Principality of Sealand

www.principality-of-Sealand.de

www.principality-of-Sealand.org

Contact:
info@principality-of-sealand.org

LEGAL OPINION

ABOUT THE INTERNATIONAL STATUS OF THE PRINCIPALITY OF SEALAND

rendered by

Dr. Bela Vitànyi

Professor in Public International Law,
University of Nijmegen

1978

Contents

I. The establishment of a State in general

The doctrine of international law requires the presence of three elements for a State to be established. According to the formulation of Professor Reuter:

> *«D'une manière générale on admet qu'un Etat existe dès que se trouvent réunis trois éléments: des pouvoirs stables et efficaces s'applicant à une population et à un territoire.»* [1]

International practice confirms this thesis. The mixed German-Polish Arbitral Tribunal declared in the case of the Deutsche Kontinental Gasgesellschaft (1929):

> *«Un Etat n'existe qu'à condition de posséder un territoire, une population habitant à ce territoire et une puissance publique qui s'exerce sur la population et sur le territoire.»*[2]

One may also recall the definition contained in Article 1 of the Convention on Rights and Duties of States of 26 December 1933, adopted at the VIIth International Conference of American States held at Montevideo:

> *«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 other States.»*[3]

De Louter has therefore correctly stated:

> *«Le droit international ne cède pas, mais trouve des sujets comme personnes juridiques, de même que le droit privé trouve les siens sous forme des personnes naturelles.»* [4]

Indeed, internal law only determines the legal status of the physical person, his capacity to act, the legal sphere in which he lives. In the same way, in international law States are persons by their nature itself. No doubt, when it has to be ascertained whether a community which claims to have this capacity really presents the elements necessary in a State, this cannot be judged with the same

---

[1] «Principes de droit international public» 103 Hague Recueil, Vol. 103, 1961, p. 508
[2] U.N. Reports of International Arbitral Awards, Vol. IX, p. 336.
[3] American Journal of International Law 1934, Supplement to No. 2, p. 75.
[4] Le droit international positif, Vol. I, p. 217.

degree of obviousness and the same ease with which the birth of a physical person would have been ascertained.

In every State there exists a power which has been entrusted to certain organs and is intended for governing the population. This is the political power which is often qualified as public authority and designated by the term sovereignty. Sovereignty presents itself first as o r i g i n a l p o w e r, in the sense that it does not derive from any other power. On the other hand sovereignty signifies s u p r e m e p o w e r in the framework of a well defined territory *(summa potestas)*; not only does it have no superior, but it is also exclusive, i.e. in its sphere of validity it does not admit of any equal or rival power (*plenitudo potestatis)*.

Eminent writers on international law consider direct subjection to international law as the corollary of the capacity of a State. This is the view of Guggenheim:

> *«La soumission immédiate des Etats souverains au droit des gens est appelée indépendance, terme qui se rapporte à la prétention souvent élevée par l'Etat d'être considéré comme l'ordre juridique suprême.»*[5]

Verdross writes along the same lines:

> *«Ein souveräner Staat ist eine vollständige und dauerhafte menschliche Gemeinschaft mit voller Selbstregierung, die durch eine völkerrechtsunmittelbare, auf einem bestimmten Gebiete regelmäßig wirksame Rechtsordnung verbunden wird und so organisiert ist, daß sie am völkerrechtlichen Verkehr teilnehmen kann.»*[6]

The legal order of the Principality of Sealand does not originate from delegation by a superior authority. The head of state of Sealand is a Prince who, assisted by the Privy Council, exercises legislative power, a Government exercising the functions of the executive, and a High Court called upon to exercise judicial power. The powers of the organs of State as well as the rights of the citizens are regulated in the Constitution. This Constitution has the character of a charter granted by the Prince. Other laws relate to matters the regulation of which was found necessary. Sealand has laid down its Constitution and its other laws by the exercise of its full self-determination in its internal and external affairs, i.e.

---

[5] Traité de Droit international public, Vol. 1, 1953, S. 174
[6] Völkerrecht, 4e Auflage, 1959, S.131

independently of any external power. The adoption of the British common law system took place by virtue of the sovereign will of Sealand. The adoption of a foreign legal system in some matters is not an unusual phenomenon in international life. In the twenties Turkey adopted Swiss civil law. The new states created after World War I, such as Poland, Czechoslovakia and Yugoslavia, kept the legal system of the States to which their respective territories belonged before they gained independence. Such a procedure is not contrary to the sovereignty of the state concerned, provided that the latter takes its decision of its own free will.

In the light of these facts we reach the conclusion that Sealand has an organized public authority exercising the ordinary functions of State power in internal as well as external respects which represents the supreme and exclusive power over its territory. The Principality is not subject to any foreign jurisdiction; its national legal order constitutes the supreme legal order in its territory. This amounts to saying that Sealand is directly subject to international law. Consequently, the sovereignty of Sealand cannot be contested; it is therefore to be considered a subject of international law.

II. The problem of the establishment of a State on an artificial installation on the high seas

1. The notion of State territory in international law

State territory is the space within which the State exercises its supreme authority. According to the arbitral award pronounced by Max Huber in the Island of Palmas case (1928):

> *«It appears to follow that sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular State. Sovereignty in relation to territory is called territorial sovereignty.» «Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.» «The fact that the functions of a State can be performed by any State within a given zone is ... precisely*

> *the characteristic feature of the legal situations pertaining in these parts of the globe which, like the high seas or lands without a master, cannot or do not yet form the territory of a State.»*[7]

International law does not recognize conditions in respect of the extent of the State territory. International practice has from time immemorial recognized the capacity of communities which constituted themselves as sovereigns, i.e. exercised State authority there to the exclusion of any other State. The Resolution 2709 (XXV) adopted by the U.N. General Assembly on 14 December 1970, by a recorded vote of 94 to 1 (United Kingdom), with 20 abstentions, expressly confirmed this principle. The Assembly

> *«having considered the question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Cocos Islands, Dominica, Gilbert and Ellice Islands,, Grenada, Guam, Monserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau, Turks and Caicos Islands, and the United States Virgin Islands» (territories some of which do not count more than one hundred inhabitants) «expresses its conviction that the questions of territorial size, geographical isolation, and limited resources should in no way delay the implementation of the granting of independence with respect to these territories.»*

The State territory of Sealand is a platform situated in the southern part of the North Sea, latitude 51-53-40 north, longitude 01-28-57 east. This means: if one draws a datum line from Landguard Point on the north side of the Orwell Stour Estuary to the Naze above Walton, the platform is between five and six miles from the datum line, i.e. about three miles outside British territorial waters.

It follows from the above that the smallness of the territory of the Principality of Sealand where it exercises public authority to the exclusion of any other State cannot form an obstacle to its capacity as an independent State. Nevertheless, the circumstance that a platform constructed an the continental shelf of the North Sea forms its territory raises some questions of international law which would seem to call for a thorough investigation.

2. The rights of the coastal State to the continental shelf

Before the proclamation of President Truman of September 28, 1945 the notion of «continental shelf» was only a geographical one. The juridical notion

---

[7] U.N. Reports of International Arbitral Awards, Vol. II

«continental shelf» takes its origin from this proclamation. President Truman stated:

> *«The Government of the United States regards the ... continental shelf beneath high seas but contiguous to the coast of the United States as subject to its jurisdiction and control ... The character of high seas of the water above the continental shelf is in no way thus affected.»*[8]

The exact nature of the property interest which the United States was claiming was an important issue left unclear, as there was no mention of either title, ownership, or sovereignty. Nevertheless the proclamation of the United States was the starting-point for a series of analogous proclamations by other States.

On the 1958 Geneva Conference an the Law of the Sea opinion regarding a precise definition of the continental shelf was divided between those who wanted to delineate the shelf according to a 200-metre depth standard and those who proposed to leave it open-ended to whatever extent an adjacent coastal State could effectively exploit its natural resources. The resulting compromise was expressed in Article 1 of the Continental Shelf Convention of 29 April 1958[9], as:

> *«a) ... 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 exploitation of the natural resources of the said areas;*
>
> *b) ... the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.»*

In Article 2 coastal States are granted «sovereign rights for the purpose of exploring ... and exploiting its natural resources», which rights are exclusive in that no other State may explore or exploit the natural resources thereof without the express permission of the coastal State. Article 3 deals with the waters above the continental shelf. Such waters are to remain international in character and subject to the 1958 Convention an the High Seas[10]. Article 5 entitles the coastal State to construct and maintain or operate on the continental shelf installations and other devices necessary to the exploration and exploitation of its natural resources. The coastal State may also establish safety zones to an extent of 500 metres around such installations and devices, and take in these

---

[8] 10. Fed.Reg. 12303 (1945).
[9] 499 U.N. Treaty Series, pp. 31 et seq.
[10] 450 U.N. Treaty Series, S 82 f.

zones measures necessary for its protection. Any installations which are abandoned or disused must be entirely removed.

It follows therefore from the Convention that neither the continental shelf nor the superjacent water forms part of the territory of the coastal State. Its rights concerning the continental shelf are exactly defined and are narrowly limited. The purpose of the coastal State's activities, if any, is the criterion of the question whether it acts in this case in its capacity as a sovereign or in that of a private person. The exploration and the exploitation of the natural resources of the continental shelf are reserved to the coastal State, while any other activity on it is lawful for all. One might therefore characterize the rights which the coastal State has to the continental shelf as «functional sovereignty»; the State only acts as a sovereign in exercising the above-mentioned functions. The same conclusion applies to the construction and the ownership of the installations on the continental shelf. The coastal State does not enjoy an exclusive right to construct and own such installations except for those necessary for the exploration and exploitation of the natural resources of the continental shelf.

As the judgment of the International Court of Justice in the North Sea Continental Shelf cases status:

> *«The most fundamental of all the rules of law relating to the continental shelf enshrined in Article 2 of the 1958 Geneva Convention (is) ... an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources ... (This right) is ‹exclusive› in the sense that if the coastal State does not choose to explore or exploit the areas of shelf appertaining to it, that is its own affair, but no one else may do so without its express consent.»* [11]

From this it follows *a contrario* that the coastal State is not entitled under international law to prohibit anyone from carrying out activities which are not reserved to the State. The legal literature is divided an the question of Status under international law of artificial islands or installations not connected with the purposes of exploration and exploitation of the shelf resources. While territorial waters are undisputedly considered within the jurisdiction of the coastal State, the high seas are open to all nations, and therefore *res omnium communis.* Since the rights of the coastal State to the continental shelf are very limited,

---

[11] I.C.J. Reports, 1969, p. 22.

there is a diversity of opinion on whether the seabed and the subsoil have the same *res omnium communis* status as the superjacent waters. According to the view based an the doctrine of the freedom of the high seas or on the freedom of the seabed argument, artificial islands and installations, not connected with the purposes of exploration or exploitation of the shelf resources, may be constructed an the continental shelf by any State or private person and not only by the coastal State, subject to the rules of reasonable regard to the interests of international navigation and non-interference with the exploration and exploitation activities of the coastal State. As regards jurisdiction, it would appear that only the national State has the requisite jurisdiction to regulate activities on such structures.

The Belgian delegate at the U.N. Seabed Committee, speaking about the problems involved in using part of the shelf for constructing an offshore installation, said in relation to the problem of jurisdiction:

> *"In Belgium, bills introduced in parliament were first submitted to the Conseil d'Etat for a legal opinion on their content. The bill, which had become the law on 13 June 1969 on the Belgian continental shelf, had therefore been studied by that authority. The opinion of the Conseil d'Etat was that an installation which was not used for the exploration or exploitation of the natural resources of the continental shelf did not come under Belgian jurisdiction.»* [12]

According to another view, considerations of coastal security as well as the paramount importance of the continental shelf for exploitation purposes make it necessary to recognize exclusive coastal authority and control over any use of the continental shelf which would require the construction of fixed or permanent installations. It was alleged that embryonic State practice would appear to confirm such a view. Accordingly, it was also submitted that all fixed or permanent installations erected on the continental shelf should be subject to the jurisdiction of the coastal State.

Mr. Koers advanced the following arguments in support of this view:

> *«A more simple solution to the jurisdictional problem of artificial islands in the water of the high seas would be the unilateral extension of the jurisdiction of the State on whose continental shelf the island would be located. Several considerations support such a solution:*

---

[12] U.N. Doc. A/AC.138/SC.II/SR.4-23, at p. 66.

a) Existing rules of law give coastal States jurisdiction over certain categories of islands;

b) Coastal States are most directly affected by such islands and their activities;

c) They cannot be constructed without the consent of the coastal State; and

d) Coastal State jurisdiction over artificial islands constructed on their continental shelf avoids the complexities of a nationality-based approach.»[13]

This view corresponds essentially to the concept of contiguity, according to which proximity is assumed to confer jurisdiction under international law upon a State over formations situated in certain zones adjacent to its territorial sea. However, this theory has not given rise up to the present to a rule of positive international law (see p.xx infra). Consequently, views of this kind do not set forth the present state of international law; they rather express a *desideratum de lege ferenda*, the practical application of which presupposes the modification of the law *in forte*, established in the 1958 Geneva Convention on the Continental Shelf. According to Article 39 of the Vienna Convention on the Law of Treaties, of 23 May 1969[14]: «A Treaty may be amended by agreement between the parties.»

Unilateral declarations on the extension of jurisdiction cannot produce any legal effect if they are found to be contrary to the provisions of the conventions which are in force.

3. Cases of the exercise of jurisdiction by the coastal State on artificial islands on the high seas

This question arose for the first time in 1918 before the appearance of the legal notion of the continental shelf. Some American citizens discovered a large oil pool in the Gulf of Mexico about forty miles from land on a reef where the water

---

[13] «Artificial Islands in the North Sea» in Gamble and Pontecorvo (eds) ‹Law of the Sea›, pp. 223 et seq.; idem: Knight, Law of the Sea negotiations 1971-1572. San Diego Law Review, 1972, pp 383 et seq.

[14] Treaties of the Kingdom of the Netherlands 1972, No. 51.

was less than a hundred feet deep. It was suggested that an artificial island might be erected, and the question was put, whether such an island could be brought under the jurisdiction of the United States. The State Department informed the petitioners that: a) unless the creation of an artificial island interfered with the rights of the United States or of its citizens, or formed the subject matter of a complaint mode upon apparently good grounds by a foreign Government, it was not likely that the Government of the United States would object to the creation of the proposed island; b) it was not likely that any foreign Government would interfere with the plan, unless its rights or those of its citizens were injuriously affected; and c) if the island were created, it was possible that the United States would exercise «some sort of control over it».[15]

However, this plan was never realized.

An effort was mode in November 1966 to establish the «State of Abalonia» on the Cortes Bank, situated approximately 110 miles off the Californian coast near San Diego. A group of businessmen from San Diego attempted to construct an artificial island on Cortes Bank, where the shallow water is approximately twelve feet deep. Cortes Bank is located about 50 miles seaward from San Clemente Island, which is itself about 60 miles from San Diego. Reportedly, the United States Attorney in San Diego considered prosecuting the «Abalonia» entrepreneurs for creating a hazard to navigation without securing a permit from the Secretary of the Army. The United States asserted what it considered to be affirmative jurisdiction over the area by the emplacement of a Coast Guard buoy, and its inclusion on leasing maps as an extension of the Southern California land mass. The Government was apparently well-prepared to sustain the jurisdiction of the federal district courts by proving that the area was part of the outer continental shelf, and that the Secretary of the Army therefore had authority to prevent the creation of navigational hazards by the emplacement of fixed structures thereon.[16]

Two groups of entrepreneurs sought to construct artificial islands and ultimately independent States, to be named «Atlantis» and «Great Capri Republic»

---

[15] See: Hackworth, Digest of International Law, Vol. II, 1941, p. 680.
[16] See: Griffin, «The emerging law of Ocean space», International Lawyer, 1967, pp. 548 et seq.

respectively, on coral reefs located outside territorial waters, four and one-half miles southeast of the Florida coast line, by engaging in dredging and filling operations. The Atlantis plan included the construction of 2,600 acres. The value of the waterfront property to be constructed was estimated to approach a billion-dollar figure. The United States sought to enjoin these activities, alleging that a trespass was being committed, since they were causing irreparable injury to the reefs, which were subject to the jurisdiction and control of the United States, and stating further that these activities were unlawful, since the entrepreneurs had not procured the authorization of the Secretary of the Army.

The District Court held that the reefs, as part of the seabed and subsoil of the outer continental shelf, were natural resources within the Outer Continental Shelf Lands Act[17] and the Convention an the Continental Shelf. The Court granted the injunctive relief sought, because it found that the failure of the defendants to secure the required permit made their activities unlawful. The Court held also, however, that the jurisdictional rights claimed by the United States constituted neither possession nor ownership, and thus were insufficient to support an action for common-law trespass.

The denial of the trespass claim was reversed on appeal to the Fifth Circuit Court, and the rights of the United States to the continental shelf were stated more broadly. The Court pointed out that the Convention on the continental shelf makes these rights exclusive in that if the coastal State does not make use of the continental shelf for exploration and exploitation of the natural resources, no one else may lay claim to them or undertake such activities without the express consent of the coastal State. The Court found that the trespass allegation was «inaccurately framed«, and the Government was in fact seeking «restraint from interference with rights to an area which appertains to the United States and which under national and international law is subject not only to its jurisdiction but to its control as well.»

Those rights, and the interest in preventing interference with them, were found sufficient by the Court to affirm the injunctive relief and uphold the trespass

---

[17] 43 U.S. C. § 1332(a) 1953.

claim.[18] By so holding, the court apparently created a new variety of State property rights which is less than sovereignty.[19]

American businessmen formed a financial syndicate, the Ocean Life Research Foundation, which had some hundred million dollars at its disposal and had offices in New York and London. In January 1972 the Republic Minerva was proclaimed and the flag of the new State was hoisted on the Minerva coral reefs, situated 400 miles north of New Zealand, south-east of the Fiji Islands, and 260 miles east of Tonga. The construction of an artificial island of 400 acres was started on the reefs.

As soon as the creation of the State Minerva had been announced, Tonga gave evidence of its hostility to the project of the American promoters. The same reaction came from the prime minister of the Fiji Islands. A conference of the neighbouring States (Australia, New Zealand, Tonga, Fiji, Nauru, Western Samoa, Cook Island) met on 24 February 1972. The head of the Tonga Government recalled that his country had claimed possession of the Minerva reefs as early as 1966, when a flag was fixed to a buoy near the reefs. With the approval of the Conference the forces of Tonga put an end to the construction work which had already been started on the reefs and at the same time to the Republic Minerva.[20]

In view of these precedents the Greek jurist Papadakis maintains the following thesis:

> *«Individuals and/or bodies corporate under municipal law, which have no legal existence independent of their respective sovereign States, cannot establish new sovereign States under existing international law through the construction of artificial islands on the high seas, i.e. through the construction of artificial territory, subsequently claimed as unoccupied territory.»* [21]

This categorical assertion originates on the one hand from the adoption without criticism of the arguments by means of which it was attempted to legitimatise the abolition of new States being formed on artificial islands and installations on

---

[18] U.S. v. Ray, 423 F 2d 16; 5th Cir. 1970.
[19] See: Dorshow, «International legal implications of offshore terminal facilities», Texas International Law Journal 1974, pp. 218-219.
[20] Revue générale de Droit international public, 1973, pp 533 - 534
[21] The International Legal Regime of Artificial Islands, 1977, p. 114.

the high seas and on the other hand from a premature generalization. In justification of the intervention, use was made (except in the case of the Republic Minerva, where advantage was taken of a title deduced from an alleged previous occupation) of an excessively broad conception of the powers to which the coastal State is entitled in respect of the continental shelf. This method appears incompatible with the Letter and the Spirit of the Convention of 1958, which constitutes the international law applying to this subject. The Convention defines exhaustively the rights which the coastal States can exercise on the continental shelf. Essentially, these rights are nothing but exceptions to the rule of the freedom of the high seas and to the legal status of *res omnium communis* of the subsoil of the high seas, which constitute the common law on international relations in this matter. According to the basic principle of every generally accepted juridical interpretation, originating from Roman law, the exceptions to the rule must be interpreted in a narrow sense. The restrictive interpretation must be applied when the rights of the coastal States to the continental shelf are concerned.

One of the most eminent writers on international low, *Max Huber,* the first President of the Permanent Court of International Justice, refused to recognize any juridical value in the principle of contiguity, by virtue of which the coastal State was assumed to be entitled under international law to extend its jurisdiction, because of its geographical position, to the formations situated outside its territorial sea. In his arbitral award in the Case of the Island of Palmas (1928) he said:

> *"Although States have in certain circumstances maintained that islands relatively close to their shores belonged to them in virtue of they geographical situation, it is impossible to show the existence of a rule of positive international law to the effect that islands situated outside territorial waters belong to a State from the mere fact that its territory forms the* terra firma *(nearest continent or island of considerable size). Not only would it seem that there are no precedents sufficiently frequent and sufficiently precise in their bearing to establish such a rule of international law, but the alleged principle itself is by its very nature so uncertain and contested that even Governments of the same State have on different occasions maintained contradictory opinions as to its soundness. The principle of contiguity, in regard to islands, may not be out of place when it is a question of allotting them to one State rather than another, either by agreement between the Parties or by a decision not necessarily based on law, but as a rule establishing ipso jure the presumption of sovereignty in favour of a particular State; this principle*

would be in conflict with what has been said as to territorial sovereignty and as to the necessary relation between the right to exclude other States from a region and the duty to display therein the activities of a State. Nor is the principle of contiguity admissible as a legal method of deciding questions of territorial sovereignty; for it is wholly lacking in precision and would in its application lead to arbitrary results.»[22]

The tendency to extend the jurisdiction of the coastal States to artificial islands and installations on the high seas which are not used for purposes of exploration or exploitation of the natural resources of the continental shelf is manifestly contrary to the Convention of 1958. This results unequivocally from the attitude of the Seabed Committee of the U.N., in preparation for the Third U.N. Conference on the Law of the Sea, which considered the following Belgian observation with respect to the Continental Shelf Convention:

«It follows clearly from these provisions (Article 2) that an installation which is not used for the exploration or exploitation of the natural resources of the continental shelf does not come under the jurisdiction of the coastal State.»[23]

III. The specific legal status of the territory of the Principality of Sealand

1. The legal status of the platform ‹Roughs Tower› before the occupation

What distinguishes the creation of the Principality of Sealand essentially from the attempts made to form a State upon artificial islands or installations on the high seas is that in the other cases the founders intended to construct an island or an installation for purposes of establishing a State thereon. The platform ‹Roughs Tower›, on the contrary, which constitutes the territory of Sealand, was constructed by the British Army during World War II for military purposes on the high seas. After the termination of the war Great Britain abandoned the

---

[22] U.N. Reports of International Arbitral Awords, Vol. II, pp. 854-855.
[23] The representative of Belgium in a letter to the Secretary General of the U.N. – U.N. Doc. A/AC.138/35, 3 May 1971.

installation. International law recognizes dereliction as a mode of losing sovereignty over a portion of a State's territory. Dereliction frees a territory from the sovereignty of the present owner-State. It is effected through the owner-State completely abandoning territory with the intention of with drawing from it, thus relinquishing sovereignty over it *(animus dereliquendi)*. Professor Rousseau formulates the rule of international law as follows:

> *«Du défaut d'effectivité dans l'exercice des compétences étatiques résulte la perte de la souveraineté par l'abandon du territoire.»* [24]

Apart from the abandonment since 1945 of the platform ‹Roughs Tower›, the subsequent attitude of the British Government furnishes additional proof of the *animus dereliquendi.* The United Kingdom ratified the Convention on the Continental Shelf on May 11, 1964 and thus completed the number necessary to bring it into force among the ratifying States.[25]

In those days the platform had been disused and abandoned for nearly twenty years. The British authorities during that whole period had not exercised any State function in respect of ‹Roughs Tower›. According to Article 5, paragraph 5 of the *Continental Shelf Convention* any installations constructed on the continental shelf which are abandoned or disused must be entirely removed. Yet the British Government did not take any measure to that effect. The British authorities were apparently of the opinion that the platform comes no longer under their jurisdiction, and that the responsibilities and obligations resulting from Article 5 of the Convention are not incumbent upon Great Britain in respect of this installation. Consequently, the platform ‹Roughs Tower› in 1967 incontestably had the legal status of *res nullius*, and thus admitted of occupation. This is admitted in connection with a concrete case even by a British Court (see p.28 infra).

2. The conditions of occupation of territory under international law

Occupation is the act of appropriation by an occupant by which the latter internationally acquires such territory, since it does not belong at the time to any State. The conditions of the validity of the occupation can be inferred from

---

[24] Droit international public, Vol III, 1977, p. 158

international jurisprudence. According to the arbitral award in the Island of Palmas case:

> *«Titles of acquisition of territorial sovereignty in present-day international law either are based on an act of effective apprehension, such as occupation or conquest, or like cession ...» «The growing insistence in international law, even since the middle of the 18th century, that an occupation shall be effective would be inconceivable if effectiveness were required only for the act of acquisition and not equally for the maintenance of the right. If the effectiveness has above all been insisted on in regard to occupation, this is because the question rarely arises in connection with territories in which there is already an established order of things.»*[26]

According to the arbitral award of Victor Emmanuel III, King of Italy, on the definition of the frontier between British Guyana and Brazil (1904):

> *« ... to acquire the sovereignty of regions which are not in the dominion of any State, it is indispensable that the occupation be effected in the name of the State which intends to acquire the sovereignty of those regions. … The occupation cannot be held to be carried out except by effective, uninterrupted, and permanent possession being taken in the name of the State, and a simple affirmation of rights of sovereignty or a manifest intention to render the occupation effective cannot suffice.»*[27]

Decision of Victor Emmanuel III, King of Italy, on the subject of the Clipperton Island (1931):

«It is beyond doubt that by immemorial usage having the force of law, besides the animus occupandi, the actual, and not the nominal, taking of possession is a necessary condition of occupation. This taking of possession consists in the act, or series of acts, by which the occupying State reduces to its possession the territory in question and takes steps to exercise exclusive authority there. Strictly speaking and in ordinary cases, that only takes place when the State establishes in the territory itself an organization capable of making its laws respected. But this step is, properly speaking, but a means of procedure to the taking of possession, and therefore, is not identical with the latter. There may also be cases where it is unnecessary to have recourse to this method.»[28]

---

[25] U.N. Monthly Chronicle, June 1964, p. 114.
[26] U.N. Reports of International Arbitral Awards, Vol. II, pp. 838-839.

[27] U.N. Reports of International Arbitral Awards, Vol. XI, p. 21.
[28] U.N. Reports of International Arbitral Awards, Vol. II, p. 1111. English text in American Journal of International Law, 1932.

The Permanent Court of International Justice speaks in its judgment on the legal status of Eastern Greenland (1933) about

> *"two elements necessary to establish a valid title to sovereignty, namely: the intention and the will to exercise such sovereignty and the manifestation of State activity.»*[29]

All those awards conveyed the same idea. The validity under international law of the acquisition of a territory without a master *(res nullius)* by title of occupation is subject to two conditions: a) *animus occupandi*, i.e. the intention and the will of the occupant to subject the territory which he has seized to his rule (subjective element); b) some manifestation of effective and continual exercise of the power of the State over this territory (objective element).

Occupation of a territory without a master under circumstances analogous to those of the occupation of ‹Roughs Tower› still takes place in the present era. In February 1968 Spanish marine forces disembarked in the small island of Alboran, situated in the Mediterranean on the 36th parallel. The sailors planted the Spanish flag on the island and established a control service, thus wishing to indicate plainly the sovereignty of Spain[30]. International practice sets aside the condition of effective exercise of State authority if an uninhabited territory is concerned. In the Case of the Clipperton Island it was stated:

> *« ... if a territory by virtue of the fact that it was completely uninhabited is, from the first moment when the occupying State makes its appearance there, at the absolute and undisputed disposition of that State, from that moment the taking of possession must be considered as accomplished, and the occupation is thereby completed ...»*

On that hypothesis the animus occupandi, manifested by symbolical acts, such as the hoisting of the occupant's flag, are sufficient to establish his sovereignty. In the Eastern Greenland case the measures of an administrative character taken by the Danish Government in respect of this territory were, in the Court's opinion, sufficient proof of will and intention, and were at the same time considered effective exercise of the powers of the State. The validity of the acquisition of a territory by title of occupation is not subject to the condition of notification, i.e. there is no obligation under international law to communicate the fact of the occupation to the neighbour States.

---

[29] P.C.I.J. Series A/B, Na. 53, p. 63.
[30] Revue générale de Droit international public, 1968 p. 1063.

> *«An obligation to notify to other Powers the establishment ... of sovereignty ... did not exist.»*[31] *»The regularity of the French occupation has also been questioned because the other Powers were not notified of it ... There is good reason to think that the notoriety given to the act, by whatever means, sufficed ...»*[32]

On the basis of the analysis of international jurisprudence on this matter we must reach the conclusion that the taking of possession of the platform ‹Roughs Tower› in 1967 by the group directed by Mr. Roy Bates with the intention of establishing an independent community, along with the fact that this group installed itself there and organized a public authority which has henceforth exercised effectively and uninterruptedly the functions of a State, has fulfilled the conditions required in international law for the acquisition of sovereignty by title of occupation over a territory without a master.

3. The occupation of a territory without a master by individuals

This question assumes special importance in the present case. In particular, according to a current in the legal literature, solely already existing States or individuals acting an behalf of an existing State are entitled under international law to occupy a territory without a master. In the last-mentioned case the occupation only produces effects with the subsequent approval of the State on behalf of which the individuals have acted. According to *Hall*:

> *«In order that occupation shall be legally effected it is necessary, either that the person or persons appropriating territory shall be furnished with a general or specific authority to take possession of unappropriated lands on behalf of the State, or else that the occupation shall be subsequently ratified by the State.»*[33]

On the basis of Hall's opinion, *Oppenheim* writes in the same order of ideas that

> *«it must be emphasized that occupation can only take place by and for a State; it must be performed in the Service of a State, or it must be acknowledged by a State after its performance.»*[34]

In contrast with this view it should be recalled that the taking of possession of an unoccupied region by a group of individuals is one of the causes of a peaceful nature which have given rise to new States in the course of history.

---

31 Arbitral award in the Island of Palmas case, p. 868.
32 Arbitral award in the Clipperton Island case, loc.cit.
33 International Law, 8th ed., 1924, p. 128.

The Republic of Liberia emerged in the first quarter of the XIXth century as the result of private initiative undertaken for the benefit of liberated American negro slaves who over a period settled down in a West-African coastal strip. It received general recognition as a new sovereign State by 1847. Toward the middle of the XIXth century the Dutch settlers, dissatisfied with their treatment by the British colonial authorities, decided to emigrate from the Cape Colony to the north and there founded States of their own, the *Orange Free State* (1848) and the *Transvaal* (1852), both on stateless territory. The case of Sir James Brooke, who in 1841 acquired *Sarawak*, in Northern Borneo, and established an independent State there, of which he became the sovereign, may also be cited. Sarawak was a British protectorate till 1946, when by voluntary – though somewhat disputed – cession it became a Crown colony. Another case, although not bearing upon the acquisition of territorial sovereignty, raises an analogous problem in respect of terra nullius. In 1929 *Jan Mayen Island,* as «no man's land», was declared to be under the sovereignty of Norway, and the Norwegian Meteorological Institute took possession of the whole island. A Norwegian subject contended that according to international law he was proprietor of that part of the island which he had occupied in 1921, when the whole island was no man's land. The Supreme Court of Norway held in 1932 that the plaintiff was entitled to undertake a private occupation and affirmed his proprietary rights.[35]

Professor *Schwarzenberger* takes a flexible attitude in this matter, which might be considered representative of the current view in the legal literature. According to him:

> *«The rules governing recognition are so elastic that there is no limit to the objects which, by recognition, may be transformed into subjects of international law. Thus, the international personality of the individual is not a question of principle, but simply of fact.»*[36]

It follows from the above that neither practice, nor the literature on international law confirms the absolute value of the thesis according to which individuals acting in their own name did not have legal capacity to occupy a territory without a master. But apart from the general conclusions, the maintenance of a

---

[34] International Law, Vol. I, 5th ed., 1958, p. 555.
[35] Annual Digest 1933-34, Case No. 42.
[36] A Manual of International Law, 5th ed., 1967, Vol. I, p.80.

contrary point of view would in the present case lead to a paradoxical and absurd result: originally British subjects would have occupied a territory for Great Britain which the latter had abandoned.

4. The significance of acquiescence in the present case

Judge *Sir Gerald Fitzmaurice* has explained the juridical effect of acquiescence as follows:

> *«Acquiescence can operate as a preclusion or estoppel in certain cases, for instance where silence, on an occasion where there was a duty or need to speak or act, implies agreement, or a waiver of rights, and can be regarded as a representation to that effect.»*[37]

According to Professor D.H.N. Johnson

> *«acquiescence is implied in cases where the interested and affected State or States have failed to manifest their opposition in a sufficiently positive manner. The effect of the acquiescence of the interested and affected State or States in the exercise of authority by another over a definite territory for a sufficient period of time is the legal recognition of the right of that State to exercise sovereignty over the area concerned.»*[38]

This principle, expressed in the adage *«qui tacet consentire videtur»*,was repeatedly applied by the International Court of Justice. In the Fisheries case the Court said:

> *«From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States». «The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact. For a period of more than sixty years the United Kingdom Government itself in no way contested it.» «The United Kingdom Government argued that the Norwegian system of delimitation was not known to it and that the system therefore lacked the notoriety essential to provide the basis of an historical title enforceable against it. The Court is unable to accept this view. As a coastal State an the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the Sea and concerned particularly to defend the freedom of the seas, the United Kingdom could not have been ignorant of the Decree of 1869 ...»*

On this ground the Court reaches the conclusion that:

---

37 Separate opinion in the case concerning the Temple of Preah-Vihear. I.C.J. Reports, 1962, p. 62.

38 «Acquisitive prescription in international law», British Yearbook of International Law, 1950, pp. 353-354.

«The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom.»[39]

In the case concerning the rights of nationals of the United States in Morocco the Court stated:

> *« ... the situation in which the United States continued after 1937 to exercise consular jurisdiction over all criminal and civil cases in which United States nationals were defendants, is one that must be regarded as in the nature of a provisional situation acquiesced in by the Moroccan authorities.»*

The Court finds, consequently, that the United States is entitled, by virtue of its capitulary rights and privileges, to continue the exercise in Morocco of consular jurisdiction.[40]

The occupation of the platform ‹Roughs Tower› and the foundation of the Principality of Sealand has been known to the British authorities for more than ten years. This is how *Max Huber* has stated it in his arbitral award in the Island of Palmas case:

> *«A clandestine exercise of State authority over an inhabited territory during a considerable length of time would seem to be impossible.»*[41]

The notion «considerable length of time» is a relative one and depends in a large measure on the geographical situation of the territory concerned. The duration of that period was evidently longer in the case of an island situated in the Pacific Ocean far from the ordinary navigation routes than in the case of the platform ‹Roughs Tower›, situated in the southern part of the North Sea, at some miles from the English coast in the midst of the most busy maritime traffic of the world. The authorities of Sealand hoisted their flag as soon as the Principality was founded; the creation of a new State in that place could not therefore remain unobserved.

Moreover, Sealand once made use, in 1968, of the right of self-defence to pave the way for the unlawful action of an English merchant vessel. In consequence of

---

[39] I.C.J. Reports, 1951, pp. 138-139.
[40] I.C.J. Reports, 1952, pp. 200-201.
[41] Loc.cit., p. 868.

the denunciation of the captain of the vessel concerned, penal proceedings were started against some inhabitants of Sealand before the British judicial authorities (Essex Assizes). *Mr. Justice Chapman* held in his judgment of 25 October 1968:

> *«Roughs Tower is one of a number of steel concrete erections built during the war as emplacements for anti-aircraft guns. It seems to have been abandoned by the Ministry of Defence after the war, and in 1967 Mr. Bates took occupation of it.» «English Courts only have jurisdiction in territory over which British sovereignty prevails, i.e. the soil of Great Britain and its adjacent islands and territorial waters up to the three-mile limit.»*

The learned Judge referred to the judgment of Mr. Justice Lindley in the case «The Queen against Keyn», which, in his opinion, is a classic exposition of the basic principles applicable in the Sealand case.

> *«Every State has full power to enact and enforce what laws it thinks proper for the preservation of place and the protection of its own interests, over those parts of the high seas which adjoin its own coasts and within three miles thereof. But that beyond this limit ... no State has any power to legislate save over its own subjects and over persons an board ships carrying its flag.»*

Furthermore:

> *«It is said, indeed, that in the absence of clear evidence of intention to the contrary a general statute is not to be construed to extend to foreigners; and this is quite true of foreigners out of the limits to which the statute is geographically applicable, but it is not true of foreigners within those limits. In fact, this rule of construction is another mode of expressing the more general rule that statutes are to be construed so as to apply only to those persons and places which are within the dominion of the legislative power.»*

In stating that Sealand is not subject to the sovereignty of Great Britain and that the force of the British laws does not extend to Sealand, Mr. Justice Chapman declared himself incompetent to judge the actions which took place in Sealand, because this territory does not come under British jurisdiction. The attitude of Great Britain towards Sealand was all the more important because the British authorities did not hesitate to bring an action against occupants of abandoned artificial installations situated on the continental shelf if it appeared to them based on law to a certain extent.

In the case of Regina v. Kent *Justices ex parte Lyle*[42] a British corporation was convicted of violating the Wireless Telegraphy Act of 1949[43] by operating a commercial radio station on an abandoned World War II anti-aircraft structure located in the Thames estuary. The structure is fixed to the seabed almost five miles from the nearest low-water mark on the coast and less than three miles from a sand-bar which is above water at low tide. The act by its own terms is applicable within the limits of territorial waters. The Court held that it had jurisdiction because of 1964 legislation implementing the articles of the Geneva Convention on the Territorial Sea, which made the sand-bar the baseline for measuring territorial waters. The defendants argued the act was subject to the XIXth-century definition of territorial waters as measured from the low-water mark on the coast. The Court rejected this contention because international law changes from time to time and municipal acts may be modified accordingly to conform to such changes without being bound by previously accepted definitions.

The prolonged inactivity of the British authorities could hardly be interpreted otherwise than as the proof of their acquiescence in the situation created by the occupation of the platform ‹Roughs Tower›. Their abstention from any kind of action against Sealand, a fortiori the express recognition in the judgment of Mr. Justice Chapman of the fact that Sealand is situated outside the limits of Great Britain's sovereignty and is not subject to British jurisdiction, expresses the conviction that the occupation effected in 1967 by Mr. Roy Bates is valid under international law and has produced all the effects which international law attaches to the occupation of a territory without a master; from that moment Great Britain did not have any legal title to an action against Sealand. In other words, the British authorities have tacitly taken cognisance of the existence of the Principality of Sealand.

---

42 (1967) All E.R. 560 (Q.B. 1966).
43 Wireless Telegraphy Act of 1949, 12 & 13 Geo. 6, c. 54.

IV. International recognition of a new State

1. Views on the legal character of recognition

With regard to this there are two theories in international law:

a) According to the constitutive theory a new State acquires subjectivity under international law solely through recognition by the existing States. Such recognition therefore has constitutive effect, for it creates the new State as a new subject of international law. This was the prevailing doctrine up to the middle of the nineteenth century. Since that time the doctrine of the constitutive effect of international recognition was gradually thrust into the background by that of the declaratory character of recognition. By way of execution some jurists still accept the constitutive theory. Thus, according to *Kelsen*: «In view of the essential legal effect which the act of recognition has on the relation between the recognition and the recognized State it must be considered as a constitutive act, just as the act by which a court ascertains that a contract has been concluded or a crime committed. No fact has, by itself, legal effects; it has legal effects only together with the act by which the existence of the fact is ascertained. An act which has this legal effect is ‹constitutive›.»[44]

b) The doctrine of the declaratory character is based on the consideration that a State is formed when its necessary elements are found to be combined (see pp.1-2 supra). If the presence of these elements can be demonstrated, the new State has been formed. Its recognition by other States is only necessary to enable it to enter into contacts with other States.

The new State, therefore, from the moment of its formation has possessed sovereignty in its internal and external affairs, but the execution of its powers in international relations is found possible only if the new State is recognized as a subject of international law by other States. According to the opinion of the great majority of the writers on international law the subjectivity under international law is not granted to the new State through recognition this act only implies the establishment of the existence of a new subject of international low. The classic exposition of this theory is found in *Rivier*:

> *«L'existence de l'Etat souverain est indépendante de sa reconnaissance par les autres Etats. Cette reconnaissance est la constatation de fait qui se*

---

[44] Principles of International Low, 2nd ed., 1966, pp. 271-272

trouve désormais fondée en droit. C'est l'attestation de la confiance qu'ont les Etats en la stabilité du nouvel ordre de choses.»[45]

The doctrine of the declaratory character of recognition was accepted fairly generally. According to Article 3 of the American Convention on Rights and Duties of States of 1933:

«The political existence of the State is independent of recognition of 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.»[46]

The Institute of International Law also endorsed this view. According to Article 1 of the Resolution an the recognition of new States and governments (1936):

«La reconnaissance d'un Etat nouveau est l'acte libre par lequel un ou plusieurs Etats constatent l'existence sur un territoire déterminé d'une société organisée, indépendante de tout autre Etat existant, capable d'observer les prescriptions du droit internationale. La reconnaissance a un effet déclarative. L'existence de l'Etat nouveau avec tous les effets juridiques qui s'attachent à cette existence n'est pas affecté par le refus de reconnaissance d'un ou plusieurs Etats.»[47]

This view also appears to have been applied in international jurisprudence. In the case of the Deutsche Kontinental-Gasgesellschaft the German-Polish Arbitral Tribunal stated that:

«... la reconnaissance d'un Etat est non pas constitutive, mais simplement déclarative. L'Etat existe par lui-même et la reconnaissance n'est que la constatation de cette existence.»[48]

From the recent legal literature we cite e.g. E. Suy, associate Secretary-General of the United Nations, who writes that *«La reconnaissance ne crée pas son sujet mais constate son existence.»*[49] In his work published in 1977, Charles Rousseau, professor at the Faculty of Law in Paris, sums up the present position of the science of international law on this question as follows:

«La reconnaissance n'est donc rien d'autre que la prise en considération ou la constatation d'une situation de fait susceptible de produire des effets

---

[45] Principles du droit des gens, 1896, Vol. I, p. 57
[46] Loc.cit. at No. 3.
[47] Annuaire de L'Institut de Droit international. 1936, Vol. II, p. 300-305
[48] Loc. cit., at No. 2.
[49] Les actes unilatéraux en droit international public. 1962, p. 192.

de droit, et c'est là un caractère qui a été mis en évidence par la doctrine contemporaine, celle-ci voyant dans un sens affirmatif sur l'existence d'un état de choses donné, constate l'existence d'un fait destiné à servir de base à des rapports juridiques ultérieurs ou acquiescence à une modification réalisé sans sa participation.»[50]

2. The conditions for recognition

As regards the legal grounds on which a State proceeds to recognize a new State, these have undergone certain changes in international practice in the course of time. Since the new States were usually formed in consequence of secession from some existing State, the problem of international recognition remained associated for a long time with the question of the legality of the secession with respect to the constitutional law of the mother country. The opponents of the legality principle set against this the factual authority exercised by the new State in a given territory, i.e. the effectiveness of the new legal order of the State.

This question was stated very sharply when in 1778 France recognized the independence of the United States, which were still considered as rebellious subjects by Great Britain in those days. In the relative exchange of notes the *French Foreign Minister D'Aiguillon* relied on the principle of effectiveness. On the basis of the fact that the Americans exercised factual authority in their territory France looked upon their independence as existing, without taking into account the legality of the secession

« … pour regarder cette indépendance comme existante, sans être obligé d'en examiner la légalité. Il suffit pour la justification que les colonies aient établi leur indépendance, non seulement par un acte solennel, mais aussi par le fait qu'elles les aient maintenue contre les efforts de la mère patrie.»[51]

Later Great Britain also took a more liberal view. *British Prime Minister Canning* in 1823 established the conditions of the new Latin-American States seceded from Spain and Portugal as follows:

a) the new States have openly proclaimed their independence;
b) they exercise factual authority in the territory to which they lay claim;

---

[50] Op. cit. at pp. 23, 528
[51] Martens, Causes célèbres du droit des gens, Vol. III, Chap. 2.

c) sufficient stability of the new States is to be expected;
d) they have abolished the slave trade. Nevertheless, the question of legitimacy still played a part in 1862, on the occasion of the recognition of the new Kingdom of Italy.

The great realist Bismarck, however, had a different opinion of the matter:

> *«Ich kann mich überhaupt nicht recht von der Richtigkeit der Theorie überzeugen, daß die Anerkennung eines neuen Staates irgendwelche rechtliche Billigung der Art, wie derselbe entstanden ist, in sich schließe; sie besagt vielmehr nur, daß man der neuen Regierung eine hinreichende Dauer zutraut, um im Interesse der eigenen Unterthanen die regelmäßigen Geschäftsbeziehungen mit ihr einzurichten.»*[52]

Approximately from 1870 onwards the legitimate origin of a new State is no longer relevant for its recognition.

From international practice one may infer the conditions for recognition of a new State required by present-day international law, i.e. fix the conditions which have to be satisfied by the new State for its recognition. In the first place it is necessary to differentiate between internal and external conditions for recognition. The internal conditions are connected with the organization of the new State. This organization must have reached the required degree of consolidation from which it is reasonably to be expected that the state of affairs realized by the new State will persist. In other words, the stability of the new legal order of the State can be presumed. In general it is considered sufficient for compliance with this condition that the government of the new State should exercise exclusive authority in its territory and should be capable of having its authority respected. As to the external conditions for recognition, these relate to the presumable attitude of the new State towards the international community. The new State is eligible for recognition if its organization in itself affords guarantees that it is able (objective element) and at the same time prepared (subjective element) to comply with the generally recognized rules of international law in its relations with other States.

These conditions for recognition can ultimately be reduced to one basis: the effectiveness of the legal order of the new State. If the legal order of the new State in its territory is effective, and this circumstance enables it to exercise the

---

[52] Fontes juris gentium Series B, sectio 1, tomus 1, pars 1, S. 150.

powers arising from sovereignty and to satisfy the obligations of international law, the other States are wont to recognize the new State.

Recognition of new States always takes place on the tacit condition that they accept the obligation to conform to the general rules of international law in international relations. The Congress of Berlin (1878) explicitly laid down this condition on the occasion of the recognition of Rumania's independence:

> *«La Roumanie, demandant à entrer dans la grande famille européenne, doit accepter les charges et même les ennuis de la situation dont elle réclame le bénéfice.»*[53]

There exists therefore a *praesumptio juris* in favour of the binding force of the general rules of international law, also in respect of the new States which in the course of history had no possibility to contribute to the formation of these rules.

There does not exist any obligation in international law to recognize a new State. Every State is itself entitled to decide whether, in the case of a new State, the conditions for recognition – required in international practice – are or are not present, and consequently to recognize or refuse to recognize the new State. In practice the grant of recognition is, however, greatly affected by political considerations.

The recognition has solely *‹inter partes›* effect, i.e. in the relations between the State recognizing the new State and the new State that is recognized. The new State may therefore be recognized by some States, whilst other States refuse to recognize it.

To conclude: the public authority of Sealand represents the supreme and exclusive power in its territory. During the eleven years of its existence the Principality has given evidence of its stability and the effectiveness of its legal order. The smallness of its territory is not decisive for its capacity as a State in international law. The Foreign Minister of Sealand accepted, in his letter of November 5, 1976 addressed to the Secretary-General of the United Nations, the obligations resulting from the Charter of the United Nations. *A fortiori,* on January 26, 1977 the Government of Sealand recognized the compulsory jurisdiction of the International Court of Justice. The Constitution of the Principality guarantees the fundamental human rights. These acts do not leave

any doubt that Sealand is prepared to conform in its relations with the other States to the general rules of international law.

It follows from the above that the Principality of Sealand thus satisfies the conditions for international recognition as a new State. Nevertheless, according to international law, the political existence of Sealand is independent of recognition by other States. This existence is not affected by a refusal of recognition.

3. The forms of recognition of a new State

International practice makes a distinction in respect of the degree of consolidation of the organization of the new State as well as in respect of the perspectives of stability of the legal order of the new State between *de jure* recognition and *de facto* recognition. If there is doubt as to the stability of the new State, which exercises factual authority in a given territory at a given moment, the existing States may confine themselves to recognizing the new State *de facto*, i.e. they recognize the legal order of the new State as a factually existing authority. *De facto* recognition is essentially a provisional recognition. If the new State shows its stability, the States recognizing it *de facto* proceed to recognize it *de jure* in due time. If not, *de facto* recognition is repealed. *De jure* recognition shows confidence in the stability of the new State. This recognition has a definitive character and retroactive effect. This means that the *de jure* recognition, even if granted many years after the formation of a new State, retroacts to the moment at which the new State began to have factual authority.

With respect to recognition international law does not provide for obligatory formalities. The recognition can be expressed in a direct way, e.g. through the conclusion of an agreement concerning recognition or through an exchange of diplomatic notes, and can also take place tacitly by means of *facta concludentia.* The following facts are to be considered as such: entering into diplomatic or consular relations, or conclusion of a bilateral convention with the new State on any desired subject.

---

53 Fontes juris gentium. Series B, sectio 1, tomus 2, pars 1, p. 92

On the other hand it is an established fact in international practice that joint participation in a multilateral international conference or joint participation in a multilateral international convention does not involve recognition. A simple contact for practical reasons, too, does not imply recognition. Even *de jure* recognition of a new State does not result automatically in entering into diplomatic relations. International law recognizes no such obligation. Every State has the right to decide for itself with what other States it wishes to maintain diplomatic relations. The rule of customary international law relating to this is laid down in Article 2 of the Vienna Convention on Diplomatic Relations, dated 18 April 1961[54]:

> *«The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.»*

[54] Treaties of the Kingdom of the Netherlands, 1962, Na. 101.