing the Sea-bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction, "Recognizing that the existing legal regime of the high seas does not provide substantive rules for regulating the exploration of the aforesaid area and the exploitation of its resources"⁹⁸ The General Assembly's resolution continues to declare the deep seabed part of the "heritage of mankind," which automatically excludes declarations of sovereignty and national ownership over it.⁹⁹ However, the resolution fails to delineate the means by which a sovereign nation exerts claims of ownership over territorial waters, thereby depriving states of the ability to demarcate their property from that of the "common heritage" enumerated above.¹⁰⁰ Furthermore, the common heritage language of the resolution is placed within the context of environmental concerns, explicitly stating that the purpose of the resolution is to be "Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment."¹⁰¹

From 1973 to 1982, 160 countries participated in drafting and adopting the Convention on the Law of the Sea.¹⁰² The main issue of contention, and the reason several countries have cited, as grounds for their refusal to ratify the Convention were provisions related to deep seabed mining.¹⁰³ From the Convention's drafting to its ratification, some countries have found issue with

⁹⁵ *The United Nations Convention on the Law of the Sea, Procedural History*, UNITED NATIONS AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW, http://legal.un.org/avl/pdf/ha/uncls/uncls_ph_e.pdf.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ G.A. Res. 2749 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8097, at 24 (Dec. 17, 1970).

⁹⁹ *Id.* at para. 1.

¹⁰⁰ *Id.*

¹⁰¹ G.A. Res. 48/263, at 3, U.N. Doc. A/RES/48/263 (Aug. 17, 1994).

¹⁰² *The United Nations Convention on the Law of the Sea, Procedural History*, *supra* note 95.

¹⁰³ *Id.*

the distribution of sovereign territory, especially with regards to suggested “common heritage” and resource allocation.¹⁰⁴

Due to the murky waters of territorial sovereignty created by the United Nations, the redrafted limitations of nautical boundaries has perplexed centuries-old courts and modern international assemblies alike. It is not surprising then, that Roy Bates’ court summons, for an alleged offense approximately six miles off the coast, was dismissed almost one-hundred years after the redrafting of territorial limitations.¹⁰⁵ The expansion of territorial sea from three to twelve nautical miles posed even more problems when freedom of navigation through strategically critical straits became a concern.¹⁰⁶ Although some nations began favoring the twelve-mile expansion, “extension by many states of coastal state maritime zone jurisdiction to 12 miles threatened to enclose within . . . territorial sea limits another 116 straits. The three mile rule would have left a strip of high seas between them.”¹⁰⁷ No longer simply a jurisdictional issue, the expansion would have drastic consequences because, “[f]reedom of navigation through several strategic straits, such as the Dover Strait, the Strait of Gibraltar, the Bering Straits, Babel-Mandeb, the Strait of Hormuz, became more precarious, because they came under the coastal states’ problematic territorial sea jurisdiction and discretion.”¹⁰⁸ Even the United States initially pushed back against the original extension for fear of diminished trade-route navigability: “The United States made it clear time and time again that it would not accept any extension of the territorial sea from three miles to twelve miles unless that right of *free passage* through international straits was accepted.”¹⁰⁹ At the heart of the issue existed not an argument of sovereignty, but rather an argument of freedom of navigation. Nations with strong naval presences desired less extended territorial waters, since they held more confidence in their security than their ability to trade on the water most efficiently.¹¹⁰ Conversely, nations more concerned with their safety desired more extended territorial zones in order to place a larger buffer between their precious coasts and the threat of a potential

¹⁰⁴ *Id.*; G.A. Res. 2749, *supra* note 98.

¹⁰⁵ Transcript of Court Decision, *supra* note 37.

¹⁰⁶ R.P. Anand, *Transit Passage and Overflight in International Straits*, 26 INDIAN J. INT’L L. 72, 78 (1986).

¹⁰⁷ *Id.* at 89.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 91.

¹¹⁰ *Id.* at 74.

maritime attack.¹¹¹ Surely, a country like Great Britain would have fallen into the former category, wishing a smaller territorial-water zone in order to free up trade routes, thus favoring the scheme that would place Sealand in international, and therefore potentially sovereign, waters.

Bates' original occupation and declaration of sovereignty of Sealand took place in the 1960's, thus capturing in time the widely accepted three-mile territorial limits of Great Britain's aquatic reach.¹¹² When Bates originally inhabited and publically decreed sovereignty, Sealand rested at Latitude 51.53 N, Longitude 01.28 E, or, roughly six miles from the coast of England.¹¹³ According to popular scholarship, "A treaty does not have retroactive effect so as to bind a party with respect to any act or fact which took place, or any situation which ceased to exist, before its entry into force for that party, unless this is provided for in the treaty."¹¹⁴ The UN Convention on the Law of the Sea's 12-mile territorial limit cannot retroactively encapsulate Fort Roughs, and subsequently, Sealand. If the UN Convention on the Law of the Sea is to be obeyed by all members of the United Nations—including the United Kingdom of Great Britain and Northern Ireland¹¹⁵—then it would stand to say that Great Britain "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state,"¹¹⁶ including the state of Sealand.

2. *High Seas*

The United Nations Convention on the Law of the Sea deals with the High Seas in great detail.¹¹⁷ Article 86 of the Convention dictates,

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.¹¹⁸

¹¹¹ *Id.*

¹¹² ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 176 (Cambridge U. Press 2000).

¹¹³ SEALAND, *supra* note 1.

¹¹⁴ AUST, *supra* note 112, at 176.

¹¹⁵ *Members*, UNITED NATIONS, <http://www.un.org/en/members/> (last visited Oct. 31, 2013).

¹¹⁶ U.N. Charter art. 2, para. 4.

¹¹⁷ UNCLOS, *supra* note 88, at arts. 87–89.

¹¹⁸ *Id.* at art. 86.

This provision clearly defines the “High Seas” as a negative space. The Convention does not define what the high seas are; it defines what the high seas are not. Utilizing this catch-all method of defining a type of territory, the framers of this Convention have created an area, the high seas, that encompass the “rest” of the ocean not otherwise enumerated. Defining the high seas as “all parts of the sea that are not”¹¹⁹ listed within the proviso, it is possible that the definition overreaches and incorporates portions of the ocean it ought not include. Under the overly-broad definition of the high seas, the Convention further defines various positive rights applicable to navigating the high seas:

(a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines, subject to Part VI; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the conditions laid down in section 2; (f) freedom of scientific research, subject to Parts VI and XIII.¹²⁰

Among these positive rights, these actions allowed on the high seas, is the freedom to “construct artificial islands” pursuant to Part VI of the Convention.¹²¹ Part VI of the Convention, in Article 80, artificial islands, installations and structures on the continental shelf, merely imports from the Exclusive Economic Zone to the Continental Shelf the right of building artificial islands for natural resource extraction.¹²² This freedom to construct artificial islands in the high seas is permitted under international law, and is transferred over from another portion of the Convention. Considering that the high seas “shall be reserved for peaceful purposes,”¹²³ coupled with the Convention’s instruction that, “[n]o State may validly purport to subject any part of the high seas to its sovereignty,”¹²⁴ the law laid down by the Convention is that no sovereign nation may appropriate resources from the high seas for its own profit. However, the portion of the Convention that the freedom to construct artificial islands has been transferred from specifically provides the purpose for constructing artificial islands. Article 56 explains that artificial island construction is for:

exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to

¹¹⁹ *Id.*

¹²⁰ *Id.* at art. 87.

¹²¹ *Id.*

¹²² *Id.* at arts. 60, 80.

¹²³ *Id.* at art. 88.

¹²⁴ *Id.* at art. 89.

the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.¹²⁵

Inherent in these contradictory provisions is the prohibition of nationalizing the resources of the high seas, while simultaneously expressly granting a freedom to construct artificial islands pursuant to a provision that allows for mining and natural resource extraction.

The purpose of the High Seas provisions in the Convention is less likely concerned with preventing artificial islands and their declarations of sovereignty, and more likely concerned with protecting lawful seafarers from piracy. Part VII of the Convention, titled “High Seas,” contains the articles outlining the rights and reservations of the high seas,¹²⁶ as well as the articles related to piracy.¹²⁷ Among those articles are the definitions for piracy, pirate ship, and the various duties to cooperate in the repression of piracy, liability of seizure of pirated goods, and liabilities of piracy of warships.¹²⁸ Anxious to set legal boundaries over piracy on an international scale, the framers of the Convention may have over-reached with regards to the rights and reservations of the High Seas, specifically the abridged rights related to sovereign declarations therein.

For many large nations wishing to mine the deep seabed for profitable resources, the contradiction located inside the minutiae of the Convention may be a small roadblock to profit, but for Sealand, the contradiction could deny an equally valuable avenue for statehood. If the Convention expressly enumerates the freedom to construct artificial islands on the high seas, and a permanent population finds themselves living on the artificial island (for whatever the purpose may be), the Convention may additionally provide the means for declaring the waters surrounding that artificial island no longer a portion of the negatively carved high seas, but rather a new Exclusive Economic Zone for the hopeful artificially situated nation.

¹²⁵ *Id.* at art. 56.

¹²⁶ *Id.* at arts. 86–99.

¹²⁷ *Id.* at arts. 100–09 (including, ironically, Article 109, *Unauthorized broadcasting from the high seas*).

¹²⁸ *Id.* at arts. 100–07.

3. *Exclusive Economic Zone*

The economic benefits of sovereignty for a young nation state cannot be overstated. Part V of the UN Convention on the Law of the Sea describes the Exclusive Economic Zone (EEZ).¹²⁹ Within the EEZ, the Convention establishes first and foremost the “sovereign rights,” or, those rights related to “the purpose of exploring and exploiting, conserving and managing the natural resources.”¹³⁰ Article 57 demarcates the boundaries of a country’s EEZ to “not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured,”¹³¹ which greatly extends a nation’s sovereign territory beyond the immediate coast. These EEZ’s are highly valuable, internationally respected boundaries that grant the custodians the opportunity to capitalize on natural resources they are thought to “own.” The boundaries are also, however, created by the framers of the Convention, and therefore subject to the imperfections of any seemingly arbitrarily written legal code. The “200 nautical mile” extension of territorial sovereignty defined in Article 57 of the Convention is clearly one that grants economic benefits.¹³² The EEZ does not restrict the peaceful passage of ships or aircraft,¹³³ which would signify that the EEZ is meant not only as an economic privilege but also a barrier to certain rights, sovereignty being one of them.

One provision in the EEZ portion of the Convention, Part 8 of Article 60, states that, “artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.”¹³⁴ To the extent this condition limits artificial islands, the natural contextual interpretation would lead the artificial island limitation to be based on oilrigs and other purely economically minded structures. Sealand requests exactly what this provision seeks to eliminate: the status of an island. It is precisely the purpose of Article 60 to deny certain rights and freedom to artificial islands in their capacity as economic tools for larger countries. However, the “artificial” basis of Sealand’s structure is inapplicable to the goals of this article, namely, to exclude foreign oilrigs from encroaching on the territorial sovereignty of other nations. Article 60 is

¹²⁹ *Id.* at arts. 55–75.

¹³⁰ *Id.* at art. 56.

¹³¹ *Id.* at art. 57.

¹³² *Id.*

¹³³ *Id.* at art. 87.

¹³⁴ *Id.* at art. 60.

concerned primarily with jurisdiction of the coastal state over any resources extracted from the artificial islands, and secondarily with the appropriate safety zones designated by the coastal state.¹³⁵ The fact that this article is within the EEZ portion of the Convention altogether is further evidence that the extraction of natural resources, and the rights connected with that activity, was the primary issue of concern. Sealand's founding father is a billionaire,¹³⁶ and the main focus of the hopeful platform-nation's goal of sovereign recognition has never been economic profit. Attributes of Sealand have never been economically minded.¹³⁷ Sealand is unlike an oilrig, whose sole purpose is natural resource extraction for profit. Sealand's constitution, coinage, citizenship paperwork, creation of passports, and ongoing efforts to gain recognition by the international legal community, are all evidence of Sealand's unique nature. If the Convention is to be strictly construed, perhaps Sealand qualifies as a "geographically disadvantaged state" as per Article 70, which allows such states "the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region."¹³⁸ Bates' Principality has no desire to infringe on the economic activities of the United Kingdom; it merely seeks sovereign recognition. The Exclusive Economic Zones are, in fact, a highly valuable attribute of the established nations of England, France, and other nations in the area. However, utilizing this argument as a basis for the non-recognition of Sealand by its geographically, historically, and economically superior neighbors is both irrelevant, and to the extent it could ever become relevant, failing.

B. *Montevideo Convention*

Perhaps the most widely used set of criteria for defining sovereignty is the *Montevideo Convention*.¹³⁹ Following World War I, nations grew eager to enter into multilateral codifying agreements to broadly promote principles of interstate relations.¹⁴⁰ Adopted at the seventh International Conference of

¹³⁵ *Id.*

¹³⁶ Hibberd, *supra* note 21, at 270.

¹³⁷ William Yardley, *Roy Bates, Bigger-Than-Life Founder of a Micronation, Dies at 91*, N.Y. TIMES (Oct. 13, 2012), http://www.nytimes.com/2012/10/14/world/europe/roy-bates-founder-of-sealand-dies-at-91.html?_r=0.

¹³⁸ UNCLOS, *supra* note 88, at art. 60.

¹³⁹ The Montevideo Convention, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19.

¹⁴⁰ MARK WESTON JANIS & JOHN E. NOYES, INTERNATIONAL LAW: CASES AND COMMENTARY 478 (4th ed. 2011).

American States in 1933, the Convention settled Latin American fears of major powers intervening in the affairs of Latin American States.¹⁴¹ Sixteen states, including the United States, adopted the Montevideo Convention.¹⁴² The Montevideo Convention “remains the customary international law standard of statehood,”¹⁴³ and its applicability to Sealand’s fight for sovereignty is strong. Article 1 of the Convention states: “The State as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other States.”¹⁴⁴

1. *Sealand Maintains a Permanent Population*

First, to qualify as a state in the international legal sphere, a state must have a permanent population.¹⁴⁵ While Roy Bates passed away in October 2012, his legacy at Sealand lives on.¹⁴⁶ In addition to more than 100 citizens,¹⁴⁷ a full-time caretaker currently occupies Sealand, and Michael Bates, Roy Bates’ son, “expects his descendants to preside over Sealand for many generations to come.”¹⁴⁸ At its most active point, Sealand had “30 to 40 persons permanently living on the platform.”¹⁴⁹ The exceedingly small number of citizens is not prohibitive of statehood, since “[a]s long as a State’s population is a group of persons leading a common life and forming a living community, then it qualifies.”¹⁵⁰ “Micro-states” such as Nauru and The Principality of Lichtenstein (eight square miles and sixty-two square miles respectively) have both been admitted to the United Nations, yet Nauru delegates its international powers to Australia, and Lichtenstein to Switzerland.¹⁵¹ Using this logic, it has been said that the Roman Catholic Church at the Vatican can qualify, while the citizens of Sealand cannot.¹⁵² Because of this reasoning, it has been argued that the “permanent population” necessary to be considered a state in the international community must follow the principle of *superiorem non*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ DAVID J. BEDERMAN, INTERNATIONAL LAW FRAMEWORKS 53 (3rd ed. 2010).

¹⁴⁴ The Montevideo Convention, *supra* note 139, at art. 1.

¹⁴⁵ *Id.*

¹⁴⁶ Yardley, *supra* note 137.

¹⁴⁷ *In re Duchy of Sealand*, 80 I.L.R. 683 (Admin Ct. Cologne 1978).

¹⁴⁸ Yardley, *supra* note 136.

¹⁴⁹ *In re Duchy of Sealand*, 80 I.L.R. 683.

¹⁵⁰ BEDERMAN, *supra* note 143, at 54.

¹⁵¹ JANIS & NOYES, *supra* note 140, at 479.

¹⁵² BEDERMAN, *supra* note 143, at 54.

recognoscentes (or, that of external independence).¹⁵³ The sovereign of Sealand, some argue, does not have the “effective authority” necessary to sufficiently fulfill the *superiorem non recognoscentes* criterion.¹⁵⁴ Opponents of Sealand’s sovereignty also claim the nationals of Sealand have not acquired the requisite “nationality,” and have associated with each other merely to support their common “commercial and tax affairs.”¹⁵⁵ This is all directly contrary to the mission of Sealand, however, in that Sealand was “founded on the principle that any group of people dissatisfied with the oppressive laws and restrictions of existing nation states may declare independence in any place not claimed to be under the jurisdiction of another sovereign entity.”¹⁵⁶

2. *Sealand Has a Defined Territory*

Second, a state must possess a defined territory.¹⁵⁷ This pre-requisite is as simple as it is complex, and creates the basis of my argument for Sealand, and future nations like Sealand’s, sovereignty. Literally interpreted, Sealand’s defined territory is the platform of Fort Roughs. The platform, measuring 51.2m long, 26.8m wide and 4.3m deep,¹⁵⁸ is approximately 1300 square meters atop,¹⁵⁹ and located at Latitude 51.53 N, Longitude 01.28 E,¹⁶⁰ it contains modest living quarters, a kitchen, a chapel and an exercise area within the cement pillars.¹⁶¹ The extremely small size of a nation is not a prohibitive feature, since “international law has recognized a host of ‘micro-States,’ entities of exceedingly small size, like Monaco or the Vatican City.”¹⁶²

However, popular scholarship uses this pre-requisite to repudiate Bates’ nation, in that Sealand’s sovereignty should be “ruled inadmissible under international law, since territory must be a naturally formed part of the Earth’s surface to qualify.”¹⁶³ Territory can be defined many ways, but the opponents of Bates’ claims utilize the word territory to mean, “a geographical area

¹⁵³ Guido Acquaviva, *Subjects of International Law: A Power-Based Analysis*, 38 VAND. J. TRANSNAT’L L. 215, 245 n.190 (2005).

¹⁵⁴ *Id.*

¹⁵⁵ *In re Duchy of Sealand*, 80 I.L.R. 683, 688 (1978).

¹⁵⁶ Yardley, *supra* note 137.

¹⁵⁷ The Montevideo Convention, *supra* note 138, at art. 1.

¹⁵⁸ Navy Sea Forts, *supra* note 11.

¹⁵⁹ *In re Duchy of Sealand*, 80 I.L.R. 683, 684 (1978).

¹⁶⁰ Terms and Conditions, SEALAND, <http://www.sealandgov.org/terms-and-conditions> (last visited Dec. 13, 2014).

¹⁶¹ Yardley, *supra* note 137.

¹⁶² BEDERMAN, *supra* note 143, at 54.

¹⁶³ *Id.*, at 54.

included within a particular government's jurisdiction; the portion of the earth's surface that is in a state's exclusive possession and control."¹⁶⁴ The first half of this established definition is satisfied by Sealand's claim to the physical territory of the platform as well as the governing documents they claim purport the rights over it. The second half is where Sealand's detractors find their footing. German courts have ruled against Sealand in finding that the platform "is not situated on any fixed point of the surface of the earth. Rather, the miniature island has been constructed on concrete pillars. The preponderant view of legal writers is that only a part of the surface of the earth can be regarded as State territory."¹⁶⁵ The court further explains, "The fact that the former anti-aircraft platform is firmly connected to the sea-bed by concrete pillars does not transform the platform into a part of the 'surface of the earth' or 'land territory.'"¹⁶⁶ The court strongly concludes on this matter, "only those parts of the surface of the earth which have come into existence *in a natural way* can be recognized as constituting State territory."¹⁶⁷

3. *Sealand Has a Government*

Third, nations must have a government.¹⁶⁸ The meaning of government particularly called for by the Convention is closely tied to sovereignty, and can be defined as "the structure of principles and rules determining how a state or organization is regulated."¹⁶⁹ On September 2, 1975, Roy Bates proclaimed the Constitution of the Principality of Sealand.¹⁷⁰ Before the Constitution, the government of Sealand was run by the Sealand State Corporation, which gave a board of Senators complete authority to administer and govern the island.¹⁷¹ The corporation passed the laws and statutes, owned the land and resources of Sealand, and ensured that Sealand law was accountable to no other nation with regards to enforcement within the three-nautical mile territory.¹⁷² Importantly, the articles of incorporation declared Sealand a Free Trade Zone so that no customs, duties, or gaming restrictions could be imposed on the platform.¹⁷³ When the Constitution of Sealand was adopted, it merely ratified the

¹⁶⁴ BLACK'S LAW DICTIONARY 1611 (9th ed. 2009).

¹⁶⁵ *In re Duchy of Sealand*, 80 I.L.R. 683, 685 (1978).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 686 (emphasis added).

¹⁶⁸ The Montevideo Convention, *supra* note 139, at art. 1.

¹⁶⁹ BLACK'S LAW DICTIONARY 764 (9th ed. 2009).

¹⁷⁰ SEALAND, *supra* note 1.

¹⁷¹ *Sealand*, WIKIA, <http://www.micronations.wikia.com/wiki/Sealand> (last visited Dec. 13, 2014).

¹⁷² *Id.*

¹⁷³ *Id.*

incorporation documents of the Sealand State Corporation and made no practical changes to the application of law in Sealand.¹⁷⁴

4. *Sealand Has the Capacity to Enter into Relations with Other States*

Lastly, nations must be able to “enter into relations with other states.”¹⁷⁵ Perhaps the cloudiest of the four requisite conditions for sovereignty in the Montevideo Convention, Sealand views this as simply satisfied. The strongest evidence that Sealand has entered into relations with other states is the visit of a German official to the island-nation back in 1977.¹⁷⁶ Coupled with the British denial of jurisdiction, Sealand has made historically supported arguments for its international relations.¹⁷⁷ Even the embassies of Gabon, Paraguay, Nepal, Syria, Haiti, Liberia, Honduras, Jamaica, Pakistan, Cyprus, Ethiopia, Jordan, and Turkey have responded to communications from Sealand representatives in their official capacity regarding investment opportunities.¹⁷⁸ Finally, as one scholar has acknowledged, “Sealand’s citizens have managed to travel into various countries by presenting Sealand passports.”¹⁷⁹

The Montevideo Convention proposes the declaratory theory of recognition.¹⁸⁰ Unlike the constitutive theory of recognition, which mandates recognition from already-existing states to create a new “state,” the declaratory theory is far more inclusive.¹⁸¹ The constitutive theory raises many problems for new and developing nations, many of which make it difficult to ever actually accede to official statehood in the “Family of Nations.”¹⁸² Constitutive theory followers are essentially recommending that recognition by pre-existing states become a fifth and necessary element of statehood in the Montevideo Convention.¹⁸³ With a constitutive theory of recognition, Sealand would face extremely difficult measures on its path to sovereignty. Which, and how many, already existing countries would have to recognize Sealand before it could join the “family?” If no one yet recognized Sealand, could neighboring nations,

¹⁷⁴ *Id.*

¹⁷⁵ The Montevideo Convention, *supra* note 139, at art. 1.

¹⁷⁶ Grimmelmann, *supra* note 38.

¹⁷⁷ Transcript of Court Decision, *supra* note 37.

¹⁷⁸ *Storm Warning*, THE GUARDIAN (Mar. 27, 2000), <http://www.theguardian.com/theguardian/2000/mar/28/features11.g2> (last visited Oct. 30, 2104).

¹⁷⁹ James Grimmelmann, *Sealand, HavenCo, and the Rule of Law*, 2012 U. ILL. L. REV. 405, 472 (2012).

¹⁸⁰ MARK WESTON JANIS & JOHN E. NOYES, INTERNATIONAL LAW: CASES AND COMMENTARY 478 (4th ed. 2011).

¹⁸¹ *Id.* at 558–59.

¹⁸² *Id.* at 558.

¹⁸³ BEDERMAN, *supra* note 143, at 56.

such as England or Germany, violate the Charter of the United Nations and threaten or use “force against the territorial integrity or political independence of” Sealand?¹⁸⁴ For these reasons, among others, the Montevideo Convention utilizes the declaratory theory of recognition.¹⁸⁵ Article 3 of the Convention states:

The political existence of the state is independent of recognition by the other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.¹⁸⁶

In just her first few decades, Sealand has done most of these things. Despite lacking recognition from other states, Sealand has defended her independence when Roy and Michael Bates allegedly defensively fired munitions towards British boats,¹⁸⁷ Sealand has attempted multiple economic endeavors to build a treasury for the nation, including capitalizing from safe data storage supply;¹⁸⁸ Sealand has intricately laid out a Constitution with cabinets of administration and governmental organization,¹⁸⁹ and Sealand has defined its nautically territorial jurisdiction, and made use of its courts.¹⁹⁰ Article 6 of the Montevideo Convention further reinforces the declaratory theory of recognition by providing, “[t]he recognition of a State merely signifies that the State which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.”¹⁹¹ The Montevideo Convention utilizes the declaratory theory of recognition rather than the constitutive, and “a head-count will show that an overwhelming majority of international law experts subscribe to the declaratory theory.”¹⁹² Recognition by other states, it follows, is sufficient for sovereignty, not necessary.

¹⁸⁴ See U.N. Charter art. 2, para. 4.

¹⁸⁵ The Montevideo Convention, *supra* note 138, at arts. 1–3.

¹⁸⁶ *Id.* at art. 3.

¹⁸⁷ Grimmelmann, *supra* note 38.

¹⁸⁸ Garfinkel, *supra* note 47.

¹⁸⁹ *Constitution of the Principality of Sealand*, WIKISOURCE, http://http://en.wikisource.org/wiki/Constitution_of_the_Principality_of_Sealand (last visited Dec. 17, 2014).

¹⁹⁰ Sealand held a trial for the dual-Sealand-German citizen who attempted to take over the country in 1977. Dennis, *supra* note 17, at 269.

¹⁹¹ The Montevideo Convention, *supra* note 136, at art. 6.

¹⁹² Johan D. van der Vyver, *Self-Determination of the Peoples of Quebec Under International Law*, 10 J. TRANSNAT'L L. & POL'Y 1, 29 (2001).

C. Secession

A strong argument against Sealand obtaining statehood is the general international opposition of secession.¹⁹³ Secession is “the process or act of withdrawing, especially from a religious or political association,”¹⁹⁴ and usually refers to separatist movements. Since Sealand’s argument for statehood could in some circumstances be fairly accurately described as secession from England, popular arguments against secession are not out of place with reference to Sealand’s case at hand. Famous cases of attempted secession in recent history include the Basques in Spain, the dissolution of former Yugoslavia, the Kurds in the Middle East, and the Quebecois secession movement in Canada.¹⁹⁵ The Quebecois case illuminates the problems with secession, and traditionally, the only two ways the international community will accept a secession attempt.¹⁹⁶ Generally, secession is recognized only when a decision to secede is “freely determined by a people,”¹⁹⁷ or, “if, following an armed conflict, national boundaries are redrawn as part of a peace settlement.”¹⁹⁸ For a decision to be freely determined by a people, it must be agreed upon by a “cross-section” of the population from both the group seceding, and the group being seceded from.¹⁹⁹ In the Quebec case, neither prerequisite for secession is likely to be fulfilled, since the remaining provinces in Canada do not wish to see Quebec go, and armed conflict is highly unlikely.²⁰⁰

In late 2014, Scotland entertained a referendum to secede the United Kingdom.²⁰¹ With motivation stemming from “currency, the monarchy, the armed forces, North Sea oil revenues, pension rights and much more,”²⁰² Scotland attempted to regain independence from the United Kingdom.²⁰³ Scotland called its people to vote on the question, “Should Scotland be an

¹⁹³ DONAH SHELTON, *THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW* 379–400 (Oxford U. Press) (2013).

¹⁹⁴ BLACK’S LAW DICTIONARY 1470 (9th ed. 2009).

¹⁹⁵ BEDERMAN, *supra* note 143, at 56.

¹⁹⁶ SHELTON, *supra* note 193, at 391.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ van der Vyver, *supra* note 192, at 11.

²⁰¹ *Scottish referendum: Scotland votes ‘No’ to independence*, BRIT. BROAD. CORP., <http://www.bbc.com/news/uk-scotland-29270441> (last updated Sept. 19, 2014, 10:51 ET).

²⁰² Nick Robinson, *Scottish independence: Does it take two to separate?*, BRIT. BROAD. CORP., <http://www.bbc.com/news/uk-politics-16468462> (last updated Jan. 9, 2012, 8:47 ET).

²⁰³ *Id.*

independent country?”²⁰⁴ Although “No” won the vote fifty-five percent to forty-five percent,²⁰⁵ that the referendum was entertained at all is a signal that independence is still a major consideration of both established and unrecognized nations alike.

In Sealand’s case, this would require a general consensus of England to agree to the secession of Sealand, in addition to Sealand’s obvious desire to separate. When England avoided tearing down Fort Roughs in order to avoid the cost of the demolition,²⁰⁶ and when British courts evaded jurisdiction over the platform in the 1960’s,²⁰⁷ an unbiased party could reasonably conclude that England would not oppose Sealand’s secession. Unlike the highly documented separatist movements listed above, England would lose a minuscule amount of economic, cultural, or social value as a result of Sealand’s successful independence. With regards to the second type of secession recognized by the international community, it is highly unlikely that Sealand would ever willingly enter into conflict with the military organizations of any of its neighboring nations. Outside of the two circumstances listed above, international courts have found three special circumstances for the right to secession.²⁰⁸ The special circumstances apply to categories of people within three groups: “(a) those under colonial domination or foreign occupation; (b) peoples subject to ‘alien subjugation, domination or exploitation outside a colonial context;’ and, possibly, (c) a people ‘blocked from the meaningful exercise of its right to self-determination internally.’”²⁰⁹ A cursory glance of these three special circumstances reveals that they likely don’t apply to Sealand’s case. Upon closer inspection of the issue, however, it appears that an application of the declarative theory of recognition fits perfectly with Sealand’s absence from this list of special circumstances. Sealand has not been prejudiced or interfered with for decades, and it is because their regular interaction with England is exceedingly small that they deserve sovereignty. The amount of political, economic, and social disruption both the United Kingdom and Sealand would experience is so negligible that the popular arguments against traditional statehood secession do not apply.

²⁰⁴ Andrew Black, *Scottish independence: SNP accepts call to change referendum question*, BRIT. BROAD. CORP., <http://www.bbc.com/news/uk-scotland-scotland-politics-21245701> (last updated Jan. 30, 2013, 7:59 ET).

²⁰⁵ BRIT. BROAD. CORP., *supra* note 201.

²⁰⁶ Dennis, *supra* note 20.

²⁰⁷ Transcript of Court Decision, *supra* note 33.

²⁰⁸ van der Vyver, *supra* note 192, at 12.

²⁰⁹ *Id.*

The international legal community's distaste for secession rests on several grounds, none of which apply to Sealand and its quest for legitimately recognized statehood. The two most applicable arguments against the "disjunction of territorial frontiers" are the concerns that, "a multiplicity of economically non-viable states will further contribute to a decline of the living standards in the world community," alongside, movement of people within plural societies "across territorial divides" has greatly destroyed ethnic, cultural or religious homogeneity in regions where it might have existed in earlier times.²¹⁰ The simple fact of the matter is that these fears of dividing societies and creating the potential for harmful segregation of minorities and future poor treatment of marginalized people is unfounded with regards to Sealand. Additionally, Sealand has a very low likelihood of becoming one of the economically non-viable states feared of by this argument.²¹¹

IV. ADDITIONAL ARGUMENTS FOR THE SOVEREIGNTY OF SEALAND

Aside from the aforementioned legal arguments for artificial islands' sovereign recognition, there are several practical and logical arguments in favor of Sealand. This section discusses the environmental arguments for sovereign recognition of artificial land. With the support of existing man-made territories as miniature case studies, this section bolsters the case that naturally occurring land is not the sole type of property with applicable sovereign qualities. Battery Park City in New York, New York, and the opulent and artistically sculpted Palm, Jumeirah, and World Islands in Dubai, U.A.E. are displayed as proven, working forms of artificially created property attached to sovereign nations. Finally, rising sea-levels and other potentially catastrophic environmental factors are posited as latent threats to hundreds of thousands of island-dwelling people, making the case stronger not only for Sealand, but for instances where Sealand could serve one day as valuable precedent in sovereign recognition of artificial islands.

A. Artificial Islands, and the Case for Their Statehood

The case for Sealand is actually an argument for future nations similarly situated to Sealand. Man-made islands, groups of people forced out of their home nations due to over-crowding and over-population, and a rising sea level

²¹⁰ SHELTON, *supra* note 193, at 392.

²¹¹ Garfinkel, *supra* note 47 (explaining that Roy Bates was a billionaire and was willing to put as much money necessary into the country of Sealand. Additionally, multiple economic enterprises were attempted in order to turn Sealand into an economically self-sufficient, even profitable, nation).

making many locations on this planet uninhabitable in the coming years, are all very real situations that our and future generations will be forced to deal with. One potential solution could be to migrate to artificially created islands. It is not unrealistic to posit this solution, as people already inhabit artificial land across the globe. From the floating villages of Cambodia and the commercially dredged Palm Islands in Dubai, to the Bates family and their home on the Maunsell Fort roughly six nautical miles off the British coast, people are living on artificial territory. When forced out of their homes, people may wish to one day replicate these societies and create a new home, build a new island, inhabit a new platform. These are the groups of people who will benefit from Sealand's sovereign recognition.

Man-made islands are inhabited all over the world, from Manhattan to the Middle East.²¹² In the luxurious Palm, Jumeirah, and World Islands off Dubai's coast, multi-millionaire and billionaire residents live in luxurious mansions and estates accessible only by their yachts.²¹³ These islands are all, of course, man made.²¹⁴ The Palm Islands alone took two hundred ten million cubic meters of dredged rock, sand, and limestone.²¹⁵ With private beach-front properties and various condominium designs to choose from, the opulent residential community on the Palm Jumeirah encompasses 49,000 square meters.²¹⁶ The entire development boasts state of the art malls, homes, and yacht clubs.²¹⁷

Manhattan, New York planned the development by expanding the island artificially rather than developing through separate islands.²¹⁸ In an effort to revitalize New York City's poor economy in the 1980's, former Mayor of New York, Ed Koch, entered into agreement to fill in the dilapidated piers with the

²¹² *Palm Jumeirah*, NAKHEEL, <http://www.nakheel.com/en/communities/palm-jumeirah> (last visited Nov. 3, 2013); HUGH L. CAREY BATTERY PARK CITY AUTH., ANNUAL REVIEW 1999 1 (2000), available at <http://batteryparkcity.org/new/wordpress/wp-content/uploads/2013/02/1999.pdf>.

²¹³ *Palm Jumeirah*, *supra* note 212; Richard Spencer, *The World is sinking: Dubai islands falling into the sea*, THE TELEGRAPH, <http://www.telegraph.co.uk/news/worldnews/middleeast/dubai/8271643/The-World-is-sinking-Dubai-islands-falling-into-the-sea.html>, (Jan. 20, 2011, 9:30 PM).

²¹⁴ *Id.*

²¹⁵ *25 of Mankind's Greatest Engineering Achievements*, CABLE NEWS NETWORK (July 5, 2013), <http://www.cnn.com/2013/07/04/travel/engineering-feats>.

²¹⁶ *Nakheel Announces the Launch of Palm Residence on Palm Jumeirah*, NAKHEEL, <http://www.nakheel.com/en/media/news/nakheel-announces-the-launch-of-palm-residence-on-palm-jumeirah>, (last visited Nov. 3, 2013).

²¹⁷ *Palm Jumeirah*, *supra* note 204. *Palm Views East and West*, NAKHEEL, <http://www.nakheel.com/en/your-dream-home/palm-views-east-and-west> (last visited Oct. 25, 2014).

²¹⁸ HUGH L. CAREY BATTERY PARK CITY AUTH., *supra* note 213, at 1.

excavated rock and from the World Trade Center.²¹⁹ A public benefit corporation created what is now known as Battery Park City, and the island of Manhattan gained approximately ninety-two acres of prime real estate on its southwest corner along the Hudson River.²²⁰ Today, Battery Park City is home to a public high school, thousands of New Yorkers, more than thirty acres of parks, and a 1.2-mile esplanade with amazing Hudson River views.²²¹ New York is not a new canvas for the concept of artificial land additions. In the early 1900's, when land reclamation was a popular idea, an architect named Dr. T. Kennard Thompson published an architectural plan in *Popular Science* to fill in the East River and connect Manhattan to Brooklyn.²²² Additionally, the architect wished to extend Manhattan to Governor's Island, and construct new islands attached to Staten Island and Jersey City.²²³ Of course, none of these architectural renderings ever saw the reality that Battery Park City did, but the ambitious endeavor of expanding populated land to accommodate a constantly growing, changing world, is no new concept.

Both the Palm Islands and Battery Park City were created as extensions of these coastal metropolises in order to add vibrancy to the community and, more importantly, provide economic stimuli.²²⁴ Battery Park was created partially to provide an economic boom to the downtown economy during the 1968 recession. With a debt of \$6 billion, New York was in dire need of financial assistance, and Battery Park City answered the call.²²⁵ The Palm Islands also found their creation at the hands of economically minded government officials in the United Arab Emirates. With vast expanses of uninhabited desert and beachfront land, the U.A.E. could have afforded to build the new residential, commercial, and retail developments inland, or on pre-existing land.²²⁶ However, the developers realized the potential to capitalize on man-made islands within eyesight of the coast proved to be a much more financially beneficial option. Yes, Battery Park City and the Palm

²¹⁹ Interview by Stephen E. Greer with Ed Koch, Former Mayor of the City of New York, in New York, N.Y. (Sept. 27, 2013), <http://www.youtube.com/watch?v=k9E5n712B4U> [hereinafter Interview].

²²⁰ HUGH L. CAREY BATTERY PARK CITY AUTH., *supra* note 212, at 2.

²²¹ *Id.*

²²² Jessica Dailey, *The 1916 Proposal to Expand Manhattan by 50 Square Miles*, CURBED (Nov. 4, 2013), http://ny.curbed.com/archives/2013/11/04/the_1916_proposal_to_expand_manhattan_by_50_square_miles.php.

²²³ *Id.*

²²⁴ *See generally* HUGH L. CAREY BATTERY PARK CITY AUTH., *supra* note 212; *Jumeirah*, *supra* note 212.

²²⁵ Interview, *supra* note 219.

²²⁶ *See generally* CENT. INTELLIGENCE AGENCY, *United Arab Emirates*, in THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html> (last updated June 23, 2014).

Islands in Dubai provide full-time housing for thousands of people, but were it not for the economic benefits of building these new landmasses, it is doubtful the projects ever would have come to fruition.

The exercise of municipal, district, and even federal jurisdiction over these man-made land additions is unquestioned. Existing American laws apply in Battery Park, and crimes can be committed on the Palm Islands with regards to the government in the U.A.E. However, the precedent that seemingly disallows the sovereignty of Sealand because it is not a naturally occurring extension of the earth's surface would disagree. The German administrative court held against Sealand's statehood when it concluded, "only those parts of the surface of the earth which have come into existence *in a natural way* can be recognized as constituting State territory."²²⁷ Battery Park City is not the natural build-up of landmass near the mouth of the Hudson River, and the Palm Islands were certainly not naturally formed into the beautiful shapes of palm fronds and globes from the tidal currents in the Persian Gulf. Nevertheless, they are both considered very much a part of state territory. Granted, Sealand is not attempting to be considered a part of England's state territory, it is attempting to be recognized as its own state territory. The definition of "State territory" according to the German administrative court is flawed either way.

Additionally, it is argued that Sealand's population does not fulfill the requisite *superiorem non recognoscentes* principle.²²⁸ The commercial appeal of a man-made territory cannot be a deterrent to statehood. The "effective authority" of a nation is no less diminished, and were it the case that Sealand housed permanent residents in the capacity that Battery Park or the Palm Islands did, the economic benefits of its situation would no longer be considered a factor in the decision of sovereignty. When Battery Park City alleviated some of New York City's \$6 Billion debt in the 1980's,²²⁹ the economic value of the artificial island extension was viewed as an attribute, rather than a detriment. When the U.A.E. government approved the plans for the opulent residential and retail communities on the Palm, Jumeirah, and World islands, no one complained that the almost purely financial impetus for their creation failed to meet the terms of a *superiorem non recognoscentes*.

²²⁷ *In re Duchy of Sealand*, 80 I.L.R. 683, 685 (emphasis added).

²²⁸ Acquaviva, *supra* note 153.

²²⁹ Interview, *supra* note 220.

Unlike the previous examples, the future holds promise for artificial islands that will not be connected to their motherlands, and that will serve purposes unlike any seen before. Peter Thiel, co-founder of PayPal, has co-founded another innovative initiative, the Seasteading Institute.²³⁰ Along with economic theorist Patri Friedman, grandson of Nobel Prize winner Milton Friedman, the two are attempting to create floating communities on which small societies can experiment with pioneering forms of governmental, political, and economic infrastructure.²³¹ The mission statement, “[T]he Seasteading Institute is a nonprofit 501(c)(3), working to enable seasteading communities—floating cities—which will allow the next generation of pioneers to test new ideas for government. The most successful can then inspire change in governments around the world,”²³² reveals multiple facets of the Institute relevant to the sovereignty of artificial lands.

The Institute’s mission is to build floating cities, more similar to large, navigable ships than stationary artificial landmasses.²³³ As a moving, transportable vessel, the floating communities would more closely resemble ships, thus requiring compliance with Article 92 of the United Nations Convention on the Law of the Sea.²³⁴ This section of the Convention outlines the requirement of flying nation-flags in order to signal allegiance to a sovereign.²³⁵ Unlike Sealand, whose goal is to declare itself an independent nation, the Seasteading Institute attempts to fly the flags of already existing nations on its floating societies.²³⁶ However, the Institute doesn’t discount the idea of independent sovereignty altogether; the reasoning behind the move to fly the flags of existing nations is strategic.²³⁷ In order to eschew the regulations and standards that coincide with flying the flag of certain larger, more developed countries,²³⁸ flying a flag from a country with loose registration standards, or open registry, allows the greatest potential for

²³⁰ *Why the World Needs Seasteading*, THE SEASTEADING INST., <http://www.seasteading.org/about/> (last visited Sept. 9, 2014).

²³¹ *Id.*

²³² *Welcome to the Seasteading Institute*, THE SEASTEADING INST., <http://www.seasteading.org/> (last visited Oct. 25, 2014).

²³³ *Floating City Project*, THE SEASTEADING INST., <http://www.seasteading.org/comprehensive-seastead-project/> (last visited Nov. 13, 2014).

²³⁴ UNCLLOS, *supra* note 88, at art. 92.

²³⁵ *Id.*, at art. 91.

²³⁶ *Law and Policy*, THE SEASTEADING INST., <http://www.seasteading.org/law-and-policy/> (last visited Sept. 9, 2014).

²³⁷ *See id.*

²³⁸ *Id.*

autonomy while adrift on the high seas.²³⁹ However, flying a flag on open registry carries both a historical stigma²⁴⁰ and high potential for legal conflict.²⁴¹ It does appear that the solution of flying flags on open registry is a temporary solution to a permanent problem: how do we claim sovereignty and live under a self-created government on artificial land?

The Seasteading Institute also proposes its goal of allowing the “next generation of pioneers to test new ideas for government.”²⁴² This experimentation of innovative government forms is akin to Sealand, with a purpose. By providing a location where inventive political theorists can test new forms of governance, and economists can likewise experiment with new forms of capital infrastructure, the Seasteading Institute has potential to be an extremely valuable Petri dish for future structures of society. However, forming new governments aboard these floating cities will likely involve exceeding the legal boundaries of current governments. Sovereign recognition, and therefore independence and immunity from restriction of other governments, is necessary for places like the islands the Seasteading Institute proposes to build.

B. Environmental Factors Forcing Artificial Island Construction

Rising sea levels threaten the livelihood of the Maldives now more than ever. This tiny archipelago nation exists, in its entirety, no more than six feet above sea level.²⁴³ Recent research on elevated oceanic temperatures has led many to believe that the earth is in fact changing.²⁴⁴ More than thirty years ago, Polar Studies scientist J. H. Mercer was already positing the results of global climate change when he concluded that when, “global consumption of fossil fuels continues to grow at its present rate, atmospheric CO₂ content will double in about 50 years,” and that this could result in “rapid deglaciation of

²³⁹ *Id.*

²⁴⁰ See Eric Pace, *Uncertain Crosswinds for 'Flags of Convenience'*, N.Y. TIMES, May 16, 1982, available at <http://www.nytimes.com/1982/05/16/weekinreview/uncertain-crosswinds-for-flags-of-convenience.html>.

²⁴¹ UNCLOS, *supra* note 88, at art. 92.2.

²⁴² *Welcome to the Seasteading Institute*, THE SEASTEADING INSTITUTE, <http://www.seasteading.org/> (last visited Sept. 9, 2014).

²⁴³ *Maldives Country Profile*, BRIT. BROAD. CORP., <http://www.bbc.co.uk/news/world-south-asia-12651486> (last updated Oct. 22, 2013, 7:06 AM).

²⁴⁴ See generally Justin Gillis, *Timing a Rise in Sea Level*, N.Y. TIMES, Aug. 13, 2013, at D6, available at http://www.nytimes.com/2013/08/13/science/timing-a-rise-in-sea-level.html?_r=0.

West Antarctica, leading to a 5 m[eter] rise in sea level.”²⁴⁵ By this metric, the Maldives would, at its highest point, exist at roughly eight feet below sea level. Sea-level science is still highly speculative, but more recent studies have shown that “continuing on our current path would mean locking in a long-term sea level rise of 23 feet,”²⁴⁶ which would obliterate coastal cities on every continent. The speculative nature of climate change means scientists are unsure if these drastic sea-level elevations are likely to happen in the next hundred years, or one thousand years.²⁴⁷ Despite this uncertainty, many communities on earth, from the islands nation of the Maldives to highly populated cities like New York, remain threatened by the potential increase in sea levels. Luckily for coastal cities, the adaptation could be to move inland. This reactive measure may not be possible, however, for the archipelagic states of the South Pacific Ocean. In addition to the Maldives, the Marshall Islands, Tuvalu, Kiribati, and Tokelau are all home to hundreds of thousands of people, and none of their islands are more than three meters above current sea levels.²⁴⁸ Exacerbating the problem on some similarly situated islands, the portions of the land that do rise significantly higher above sea level are comprised of rugged, high-relief volcanic terrain that focuses the populations down “along low coastal fringes.”²⁴⁹ Rising sea levels are not the only threat for coastal communities and small islands. Explosive population growth, overdevelopment, pollution, and other environmental factors could play devastating roles in the destruction of naturally occurring land.²⁵⁰

The case for Sealand is, after all, an argument for the future of people in perilous situations. Whether it be rising sea levels, overpopulation, or any number of other environmental factors that force people out or off their land, one solution could be artificial land production. Unlike the Bates family, who settle on an already constructed platform, humans could potentially construct their own, new, inhabitable land. Like Rousseau’s Social Contract philosophizes, groups of people who eventually break off and inhabit new land will likely want to govern their own communities.²⁵¹ And if these new

²⁴⁵ J. H. Mercer, *West Antarctic Ice Sheet and CO₂ Greenhouse Effect: A Threat of Disaster*, 271 NATURE 321, 321 (1978).

²⁴⁶ Gillis, *supra* note 244.

²⁴⁷ *Id.*

²⁴⁸ Stephen P. Leatherman & Nancy Beller-Simms, *Sea-Level Rise and Small Island States: An Overview*, 24 J. COASTAL RES. (Special Issue) 1, 2 (1997).

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ ROUSSEAU, *supra* note 57, at 170.

societies, bounding forth into the aquatic frontier satisfy the qualifications defined in the Montevideo Convention,²⁵² their plea for sovereign recognition should be accepted.

CONCLUSION

It is perhaps a far off chance for the Principality of Sealand to ever gain recognition in the international legal community as a sovereign nation, with all of the rights and freedoms that coincide with the valuable status. Sealand's case for this independent recognition of statehood is ambitious, and likely more valuable as a case study to bolster support for future artificial islands, and their goals of similar recognition. The ideological implications of granting Sealand their requested status are nearly as far reaching as the practical ones, it would open the floodgates for pioneering social entrepreneurs. For better or worse, the barriers to the final, habitable (for the time being) frontier would be unfastened and a new era of social experimentation could occur. If and when the day comes that mankind requires more physical space to house its members, the success of independent, self-reliant societies would depend heavily on the path carved out before them, the lessons learned from the successes and failures of those new nations forging the way. The potential to amalgamate the flourishing qualities of modern society, as well as the opportunity to eliminate the flawed ones, would allow artificially created islands and landmasses to house new countries.

The United Nations' various treaties and conventions have successfully guided the international community for decades, but with the ever-changing global setting it resides in, the codified commonly accepted "rules" are bound to bend and adapt. Concepts like territorial sovereignty and exclusive economic zones were defined by the UN in an era where artificial islands were neither existent nor necessary. Now, the environmental changes currently affecting the planet may dictate a new outlook on how we define "country" and "state." The cut off point of admissibility to international recognition should no longer be "naturally-occurring" land, and should no longer be solely concerned with compliance of laws rooted in out-of-date history. Changing these laws, norms, and prerequisites is a bold request, but these laws are elastic, and the international legal community is as well. Roy Bates, with his radio station and rebellious spirit, probably never imagined the future implications of his Principality and its quest for acknowledgment. However, the spirit of his

²⁵² The Montevideo Convention, *supra* note 139, at art. I.

country and its motto, “E Mare Libertas,” is the perfect rallying cry for the expansion of sovereignty’s meaning in today’s world. From the sea, freedom, Bates requested. Perhaps the international legal community should note his call to arms. One day, they may have to.

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