

## **"REPUBLICS OF THE REEFS:" NATION-BUILDING ON THE CONTINENTAL SHELF AND IN THE WORLD'S OCEANS**

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Abalonia, the Grand Capri Republic, Taluga, the Duchy of Sealand, Minerva, the Kingdom of Humanity—a quick flip through the *Statesman's Yearbook* will reveal *nothing* about these states. Their representatives do not vote at the United Nations, their passports, stamps, and coins gather dust. This study will deal with countries on the continental shelf over which the waters have figuratively closed—not only do they not exist today, they may never have been more than the gleam in their founders' eyes. Or perhaps they *were*.

The oceans have always attracted nation builders; allegedly there were "pirate republics" in the early 18th century<sup>1</sup> and some years later the Mutiny at the Nore was dubbed "the Floating Republic."<sup>2</sup> The freedom as well as the isolation offered by a maritime location could both inhibit the control exercised by established powers and encourage the formation of alternative political societies, much as Darwin found that separate ecosystems had evolved on different islands of the Galapagos chain. Proof of this political axiom is supplied by the current makeup of the Pacific; consisting of less than 1% of the earth's surface, it nonetheless boasts the separate States of The Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, the Solomon Islands, Tonga, Tuvalu, Vanuatu, and Western Samoa, to name but a few.<sup>3</sup>

However, this study is not of *successful* island states. It does not consider attempts to "subdivide" such nations through secession or other processes, of which the continuing Bougainville controversy,<sup>4</sup> the attempted

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1. See Samuel P. Menefee, *Scourges of the Sea: Piracy and Violent Maritime Crime*, 1 MAR. POL'Y REPORTS 13, 14 (1989); AUGUSTE TOUSSAINT, *HISTORY OF THE INDIAN OCEAN* 144-46 (June Guicharnaud, trans. 1966); PHILIP GOSSE, *THE HISTORY OF PIRACY* 200-01 (1932).

2. See G.E. MANWARING & BONAMY DOBREE, *THE FLOATING REPUBLIC: AN ACCOUNT OF THE MUTINIES AT SPITHEAD AND THE NORE IN 1797*, 183 (1935).

3. See Bryan L. Isacks, *Continent*, in 7 *ENCYCLOPEDIA AMERICANA* 688 (1989); *THE WORLD ALMANAC AND BOOK OF FACTS* 1994, 736-828 (Robert Famigaetti, ed. 1993).

4. See generally Samuel P. Menefee, *The Bougainville Copper controversy*, in 7 *I.C.C. COMMERCIAL CRIME INTERNATIONAL* 6 (April, 1990).

secession of the southern Maldives as the United Suvadiva Islands Republic in 1959,<sup>5</sup> the split of Mayotte from the Comoros,<sup>6</sup> a separatist movement in Abaco in the Bahamas,<sup>7</sup> the Anguilla Revolt of 1969,<sup>8</sup> and the (failed) "Republic of Vemerana," on the island of Espiritu Santo in Vanuatu,<sup>9</sup> are but a few examples. Rather, it will investigate four distinct forms of "nation-building" on the continental shelf: 1) the appropriation of apparently unclaimed islets; 2) the promulgation of sovereignty over reefs or low-tide elevations; 3) the creation of states in shallow waters by dumping or other means; and 4) the erection of empires on totally artificial platforms. While each investigation will be illustrative rather than exhaustive, it is hoped that a few generalizations may be drawn in conclusion as to the reasons for the failure of these "reef republics."

### I. "SCEPTERED ISLES?" THE ORGANIZATION OF STATES ON ISLETS OF DUBIOUS STATUS

In considering the establishment of States on islets of dubious jurisdictional status, the field of inquiry is somewhat constrained. Gone are the days when an explorer could negotiate the reefs of a coral atoll, beach his boat on golden sands, and proclaim a new state, or that shipwrecked survivors, cast ashore on some unknown island, could wring out their garments and proceed

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5. See URMILA PHADNIS & ELA DUTT LUTHUI, MALDIVES: WINDS OF CHANGE IN AN ATOLL STATE 28-34 (1985).

6. See Philippe Decraene, et al., *Dependent States*, in 1975 BRITANNICA BOOK OF THE YEAR 228, 231 (1975).

7. See JOHN BEASANT, THE SANTO REBELLION: AN IMPERIAL RECKONING 54 (1984); which notes that

[i]n 1974 [Michael] Oliver became involved in another attempt at creating a new country, this time on the island of Abaco in the Bahamas. The scheme read like the plot of an elaborate political thriller. Agents provocateurs, using a local political movement and the community on the island as a springboard from which to launch the breakaway attempt, created an artificial independence party and manipulated public opinion towards support for secession from the central government in Nassau. A small paramilitary force, commanded by General Mitchell Livingston Werbell III, a man as ambitious as his name suggests, who ran a school for mercenaries called the 'Cobray International War School' . . . would take the necessary action on January 1st 1975, the day set for the Islands 'Independence.' Oliver's role within the operation was the creation of a syndicate of financial backers to underwrite the scheme and the preparation of the constitution. In late 1974 everything seemed on target for a successful declaration of independence, but when Werbell became involved in Senate investigations (involving the sales of the gun silencer he had designed) the scheme became too hot to handle and it all collapsed in confusion, following a three-way power struggle between Werbell, Oliver's financial syndicate and the independence movement in Abaco.

See also Sheila Patterson, *The Bahamas*, in 1975 BRITANNICA BOOK OF THE YEAR 98 (1975).

8. See Philippe Decraene, et al., *Dependent States*, in 1970 BRITANNICA BOOK OF THE YEAR 273, 276 (1970).

9. See generally BEASANT, *supra* note 7.

to found their own kingdom. Such plots may still exist in *fiction*,<sup>10</sup> but today most people do not dream the dreams of 19th-century sailors such as Samuel Comstock, King Harris of Nauru, Captain David O'Keefe, "King of Yap, Monarch of Mapia and Sovereign of Sonsoral" or M.P. Shiel.<sup>11</sup> However, there is one well-documented twentieth-century case involving attempted nation-founding under such circumstances, the Kingdom of Humanity.

A. A "Modeste Proposal." *The Kingdom of Humanity  
and the Republic of Morac-Songhrati-Meads*

These two countries, or one country, or none-at-all, depending upon one's viewpoint, were located in the island group more commonly known as the Spratley Islands.<sup>12</sup> According to the facts stated in the "Brief History of the Meads Islands," filed along with a formal affidavit at the American Embassy in Manila in late 1971, the island group was "discovered" by Captain James George Meads of the *Modeste* in the latter 1870s.<sup>13</sup> Meads

10. See ROSE MACAULAY, *ORPHAN ISLAND* (1924) (shipwrecked orphans establish a neo-Victorian State in the Pacific); EDGAR WALLACE, *EVE'S ISLAND* (1935) (adventurer sets up an independent republic on the Isle de Desolation in the South Atlantic).

11. See generally EDWIN P. HOYT, *THE MUTINY ON THE GLOBE* (1975); LAWRENCE KLINGMAN & GERALD GREEN, *HIS MAJESTY O'KEEFE* (1950). Comstock led a mutiny aboard a whaler in 1824, and intended to set up his own kingdom on a remote Pacific island, HOYT, *supra*, while "King Harris" was an escaped Australian convict who ruled Nauru in the latter nineteenth century, see KLINGMAN & GREEN, *supra*, at 108, 110, 115-16, 246. Perhaps the most interesting such ruler, however, was Captain David Dean O'Keefe, a former Confederate blockade runner, who was shipwrecked on Yap and, through cornering the market in its stone money, eventually became "King" of the island (as well as ruler of Sonsoral and Mapia (St. David's)). O'Keefe initially flew the Confederate Stars and Bars as his national flag, but subsequently exchanged this for the Union Jack, and then for a personally-designed ensign—"a green shamrock on a field of red, white and blue stripes over three green sprouting coconuts, a disc of white stone money, and the red letters, O.K." KLINGMAN & GREEN, *supra*, at 277. His reign survived the Spanish occupation of Yap, only to run foul of the Germans when they took over after the Spanish American War. See generally *id.* at 218, 240-41, 242-43, 244-45, 247-52, 262, 276-77, 279, 286, 301, 349-51, 354. But see *id.* at 350, quoting Mr. Hartridge, a Savannah lawyer employed by some of the O'Keefe heirs, to the effect that "O'Keefe was the biggest trader in the Carolines and in this way got to be called King . . . . Of course, there is no kingdom, or anything of that sort, and he did not govern the natives, who are under German rule." (citation omitted). The (presumed) death of O'Keefe and his sons in a typhoon, see *id.* at 345, 349, 354, is strangely similar to the fate of the founders of the Kingdom of Humanity, see *infra* text accompanying note 21. Matthew Phipps Shiel (1865-1947) alleged that "[h]is sea-trader father . . . [had] laid claim to the small uninhabited ISLAND of Redonda, near Antigua, and in a ceremony there crowned young Matthew king. On MPS's death the "crown" passed to John GAWSWORTH [Terence Ian Fytton Armstrong], who awarded titles of nobility to persons associated with Shiel, including Sayers, West, Edward SHANKS and Dylan Thomas . . . . On Gawsworth's death the title became clouded." *ENCYCLOPEDIA OF SCIENCE FICTION* 478, 1101-02 (John Clute & Peter Nicholls, eds. 1993). See also E.F. Bleiler, *M.P. Shiel, in 1 SUPERNATURAL FICTION WRITERS: FANTASY AND HORROR* 361 (E.F. Bleiler, ed. 1985).

12. This group is located west of Palawan Island in the Philippines, to the northwest of the state of Sabah in Malaysia, and due north of Sarawak.

13. MARWYN S. SAMUELS, *CONTEST FOR THE SOUTH CHINA SEA* 169 (1982).

named the area the "Humanity Sea,"<sup>14</sup> designated the major islet (currently known as Itu Aba) as "Meads Island," and staked a personal claim to several atolls.<sup>15</sup> "[H]e claimed the island for himself, established a colony on several of the islands and later conferred title to his son, Franklin N. Meads. The title is said to have 'passed down to a later generation which had immigrated to the United States,' and finally conferred upon 'the present exclusive owner and sole sovereign, Morton Frederick Meads,' Captain Meads's great-grandson."<sup>16</sup>

In 1914 various members of the colony formed the independent 'Kingdom of Humanity' with Franklin Meads as sovereign and with a capital on Meads Island (Itu Aba). . . . These and other settlers are said to have continuously occupied and developed the islands until World War II, at which time they were forced out of the islands by invading Japanese troops

. . . . Franklin Meads, having died in 1945, conferred title to the islands on his son, Josiah. However, Josiah died only one year later. As his son and sole heir, Morton F. Meads, was 'too young to rule,' the title of Chief of State was conferred . . . [elsewhere]. In order to further confirm title to the area, in 1946 . . . sovereignty markers [were buried] on most of the main islands in the archipelago.<sup>17</sup>

. . . The concern over title to the islands became necessary in 1946 when the Sultan Songhrati apparently sold his own 'rights of possession' to some of the islands to Mercedes Magsaysay, sister of the Philippine President, Ramon Magsaysay. However, in order to clear title to the area, Morton Meads is said to have subsequently purchased all such 'rights of possession' from Mercedes Magsaysay.

. . . The colony is said to have remained intact until 1959, at which time a dispute developed among the settlers, causing a splinter group . . . to establish a rival 'Republic of Morac-Songhrati-Meads' over part of the archipelago. However, the dispute was apparently resolved in 1963 when the two 'states' were merged . . . .<sup>18</sup>

However, as noted by Samuels in his study of the area, there are troublesome holes in this story. The affidavit fails to detail the way in which the founders came to the island. There is a similar dearth of information about Morton F. Meads, while some of the dates listed in the affidavit are questionable. Assuming that the founders were in their twenties in 1914, these nation-builders would have been rather elderly when the affidavit was

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14. An inappropriate cognomen at best; while "[t]he Spratly Archipelago has sometimes appeared on American and British maps under the designation 'Humanity Sea and Meads Islands,'" see *id.* at 168, the region is marked as a "dangerous area" on many charts, see *id.* at 197.

15. *Id.*

16. *Id.* at 169.

17. *Id.* at 169-70. Independent corroboration exists of the *rumored* activities of this group in the early 1950s. "Under the orders of President Magsaysay an official Philippine mission to make contact with the government of the Kingdom/Republic was sent out in 1951, but the mission failed because the government could not be found." *Id.* at 81 & n.21 (citing *Freedomland: Government states Position on Ibroglio over Isles*, 6 NEW PHILIPPINES 6-7 (Feb. 1974)).

18. SAMUELS, *supra* note 13, at 170.

filed in 1971.<sup>19</sup>

For those unimpressed with the 1971 filings, alternative versions of the events surrounding the Kingdom of Humanity are available.

According to other reports, the so-called "Kingdom of Humanity" was itself "discovered" by Morton F. Meads either just before or just after his discharge from the U.S. army in Manila in 1946. He is said to have found . . . others already resident on one of the islands— . . . [one individual] having already formed a kingdom with himself as monarch. Meads apparently agreed to act as the commercial agent for the group, and subsequently established two companies chartered in Manila for the purposes of exploiting the mineral resources and pearl-beds of the area. Together with the others, furthermore, he is said to have concocted the story of the founding of the Kingdom of Humanity not only in order to lay claim to the islands, but also to engage in such nefarious activities as a fake postage stamp enterprise aimed to swindle philatelists around the world. For this and other reasons, Meads was arrested in Manila in 1955, but all charges were apparently dropped.<sup>20</sup>

Meads was lost sight of until 1972 "when he is said to have written to President Marcos, President Chang K'ai-shek and the Secretary-General of the United Nations on behalf of his claim."<sup>21</sup> However, in June of the same year, the Kingdom suffered an irreparable blow when the bulk of its founders drowned at sea. According to press reports, they were killed when the "50-ton motor ketch, the *E. Pluribus Unum*, was hit by . . . typhoon 'Konsing' and sank somewhere west of Mindoro Island."<sup>22</sup> So much for Humanity Sea!

## II. "TURN OF THE TIDE:" STATES CREATED ON REEFS OR OTHER LOW-TIDE ELEVATIONS

At least two examples of this practice exist: a) Atlantis, Isle of Gold, otherwise known as the Grand Capri Republic, and b) Minerva.

### A. *Triumph (Reef) and Tragedy: Atlantis, Isle of Gold, the Grand Capri Republic, and Uncle Sam*

Certainly the best known *American* example of the attempted founding of a State is that connected with the Grand and Triumph Reefs, east of and parallel to the Florida Keys, which is enshrined in a series of Federal Court

19. *Id.* at 171.

20. *Id.* (citing A.V.H. HARTNEDORP, HISTORY OF INDUSTRY AND TRADE OF THE PHILIPPINES: THE MAGSAYSAY ADMINISTRATION 209-11 (1961) and Hsiao Shi-ching, *The Nanshas (Spratlys) Dispute*, in ANNALS OF THE PHILIPPINE CHINESE HISTORICAL ASSOCIATION 63-67 (May, 1976)).

21. SAMUELS, *supra* note 13, at 171 (citing Shi-ching, *supra* note 19, at 66).

22. *Id.* at 171 (citation omitted).

decisions.<sup>23</sup> According to the 1965 *Ray* decision, Louis M. Ray, president of the defendant, Acme General Contractors, Inc., filed an application for a permit to dredge and bulkhead in the Triumph Reef waters. A close inspection of the application showed that Ray and Acme planned to dredge the area around the reef to such a degree as to create a man-made island over the reef. It was intended to cover twenty acres and have an elevation of twelve feet. The court found that Acme's ultimate purpose was to develop a resort area on the island.<sup>24</sup>

However, at the application hearing, Ray testified that his intention was only to build and operate a ships' servicing store. He testified that he and Acme had already dredged and filled three small circular areas, intending only to shore up these islands to protect them from storms, improve them, and use them for the servicing area. However, Ray failed to explain the request in his application for permission to construct a twenty-acre island for use as a resort. Because of this, the court found Ray's credibility problematic.<sup>25</sup>

Furthermore, although Ray was notified by the Corps of Engineers that his application had been denied, he nevertheless rented a barge and began dredging and filling the three circular island formations. This "involved the dredging and depositing of the subsoil and seabed, including the live and dead coral formations" into three fifty-foot caissons, two of which were on Triumph Reef, with the one on Long Reef.<sup>26</sup>

The predictable result was an action by the Government seeking a preliminary injunction against this work.<sup>27</sup> Noting that "[t]he coral area on and around Triumph and Long Reefs is unique and rare in this part of the world," the court referred to the formations as "a natural wonderland" which provided an environmental niche "for countless species of fish and other sea life which are found only in that area."<sup>28</sup> The court continued by enumerating the important commercial and social functions of the reefs.<sup>29</sup>

Summarizing these facts, the District Court declared that

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23. *United States v. Ray*, 281 F. Supp. 876 (S.D. Fla. 1965); *Atlantis Development Corp. v. United States*, 379 F.2d 818 (5th Cir. 1967); *United States v. Ray*, 294 F. Supp. 532 (S.D. Fla. 1969); and *United States v. Ray*, 423 F.2d 16 (5th Cir. 1970).

24. *Ray*, 281 F. Supp. at 877.

25. *Id.*

26. *Id.* at 877-78.

27. *See id.* at 877.

28. *Id.* at 878.

29. *Id.* noting:

The evidence shows that this reef area is heavily fished by both commercial and sports fishermen; that the area over and around these two reefs is extensively navigated by both commercial and pleasure craft; that this area has been one of research by countless marine biologists; that the area is in close proximity to the John Pennekamp and Key Largo Coral Reef Fish and Game Preserve, which have been designated as a national park, and that at the present time a plan is nearly completed to designate and constitute these two reefs and the reef areas around them as a national monument.

[t]he dredging and filling operations by the defendant already accomplished, and the further operations which are contemplated and which are obviously necessary for the purposes of the defendants, have and will result in the destruction of the living coral reef of the area and thereby has and will be destructive of the marine life which abounds there. More importantly, the damage already done, and that which is in prospect, is irreparable, and in the opinion of this Court sufficiently extensive to require the injunctive relief herein granted.<sup>30</sup>

The court held that it had jurisdiction over parties and subject matter in this cause,<sup>31</sup> noting that such jurisdiction extended to the subsoil and seabed of the outer Continental Shelf adjacent to the U.S. coast.<sup>32</sup> The court also noted that the Secretary of the Army's authority to prevent obstruction in navigable U.S. waters extended to artificial islands and fixed structures on the outer continental shelf.<sup>33</sup> Therefore, because of the irreparable damage caused to the reefs and the defendants' defiance of the Corps of Engineers, a preliminary injunction was justified.<sup>34</sup>

Having accounted for the first District Court case, the waters must now be temporarily muddied by reference to *Atlantis Development Corp.*<sup>35</sup> Ray and his group, despite their interest in the reefs, were apparently not the *first* whose minds ran to sovereign states.

In 1962, Mr. William T. Anderson apparently "discovered" the reefs through his notion of occupation through building facilities for a hotel, fishing club, marina, skin diving club, and possibly a gambling casino. Laying a claim, Anderson gave public notice through newspaper advertisements in both England and the United States in 1962 and 1963.<sup>36</sup> His "rights" were subsequently acquired by Atlantis Development Corporation, Ltd. (the proposed intervenor in the case).<sup>37</sup> Atlantis had been attempting, to no avail, to ascertain its legal rights through all proper governmental agencies. The State of Florida responded to the corporation's request by stating that the property was outside of its constitutional boundaries and therefore outside its jurisdiction.<sup>38</sup> Atlantis received the same response from some sectors of the Federal Government. On September 14, 1962, the Department of the Interior stated that it had no jurisdiction over land outside the United States' territorial limits and that any further questions should be directed to the Department of State.<sup>39</sup> On November 9, 1962, the Depart-

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30. *Id.*

31. Under 43 U.S.C. § 1333 (b). *Id.*

32. Under 43 U.S.C. § 1332. *Id.*

33. By 43 U.S.C. § 1333(f). *Id.*

34. *See United States v. Ray*, 281 F. Supp. 876, 878 (S.D. Fla. 1965).

35. *Atlantis Development Corp. v. United States*, 379 F.2d 818 (5th Cir. 1967).

36. *Id.* at 820.

37. *Id.*

38. *Id.*

39. *Id.* at 821.

ment of State, answered Atlantis' questions in a similar fashion: that the areas in question were outside the jurisdiction of the United States, and were a part of the high seas open to exploitation by all nations.<sup>40</sup>

Atlantis then expended approximately \$50,000 conducting surveys and constructing four prefabricated buildings. (Three of these buildings were destroyed by a hurricane in September of 1963.) Shortly thereafter, Atlantis discovered that the United States Corps of Engineers was contending that permission was required for construction of certain structures on Triumph and Long Reef.<sup>41</sup> Atlantis then began its tedious and ultimately unrewarding efforts to convince the Corps of Engineers and the United States Attorney General that the reefs were outside the jurisdiction of the United States. However, the Corps of Engineers reaffirmed its earlier decision necessitating permits. In December of 1964, Atlantis discovered that the defendants in the main case had formally sought such a permit from the Engineers. Atlantis notified the Government of its ownership claim and of the defendants' threatened unauthorized actions. The United States Government then initiated suit.<sup>42</sup>

In its cross-claim Atlantis admitted jurisdictional grounds, but contended that the United States had no territorial jurisdiction, control or ownership in or over the reefs and therefore could not maintain its action for an injunction. Conversely, Atlantis maintained that it possessed title by discovery and occupation. As such, in its cross-claim, Atlantis charged the defendants with trespass.<sup>43</sup> The District Court denied Atlantis' intervention either as a matter of right or permissively, but gave leave to appeal.<sup>44</sup>

In its analysis of Atlantis' right of intervention in the main case, the court noted the persuasive importance of whether joinder of Atlantis was mandated under the new Rule 19 of the Federal Rules of Civil Procedure. The court found that had been the controlling issue, there would have been sufficient basis to answer this question in the affirmative. The court found persuasive the following facts: 1) Atlantis had formally notified the Government of its ownership claim to the reefs; 2) it had informed the Government of the trespass of the defendants; and 3) it had successfully persuaded the Government to bring suit against the defendants. As such, the court noted that Atlantis should have been joined under Rule 19(a)(2)(i)<sup>45</sup>

The court felt that both from Rule 24(a)'s terms and its adoption of 19(a)(2)(i), intervention as of right was necessitated.<sup>46</sup> Atlantis clearly lacked adequate representation of its interest being "without a friend in this

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40. *Id.*

41. *Id.* at 821.

42. *Id.*

43. *Id.* at 821-22.

44. *Id.* at 822.

45. *Id.* at 825.

46. *Id.*



litigation. The Government turns on the defendants and takes the same view both administratively and in its brief here toward Atlantis. The defendants, on the other hand, are claiming ownership in and the right to develop the very islands claimed by Atlantis."<sup>47</sup> Similarly, the corporation possessed an interest which may have been impaired as a practical matter as a result of the suit. The purpose of the action was to assert the sovereign's exclusive dominion over two of the islands which were publicly claimed by Atlantis. The corporation's interest in the very property at stake in the main action, as well as with the particular transaction of the right to construct buildings unhindered by the Corps of Engineers, was of grave importance to Atlantis.<sup>48</sup> While the judgment between the United States and the defendants in the main action would not directly affect Atlantis' rights, in a practical sense that trial was also the trial of Atlantis' rights.<sup>49</sup> Notwithstanding Atlantis' sovereignty contest with the U.S. Government over its "discovery" and occupation of the reefs, there were at least two important unresolved legal issues between the Government and the defendants which were also present in Atlantis' claim against the Government. The first was whether the coral reefs which had been built up by accretion of marine biology were "submerged lands" under the Outer Continental Shelf Lands Act.<sup>50</sup> The second was, assuming from their geographical location and nature that they constituted "lands," whether the United States' sovereignty extended to them purposes for other than protecting the "exploring for, developing, removing, and transporting . . ." of natural resources under 43 U.S.C.A. § 1333 (a)(1). Another related issue was whether the Secretary of the Army's authority to prevent obstruction of navigation, which was extended by § 1333(f) to "artificial islands and fixed structures," extended to structures other than those "erected . . . for the purpose of exploring for, developing, removing, and transporting" mineral resources.<sup>51</sup>

In this regard, the court reasoned that "it hardly comports with good administration, if not due process, to determine the merits of a claim asserted in a pleading seeking an adjudication through an adversary hearing by denying access to the court at all."<sup>52</sup> In the present case the court felt that failure to allow the intervenor the chance to advance its theories of law and fact in the trial and on appeal would particularly impair or impede Atlantis'

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47. *Id.*

48. *Id.* at 825-26.

49. *Id.* at 826.

50. 43 U.S.C.A. § 1331 et seq.

51. *Id.* at 826-27.

52. *Id.* at 827. The Judge went on to note "the importance of allowing access to an adversary hearing when dealing with outer continental shelf interests, particularly in view of restricted United States jurisdiction over the area, "the limited nature of which was formally recognized by the International Convention on the Continental Shelf." Samuel P. Menefee, *Oceans Law for the Practitioner: Keeping Your Head Above Water (II): The 1958 Geneva Convention: A Swiss Army Knife*, 2 A.B.A. LAW OF THE SEA COMM. NEWSL. 7, 8 (May, 1988) (quoting *Atlantis Development Corp. v. United States*, 379 F.2d at 827-28).

ability to protect its interests, and so reversed the District Court's decision.<sup>53</sup>

The plans of the rival groups become somewhat clearer in the next reported judgment on the matter, *United States v. Ray*.<sup>54</sup> Ray, who had "envisioned an island nation, the Grand Capri Republic" reported that,

I had originally set out to build an island out there about, I believe it was, five hundred feet wide and two thousand feet long . . . . So I set out to take possession of the four reefs individually—that is, me and some other investors. And it was my thinking that it would be necessary to claim, occupy and defend the area against all comers in order to lay the proper claim for title to it . . . . [W]e decided to move out there and take possession by means of inhabiting the reefs and holding possession of them. That was to be done, of course, in my individual name and my investors'. . . . [W]e had planned to expend several hundred thousand dollars, and Acme General Contractors was planning a big operation to do this work . . . . We were going to bring in hydraulic dredges to build a big island . . . . I went out there and I sat on that island and I built these caissons and a house and I was going to put a family in the house and I going [sic] to make some semblance of a defense. And don't get me wrong by saying if I am going to attack the Coast Guard or Navy, but I was going to have some semblance of a defense and I was going to build it and claim it and I occupied it, and I was going to defend it to the best of my ability and I was going to own it. Now, am I a nation? Me and four investors?<sup>55</sup>

The plans of the rival consortium, Atlantis Development Corporation, were a bit further developed. *Their* nation, Atlantis, Isle of Gold was to cost that, literally—\$150,000,000 for 350 acres on Long Reef and 150 acres on Ajax Reef, and another \$100,000,000 to complete the remainder of the 2,600 acre project.<sup>56</sup> In testimony, William Anderson, the site's "discoverer," supplied further details of the project:

- Q. . . . [I]n the very last sentence it says, "Using Miami Beach and Las Vegas as comparables, the price of this land would be worth approximately \$1,000,000,000." Is that correct?
- A. Yes, sir.
- Q. Now, do you have any idea what that was based on?
- A. Let me say this, sir. One time there was a group went out there of eighteen millionaires from Miami Beach and walked all around on this, and this one man came back and said, "You don't have a

53. See *Atlantis Development Corp. v. United States*, 379 F.2d at 828-29.

54. 294 F. Supp. 632 (S.D. Fla. 1969).

55. *Id.*

56. *Id.* at 535.

million dollar deal; you've got a billion dollar deal."<sup>57</sup>

A gambling casino was contemplated, \$1,500,000 to build a radio and television station ("We had a man who wanted to buy that right off of us"), and \$2,500,000 was allotted for a "post office, building offices, stamp department and foreign offices."<sup>58</sup> A "government palace and congress" were listed as costing one million dollars, and Atlantis "had a group that wanted to put a bank there where people could bank by number just as they do in Switzerland."<sup>59</sup>

Q. It was your intent, was it not, to establish what amounts to a new sovereign nation, is that correct?

A. That's correct sir.<sup>60</sup>

The amended complaint that was the subject of this action alleged, first that the submerged area was subject to United States' jurisdiction pursuant to the Outer Continental Shelf Lands Act since it appertained to the United States. It further alleged that the defendants were involved in activities which affected the Outer Continental Shelf's subsoil and seabed. According to the complaint, such unauthorized activities constituted a trespass on Government property.<sup>61</sup> The second count alleged the creation of "artificial islands or fixed structures on the shelf without required authorization of the Secretary of the Army in violation of . . . the Outer Continental Shelf Lands Act."<sup>62</sup> The defendants responded by pleading lack of jurisdiction over the reefs as well as a lack of authority by the Secretary to require a permit. The intervenor crossclaimed against the defendants asserting it possessed better title to the property in question through a previous claim. It further claimed that the defendants were attempting to "deprive it of its property, appropriate the benefit of its expenditures, and exploit and develop its discovery, conception, and occupation; that actually the alleged trespass by the

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57. *Id.* Anderson continued that:

I know personally that it would be worth more than that. Just if you take the hundred thousand feet on both sides of the reefs, it would give you one hundred thousand—about one hundred ten thousand feet. And I have been told by different men that the land would be worth \$8,000 to \$10,000 a front foot. That is your ocean frontage, sir. *Id.*

58. *Id.* at 535-36.

59. *Id.* at 526.

Q. Was the money . . . to be paid [you] by the currency of Atlantis Isle of Gold?

A. No sir. It was to be paid not in the currency of the new nation. That was in good old hard American money. *Id.*

60. *Id.* at 535.

61. *Id.* at 536.

62. *Id.*

defendants . . . [was] against the intervenor's property."<sup>63</sup>

Ultimately, the case turned on the character of the reefs. On the one hand, both the intervenor and the defendants contended that the reefs were islands, and therefore, pursuant to international law, subject to colonization. The Government, however, argued that the reefs were a natural resource of the Outer Continental Shelf's seabed or subsoil. The Supreme Court had defined an island as a "naturally-formed area of land surrounded by water, which is above the level of mean high water."<sup>64</sup> As the evidence firmly established that the reefs were totally submerged at mean high water, the District Court here held that they could not be islands. The court further stated,

The Outer Continental Shelf Lands Act defines the Outer Continental Shelf as all submerged lands lying seaward and outside of the area given to the States under the Submerged Lands Act, of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control . . . . The 1958 Geneva Convention on the Continental Shelf, Article One, defines the Shelf as:

the seabed and subsoil of the submarine areas adjacent to the coast [and islands] but outside the area of the territorial sea, to a depth of 200 meters [656 feet] or, beyond that limit, to where the depth of superjacent waters admits of the exploration of the natural resources of said area.<sup>65</sup>

These reefs, lying only a short distance off the Florida Coast, fall well within these definitions, and are therefore part of the seabed and subsoil of the United States Outer Continental Shelf.

Evidence abounds that these reefs are a priceless and irreplaceable natural resource of this nation. . . .<sup>66</sup>

The district court went on to evaluate both the definition of "natural resources" in the Outer Continental Shelf Lands Act (incorporating the definition of that term for the Submerged Lands Act) and in the Geneva Convention on the Continental Shelf. It concluded that "[t]he reefs and their coral and piscatorial inhabitants are natural resources not only as that term is understood by the general public, but as defined by law."<sup>67</sup> The court further found that Ray's caissons and the jack platform construction or "boathouses" proposed by Atlantis constituted "'artificial islands and fixed structures . . . erected . . . for the purpose of developing' the reefs, within the Outer Continental Shelf Lands Act."<sup>68</sup>

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63. *Id.* at 536.

64. *Id.* at 538.

65. Convention on the Continental Shelf, done at Geneva, April 29, 1958, 15 U.S.T. 471; 499 U.N.T.S. 311.

66. *United States v. Ray*, 294 F. Supp. at 538. *See also* Menefee, *supra* note 52, at 8.

67. *Id.* at 539. *See also* Menefee, *supra* note 52, at 8-9.

68. *Id.* at 539.

Based on this finding, it is not surprising that the district court ruled that jurisdiction existed, not only as an action brought by the United States and "a controversy arising under the Constitution, laws or treaties of the United States, and involving more than \$10,000," but also under the terms of the Outer Continental Shelf Lands Act.<sup>69</sup>

The Court then proceeded to deny the Government's claim for recovery under trespass, noting that "the claimed interest is something less than fee simple . . . ." "This understanding of United States law comports with international law, as expressed by Conventions which differentiate between the complete sovereignty of a coastal state over the area of its territorial sea, and the lesser interest it has in its Outer Continental Shelf . . . ." <sup>70</sup>

The United States, acting through the legislative power of the Congress or the treaty making power of the President, has never claimed title to the Shelf or asserted sovereign ownership over it. All it has claimed is the right to explore and exploit the Shelf and formulate regulations to ensure an orderly enjoyment of that right, in a manner consistent with the safety of navigation. . . .

The gist of the common law action for trespass . . . is the unwarranted entry upon the land of another. . . . If an owner is not in actual possession of the property but does have *title* thereto, the title will draw constructive possession to itself, and trespass will lie. However, since the United States is not in actual possession of these reefs, and since it apparently has not claimed their title, it cannot recover under its first count . . . . <sup>71</sup>

Similarly, the finding of the court that the constructions were "artificial islands and fixed structures . . . erected . . . for the purpose of developing" the reefs within the terms of the Outer Continental Shelf Lands Act,<sup>72</sup> when taken with the Secretary of the Army's activity under the same Act, meant that "the past construction activities of the defendants and intervenor upon the reefs and those contemplated by both are unlawful in the absence of the statutory permit."<sup>73</sup>

The court ultimately determined that the ownership claims of both the defendants and Atlantis were inconsistent with the Outer Continental Shelf Lands Act as well as the Convention on the Continental Shelf.<sup>74</sup> In its

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69. *Id.* at 539-40.

70. *Id.* at 540 (which goes on to quote art. 2 of the Convention on the Territorial Sea and Contiguous Zone and arts. 2(1) and (3) of the Convention on the Continental Shelf, *id.* at 540-41). See Convention on the Territorial Sea and Contiguous Zones, Geneva, 29 April 1958, 15 U.S.T. 1606; T.I.A.S. 5639; 516 U.N.T.S. 205.

71. *Id.* at 541 (quoting David Phillip Stang, *Wet Land: The Unavailable Resources of the Outer Continental Shelf*, 2 J. LAW & ECON. DEVEL. 153, at 180 (1968)).

72. *United States v. Ray*, 294 F. Supp. at 539 (quoted *supra* note 68).

73. *Id.* at 541.

74. *Id.* at 542.

discussion, the court noted that the rights of the coastal State over the continental shelf were not dependant upon effective or national occupation or an express proclamation. Moreover, the court held that the express consent of the coastal State was required for an exploration of the continental shelf or its natural resources, regardless of whether it was itself undertaking such activities.<sup>75</sup>

The Government had not consented to private construction on the reefs.

Because the reefs have been found to be seabed rather than islands, it is unnecessary to consider in detail the international law precedents for establishing island nations . . . . Whatever proprietary interest exists with respect to these reefs belongs to the United States under both national (Shelf Act) and international (Shelf Convention) law. Although this interest may be limited, it is nevertheless the only interest recognized by law, and such interest in the United States precludes the claims of the defendants and intervenor. . . . The issues of this case are of great public interest, involving not only the preservation of rare natural resources, but the preservation of our very security as a nation. If these reefs were available for private construction totally outside the control of the United States Government, they could conceivably support not only artificial islands and unpoliced gambling casinos, but even an alien missile base, all within a short distance of the Florida Coast. Congress has seen fit to claim this area so that it may be used for the Commonwealth rather than private gain.<sup>76</sup>

In affirming in part and reversing in part the judgment of the lower court, the court noted that “[t]he dreams of the separate groups for a new nation must perish, like the lost continent ‘Atlantis,’ beneath the waves and waters of the sea which constantly submerge [sic] the reefs.”<sup>77</sup> The Government had appealed the District Court’s denial of injunctive relief based on the first count of the complaint. The Fifth Circuit *reversed* on this matter while *upholding* injunctive relief on the second count.<sup>78</sup> The court started by noting that to the extent that any part of The Outer Continental Shelf Lands Act was inconsistent with the later adopted Geneva Convention on the Continental Shelf, it should be considered to be superseded. The court went on to note, however, that there was nothing in the applicable language of the Geneva Convention on the Continental Shelf which was inconsistent with the Outer Continental Shelf Lands Act. “To the contrary,

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75. *Id.*

76. *Id.* at 542. See also Menefee, *supra* note 52, at 9.

77. United States v. Ray, 423 F.2d 16, 18 (5th Cir. 1970).

78. *Id.* at 19-20 (citation omitted) noting:

[t]he quoted section [of the Outer Continental Shelf Lands Act] extends the authority of the Secretary to fixed “structures located on the outer Continental Shelf” without regard to the navigability of the particular area involved. If it were necessary to find navigability, however, the evidence amply supports such a finding, and fully establishes that the structures herein involved interfere with the exclusive rights of the United States under the Convention to explore the Continental Shelf and exploit its natural resources.

the Geneva Convention confirms and crystallizes the exclusiveness of those rights, particularly with reference to the natural resources of the Shelf."<sup>79</sup> In this regard, the court further noted that recognition of the United States' right to control these natural resources could be found in Article 2, paragraphs 1, 2, and 3 of the Geneva Convention on the Continental Shelf.<sup>80</sup>

Turning to the right of the United States for injunctive relief under the first count of its complaint, the court noted that this was inaccurately framed in terms of *trespass*. What the government was seeking was not damages, but *injunctive relief*—"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 its control as well."<sup>81</sup> For this, neither ownership nor possession was necessary,<sup>82</sup> but only whether the United States had an interest to protect and defend.<sup>83</sup> The court found that the evidence was overwhelming that the Government had an important interest, both practically and aesthetically, in preserving the reefs for public use and enjoyment. As such, the court determined this interest to be so vital to the United States that a full and permanent injunction against any interference by either the defendants or the intervenor was necessitated.<sup>84</sup>

### B. "No Fair Atoll:" The Rise and Fall of the Republic of Minerva

The North and South Minerva Reefs lie some 315 miles southwest of Tonga, 430 miles southeast of Fiji, and 970 miles northeast of New Zealand.<sup>85</sup> Allegedly discovered in 1818 or 1854,<sup>86</sup> they have been the site of several shipwrecks, the best-known of which was that of Captain Tevita Fefita and several members of the Tongan boxing team in 1962.<sup>87</sup> Additionally, there is good evidence that Tongans have fished in the area of

79. *Id.* at 21. See also Menefee, *supra* note 52, at 9.

80. United States v. Ray, 423 F.2d at 21 (citation omitted). See also Menefee, *supra* note 52, at 9.

81. United States v. Ray, 423 F.2d at 22.

82. See *id.* (citing United States v. Louisiana, 339 U.S. 699 (1950) and United States v. Texas, 339 U.S. 707, 708 (1950)).

83. See Wyandotte Transportation Co. v. United States, 389 U.S. 191 (1967); United States v. Ray, 423 F.2d at 22 (citing United States v. Republic Steel Corp., 362 U.S. 482 (1960)); United States v. City and County of San Francisco, 310 U.S. 16 (1940); United States v. San Jacinto Tin Co., 125 U.S. 273 (1888).

84. United States v. Ray, 423 F.2d at 22-23.

85. Lawrence A. Horn, *To Be or Not to Be: The Republic of Minerva—Nation Founding by Individuals*, 12 COL. J. TRANSNAT'L L. 520, 521 n.5 (1973). But see Peter C. Du Bois, *Utopia on the Rocks: Or, the Short, Unhappy Life of the Republic of Minerva*, BARRON'S, Mar. 26, 1973, at 5, giving the distance as 260 miles southwest of Tonga and 380 miles southeast of Fiji.

86. See Horn, *supra* note 85, at 521 n.5.

87. See generally OLAF RUHEN, MINERVA REEF (1963). See also Horn, *supra* note 85, at 527; Robert Trumbull, *Pacific Islanders Fight Reef Plan: Seek to Halt the Construction of Ministate on Artificial Isle*, N.Y. TIMES, Feb. 27, 1972, at 5.

the reefs for many years,<sup>88</sup> although this may also have been true of other nations.<sup>89</sup>

In August, 1971, the Ocean Life Research Foundation<sup>90</sup> arrived from Fiji "in a 54-foot chartered motor sailer" and

proceeded "to dredge up two hummocks of land, coral wrapped in seven layers of chicken wire and encased in reinforced concrete, to above mean high water. They erected twenty-six foot high markers replete with beacons and radar reflectors and topped by a flag with a gold torch inside a gold circle on a solid blue background, representing the Republic of Minerva—Land of the Rising Atoll."<sup>91</sup>

This was the initial step in what was planned to be an "enhancement" of the reef's physical characteristics. Preliminary work was to lend "to the construction of a 400-acre island on the highest parts of the reef, which are only a few feet under water."<sup>92</sup> Indeed the plans devised envisioned "the creation of some 2500 acres of land on the two reefs, 2000 to be residential and 500 for commercial enterprise," with an elevation of 8-10' above mean high tide.<sup>93</sup> It was intended that "[a] proposed sea wall would protect the claim from heavy seas," and that topsoil would "be imported from Fiji to cover the reclaimed area. Ultimately, floating cities . . . [were] planned for

88. See Horn, *supra* note 85, at 549.

89. When the crew of the Tukaepau was wrecked on South Minerva Reef in 1962, they found the remains of the Japanese fishing vessel *Number 10, Nostemi Maru, K 30*. See RUHEN, *supra* note 87, at 66-72.

90. Horn describes this as "of Carson City, Nevada," Horn, *supra* note 85, at 521, subsequently noting that while "Owen Claridge, Minerva's 'Consul General-designate' in Auckland, claims that the Foundation has headquarters in New York and London," other sources "claim that the exploitation of the Reefs is actually controlled by Caribbean-Pacific Enterprises, a Nevada real estate corporation which Michael Oliver co-founded in 1970," *id.* at 522 n.6. See Du Bois, *supra* note 85, at 5 for further information on Caribbean-Pacific.

91. Horn, *supra* note 85, at 521. See also Du Bois, *supra* note 85, at 5, indicating the flags (and plaques) were placed only on the two major structures. Horn notes that "Owen Claridge of the Auckland law firm of Haddow and Co. has served detailed notice concerning the location, operational aspects, and physical appearance of the radar reflectors and blinking lights erected upon both the North and South Minerva Reefs to the New Zealand naval authorities in the interests of navigational safety and as evidence of the valid occupation of the Reefs." Horn, *supra*, at 521 n.4. See also OCEAN SCI. NEWS 2 (Apr. 7, 1972).

92. Trumbull, *supra* note 87, at 5. According to Horn, "[t]he greater part of North Minerva Reef is under at least six feet of water at low tide, and the remainder of the Reef never uncovers more than two feet; the entire Reef is submerged at high tide," while South Minerva Reef "is completely submerged at high tide, although it uncovers at low tide." Horn, *supra* note 67, at 522 n.5. This would have involved dredging, compacting, and spreading some 320,000 cubic yards of coral and sand. See *id.* at 524 n.11. The statement in Beasant of "ambitious plans for a 400 acre high-rise sea city to be built on concrete stilts" would appear to be incorrect. See BEASANT, *supra* note 7, at 53.

93. Horn, *supra* note 785 at 523. See also OCEAN SCI. NEWS 3 (Apr. 7, 1972). Unlike the developers on Triumph Reef, the founders of Minerva appear to have had a fair share of environmental awareness. "Geologists and biologists have been sent to both atolls to study and make recommendations on how and where to create new land with a minimum environmental/ecological impact." *Id.* This may refer to the February/March 1972 feasibility study. See *infra* text accompanying note 106.



the lagoon.<sup>94</sup>

On January 19, 1972, a Declaration of Sovereignty was issued, which established the Republic, basing its claim to the reefs on actual occupation of *terra nullius*. The Declaration noted the "improvement" of the reefs' height "to a point of permanent protrusion above sea level at high tide, spoke of plans for further reclamation, claimed a 12-mile territorial sea and proclaimed a republican government operating under democratic principles."<sup>95</sup> It further stated that "The Republic of Minerva shall, to the extent possible, assist international shipping, especially in helping ships in distress, and shall promote the cause of ecological balance, preservation of environment and research in ocean living, particularly as this pertains to an ever increasing world population."<sup>96</sup> Michael Oliver, one of the founders and the apparent philosophical guru behind the scheme stated that "his team sought a new land to escape from high taxes, riots, drugs and crime."<sup>97</sup> According to Horn, the founders intended

to demand the separation of politics and economics in order to promote maximum prosperity, freedom, and tranquility. Oliver's extreme laissez-faire political-economic philosophy will materialize in a government which will have as its only function the protection of individual rights and property against force and fraud. All property will eventually be privately owned. The state will not attempt to regulate commercial activities, and there will be no income tax. In its place will be premiums of \$50 to \$100 per person per year and \$150 to \$500 per company per year, which will be purely voluntary: Non-payers will only be deprived of certain judicial services for which the users of these services will pay. There will be no welfare, no foreign aid, no regulatory agencies, no tariffs, and no wage or

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94. Horn, *supra* note 85, at 524. See also OCEAN SCI. NEWS 3 (Apr. 7, 1972). The idea of "floating cities" may be traceable to the presence on the project of Richard King, as Vice President and later President of the Republic; "[i]n 1968 he proposed the idea of trying to place a floating city in the North Sea," Horn, *supra*, at 523. See also OCEAN SCI. NEWS 3 (Apr. 7, 1972).

95. See Horn, *supra* note 85, at 524-25; *Declaration of Sovereignty* (January 19, 1972). The Declaration further noted Minerva's intent "to maintain internal tranquility, order and peaceful relations with all nations and stated that it would consider free association under commonwealth status with cooperating nations sharing the same principles." *Id.* Principal Members of the First Provisional Government were listed as Morris C. Davis (President), Richard J. King (Vice-President), David E. Williams (Secretary of the Interior) and Ralph McMillan (Secretary of State). *Id.* Du Bois, *supra* note 85, at 5 notes the influence of Oliver's 1967 book, *A New Constitution for a New Country*, on the project.

96. *Declaration of Sovereignty*, *supra* note 95. In line with this, Ralph McMullen, Minerva Secretary of State, noted in an accompanying letter that:

To enhance international shipping and weather forecasting, lighthouses and a weather station, including radar equipment, will soon be erected in the Republic of Minerva. We trust that this will be of benefit to vessels of all countries in or around the vicinity of Minerva, since this area presently contains navigational hazards.

Letter from Ralph McMullen, Minerva Secretary of State to the [United States] Secretary of State (19 January 1972).

97. *South Sea Reef Proclaimed a Republic by 3 Americans*, in N.Y. TIMES, Jan. 30, 1972, at 11. Elsewhere it is stated that "[O]pposition to crime, socialism, violence, drugs, pollution, and crippling taxes motivated Minerva's utopian-oriented founders . . ." Horn, *supra* note 85, at 525.

price controls. All legislative acts will expire in five years but can be repealed at any time. As a fundamentally practical move, a special issue of commemorative stamps is planned, a coin has been minted, and a currency is being designed. Even though Minerva will not provide a tax retreat for gambling establishments, it could become a significant tax haven and a legal base for "flag of commerce shipping" as well as a retreat from bureaucracy.<sup>98</sup>

In addition to tourism, the founders expected light industries, commercial activities and fishing, oceans-related activities, and even a possible munitions plant!<sup>99</sup> The majority of Minervan citizens were not expected to be residents. Most would retain their present residences, although carrying Minervan passports. Conversely, most Minervan residents would not be citizens. They would be mostly laborers from Tonga and Fiji. It was further intended that Minerva's police force would be minimal in hopes of a crime-free society.<sup>100</sup>

Shortly after issuing the Declaration, Minerva's founders despatched letters to some one hundred countries seeking recognition, with disappointing results. The only full diplomatic relation established has been with the tiny Sultanate of Ocussi-Ambeno, on the island of Timor in the Malay Archipelago.<sup>101</sup> What the letters *did* do was to create a stir among nearby States.

Alarmed by the prospect of unwelcome neighbors on numerous reefs in the area, the heads of government of Fiji, Tonga, Nauru, Western Samoa and the Cook Islands brought up the matter Thursday [February 24, 1972] in their periodic meeting with the Governments of Australia and New Zealand.

"The precedent is rather a dangerous one," said Sir Kamisese Mara, the Prime Minister of Fiji . . . . "If these people can do it there, what is to stop them from doing it here?" he asked at a news conference in Suva, his capital.

The legal aspects of the matter will be investigated with the help of Australia and New Zealand, and diplomatic approaches may be made to the United States to exert pressure on the syndicate to discourage the enterprise, a spokesman for the South Pacific Forum said Thursday.

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98. Horn, *supra* note 85, at 525-26 (footnotes omitted). See also OCEAN SCI NEWS 3 (Apr. 7, 1972); *Registration of Ships*, MINERVA TIMES, Oct. 1972. In a statement entitled "Fundamental Principles of Government," the Founders suggested that "[n]o right can be delegated by a person or gathering of persons to any entity, including government, unless such a right can be morally exercised on an individual basis." "We believe it to be necessary and practically possible to establish a nation based on the principle that not only must government be separated from religion, but also it must be separated from economics and limited in function. . . ." "[W]e believe that the works of Von Mises, Rand, Hayek, and Hazlitt can form the basis of a better society." "Fundamental Principles of Government" (October 1972).

99. See Horn, *supra* note 85, at 526 n.18; OCEAN SCI. NEWS 3 (Apr. 7, 1972).

100. Horn, *supra* note 85, at 526 n.18.

101. Roy Bongartz, *How to Launch a Country*, in SATURDAY REV. OF THE SOC., vol. 1, no. 3, March, 1973, 10, at 11. See also Horn, *supra* note 85, at 526; Du Bois, *supra* note 70, at 5. "The Government of New Zealand says its too busy to worry about it, while the official position of the U.S. is that "we have no position." OCEAN SCI NEWS 3 (Apr. 7, 1972).

Tonga, the independent Polynesian kingdom whose fishermen use the reef will study the legal requirements for claiming sovereignty, said Prince Tu'iplehake, the Tongan Prime Minister, in an interview.

"We can't have people setting up empires on our doorstep," the prince said. . . .

The prince said Minerva had been claimed for Tonga unofficially on Nov. 24, 1966, by a Tongan mariner, Capt. Tevita Fefita, who visited the spot in a trawler and left a Tongan flag attached to a buoy in an "annexation" ceremony.

The prince was uncertain whether the mariner's "annexation" of the reef constituted a legal basis for claiming Tongan sovereignty in international law.<sup>102</sup>

Horn reports that although when the King of Tonga was initially informed of the Minervan claim he "denied any claim to the Reefs but refused to recognize any other claims,"<sup>103</sup> subsequent inaction by other nations "instilled the King with new-found fear, he has viewed a Tongan claim as the

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102. Trumbull, *supra* note 87, at 5. See also Horn, *supra* note 85, at 526. Horn notes that, Tonga's primary fear about the Ocean Life Research Foundation's claim centers around its proximity to the Minerva Reefs and the fact that Tonga has used the reef area for years for lobster and other kinds of fishing. The Minerva activity is a potential interference with sea life on the reefs and source of pollution. Additionally, Tonga fears that Minerva soon might allow a number of illegal activities free of international controls (e.g., drug trade).

*Id.* "Oliver, speaking for the Minerva authorities, has said that Tonga as well as any other nation is welcome to fish at Minerva and flatly denies any intention to allow illegal activities in Minerva." *Id.* at 526-27, n.22.; *South Seas: The Minerva Ploy*, NEWSWEEK, Oct. 23, 1972, at 52, however, states that the Tongan monarch is "[f]earful that the Minervans might try to cut into one of his nation's most lucrative enterprises—the sale of colorful postage stamps to the world's philatelists. . . ."

It is of interest that

[t]he Tongan claim to sovereignty was not in fact recognised at the South Pacific Forum when it was considered in February 1972. A resolution passed by the Forum stated that "members of the Forum recognised Tonga's historical association with the Minerva reefs, welcomed the Tongan Government's continued interest in the area and agreed that there could be no question of recognising other claims and specifically that of the Ocean Life Research Foundation to the sovereignty over the reefs." During that same meeting, we understand that Fiji did not claim any of the reefs and stated that if any country had a claim to the reefs, it would clearly be Tonga.

Letter of Peter Shannon, First Secretary, Embassy of Australia to Robert W. Smith, Office of the Geographer, U.S. Department of State (Nov. 15, 1983).

103. Horn, *supra* note 85, at 527. It may be at this point that the Minerva backers first considered negotiation with Tonga. *The Minerva Times*, announced the appointment of Mr. Fred Elliot of Guam as Chief Negotiator, and noted that

[n]egotiations with Tonga are only part of an overall Plan of Action for the acquisition of additional territory in the Pacific area. First and foremost, if Tonga can be persuaded to recognize the Republic of Minerva the other countries of the Pacific Basin will do likewise. We are attempting to purchase the land area of three other islands from the individual land owners which will enhance our position when we attempt to annex them into the Republic of Minerva. We have further information that should we gain recognition, many of the islands of the U.S. Trust Territories of the Northern Pacific would be interested in joining the Republic.

*Tongan Negotiations*, MINERVA TIMES, Oct. 1, 1972.

best course of action to combat the Republic of Minerva Project.”<sup>104</sup>

In February, 1972, Morris C. Davis was elected Provisional President of the Republic of Minerva, and in that and the following month “a ‘land development and project consultant’ firm in Auckland, New Zealand, visited the reefs to prepare a feasibility study. . . .”<sup>105</sup> Tonga, in turn, took a series of actions to demonstrate Tongan jurisdiction over the Reefs. In February, 1972, Tonga placed refuge stations (boxes with emergency supplies and locating beacons) on the coral atolls.<sup>106</sup> In late May, the King of Tonga sailed to the reefs towing a barge holding several steel I-beams in order to erect two permanent structures on them to support a Tongan claim if one were later determined to be necessary. Also on board were two cabinet ministers, some troops and twenty Tongan prisoners. “The King watched from his royal yacht as a gang of Tongan convicts tore down the Republic of Minerva flag.”<sup>107</sup> On June 15, prior to the opening of the Kingdom’s Parliament, the Tongan monarch announced that in four days time his state would issue a formal proclamation announcing its sovereignty over the Minerva Reefs. “The King advised that Tonga would exercise territorial rights within a radius of twelve miles north and south of the Minerva Reefs, noting that the Reefs were outside Tongan territorial waters but within Tongan fishing grounds.”<sup>108</sup>

[On] June 26, aboard the chartered vessel *Oloraha*, King Taufa’ahau Tupou IV, his deputy prime minister Mahe Tupouniua, representatives of the legislative assembly, and about 100 convict laborers set sail for the Minerva Reefs to build up their *own* bits of dry land.<sup>109</sup> The Tongans named the reefs Teleki Tokelau and Teleki Tonga and officially claimed them and “all islands, rocks, reefs, foreshores, and waters lying within a radius of twelve miles thereof as part of our Kingdom of Tonga.”<sup>110</sup>

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104. Horn, *supra* note 85, at 527. That the Minerva group in turn had worries about the Tongan position is suggested by the fact that Horn claims “[i]n exchange for a renunciation of any claims that he might have to the Reefs, King Tenfa’ahav [of Tonga] has reportedly been offered a variety of gifts, including an airline, a low-wattage television station, a shipyard, cash, and other unspecified consideration.” *Id.* at 527 n.24. *See also* Du Bois, *supra* note 85, at 23.

105. Du Bois, *supra* note 85, at 5.

106. *See* Horn, *supra* note 85, at 527, 545. This may possibly have been in response to a similar gambit by the Ocean Life Research Foundation; in a discussion of beacons and radar reflectors which the group erected on the reef, and talk of future lighthouses, weather stations, and postal connections, Horn notes that “[i]nformal sources have indicated that emergency supplies and first aid provisions are already on the Reefs.” *Id.* at 521 n.4.

107. *Id.* at 528 n.31, *see also id.* at 545-46 (giving the date of visit as May 24). *See also* Du Bois, *supra* note 85, at 23 (giving the date as late June, which suggests possible confusion with a later Tongan visit. *See infra* text accompanying note 94.).

108. Horn, *supra* note 85, at 528.

109. This may have been in response to the April 1972 despatch of two dredges from New Zealand by Minervan backers “with the first objective of creating 7.5 acres each on North and South Minervan Reefs.” OCEAN SCI. NEWS, Apr. 7, 1972, at 2.

110. Bongartz, *supra* note 101, at 16. *See also* Mary Boyd, *Tonga, in 1973 BRITANNICA BOOK OF THE YEAR 677 (1973)* (noting that the King raised Tonga’s flag over two small artificial islands built on the reef during this visit); *South Seas: The Minerva Ploy*, NEWSWEEK, Oct. 23, 1972, at 52 (stating, *incorrectly*, that this was the first time the Tongan flag had been

Davis, the "President" of Minerva had been refused an audience with the King when he was in Tonga in June. He was further informed, in a session with the monarch's half brother and the crown solicitor "that any attempt by any of our group to land on the reefs would result in . . . [removal] by force . . . and . . . [a] trial for trespassing on Tongan territory. . . . [To maintain its claims to the reefs] . . . Tonga was prepared to go . . . '[t]o any extent short of war.'"<sup>111</sup> As late as October of 1972, however, *Newsweek* reported "the dispute is not over."

[B]oth sides have stiffened. The Minervan entrepreneurs insist that despite the King's claim that the reefs are vital to Tonga-Australian shipping, they have been ignored for centuries. The developers say they have already plunged upwards of \$200,000 into the project, and last week the Minervans were in New Zealand reportedly fitting out a ship for yet another trip to the reefs. If no solution can be found, the hassle may come before the United Nations. That could cause some unique problems—for there are few precedents covering the creation of a nation out of nothing. "Heaven forbid for this kind of thing to happen," says one British diplomat in the Pacific. "We'll have every crackpot with an ounce of imagination claiming sovereignty over every last scrap of unclaimed land. The next thing you know, they'll be demanding loans from the World Bank."<sup>112</sup>

In a March, 1973 article, Ray Bongartz quoted Davis as saying "[a]t present we do not think it advisable to reveal our future plans . . . or our timetable lest it fall into the wrong hands."<sup>113</sup> He went on to state, however, that an Auckland based engineering firm had recently completed a feasibility study for the new republic on the possibility of filling in areas of the lagoons. He noted that it completed the study after conducting depth readings and taking core samples. Bongartz further notes that "Davis clearly hopes to make it to his new base sometime next summer, with a full crew of expatriates aboard the *Ranguinui*."<sup>114</sup>

And then . . . silence . . . . What happened? Beasant reported only that "within a year the whole project had collapsed in disarray, confusion and personal disagreement,"<sup>115</sup> while Horn notes that Davis, "formerly President of the Republic of Minerva . . . was fired for being a dictator on February 26, 1973, in a dispute with his former friend and associate, Michael Oliver . . . ."<sup>116</sup> Charges included accusations that Davis "'operated as a dictatorship' . . . 'acted arbitrarily' . . . and . . . 'disgraced the Republic of Minerva by making clandestine associations with persons who were not presented to the other members of the Provisional Govern-

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raised over the reefs; Captain Fefita having done so in 1966).

111. Bongartz, *supra* note 101, at 16.

112. *South Seas: The Minerva Ploy*, *supra* note 110, at 52.

113. Bongartz, *supra* note 101, at 16.

114. *Id.*

115. BEASANT, *supra* note 7, at 53.

116. Horn, *supra* note 85, at 523 n.9.

ment. . . .”<sup>117</sup> The last charge *may* relate to the appointment of Thomas M. Taylor as Commissioner of Maritime Affairs and of Michael J. Travers who “allegedly has served as a mercenary in several international conflicts” as Chief Advisor to the Republic’s Military Forces.<sup>118</sup> Taylor had been fired by Davis for actions which Davis believed to be inconsistent “with the principles of Libertarian philosophy,” but felt in turn that

he was deliberately misled. Taylor interpreted his assignment broadly, believing he had been selected as a neutral coordinator to arrange the occupation of the Minerva Reefs. Later, charging that Caribbean-Pacific had abandoned its claim by not occupying the reefs continuously, he hatched his own scheme. Basically, he called for volunteers to build a hurricane shelter (containing 200 rooms), an air strip and a dock on the reefs. Anyone staying for 90 days would receive one share of “land.”<sup>119</sup>

### III. “DUMPING ON GOVERNMENT:” THE CREATION OF STATES IN SHALLOW WATERS BY DEPOSITS AND OTHER MEANS

Closely related to the promulgation of sovereignty over reefs or low-tide elevations is the creation of territory by means of dumping in shallow water. This has not successfully occurred to date, but is represented conceptually by the two “nations” of a) Abalonia and b) Taluga.

#### A. Abalonia: A Nation on the Half-Shell

At about the time that Atlantis, Isle of Gold and the Grand Capri Republic were enmeshed in litigation, West Coast interests were involved with founding a state of their own. The “nation” of Abalonia was to be situated upon the Cortes Bank, some 110 miles west of San Diego, California. In some places between the coast and Cortes Bank the water’s depth exceeds 1200 meters. This apparently unexplored area was reportedly rich in abalone and lobster. The plan was to build a “tax free” processing plant, employing divers to harvest the abalone and lobster. The entrepreneurs first obtained a World War II surplus troop ship: the 306-foot-long reinforced concrete S.S. Jalisco. They towed it to the bank, moored it, and opened the sea cocks, intending to sink the vessel in an area just two fathoms deep. However, rough seas broke a mooring line, the ship dragged to deeper water. The group suffered not only financial loss, but also the threat of prosecution for creating a “hazard to navigation.”<sup>120</sup>

117. Du Bois, *supra* note 85, at 23.

118. *Id.* at 5.

119. *Id.* at 23.

120. Stang, *supra* note 71, at 183-84. See also Sherry Eckhardt, *International Law—Continental Shelf—Proprietary Interest of United States in Continental Shelf Precludes Claims of Acquisition by Private Entrepreneurs. United States v. Ray (S.D. Fla. 1969)*, 6 SAN DIEGO L. REV. 487, 498-99 (1969).

Stang states that “[a]pparently the U.S. Department of the Interior is convinced that Cortes Bank is legally part of the ‘outer Shelf’ because it published leasing maps . . . of this area in the Federal Register on December 20, 1966,” but notes that “[t]he Abalonian promoters . . . will not be sued so long as they agree not to return to Cortes Bank to resume their island building project.”<sup>121</sup>

*B. The Concept of Taluga: When “All the Seas Were Ink”*

Another state in the Cortes Sea apparently did not make it off the drawing board. The story is best summarized in David P. Stang’s article “Wet Land,” from which the following description is taken:

This episode began on November 23, 1966, when the Taluga lawyers mailed to the Los Angeles office of the Coast and Geodetic Survey, and to another federal office, a document entitled “Notice of Intent.” The cover letter bore the address of a Seattle, Washington law firm.

The Notice of Intent (containing 23 pages of text and supplementary sketches, diagrams, charts, engineering data, and financial statements) describes how Taluga was to be built, the objective in building it, and what its legal status would be.

In a nutshell, Taluga, at a cost of more than \$13,000,000 to its promoters, was to be constructed on Cortes Bank by means of carrying rock from the Mexican mainland aboard barges towed by tugs. The rock was to be dumped or placed by a crane in such a fashion as to form a rectangular seawall. Marine fill would then be dredged from the ocean bottom outside the seawall and pumped inside the seawall’s perimeter. The area so filled was to be approximately 20 acres.

This island, which would take two years to build, would be named Aurora and function as the Capital City of Taluga.<sup>122</sup>

In addition to Aurora, three other islands were to be constructed, forming part of the nation of Taluga.<sup>123</sup> These were: (1) Trianna, Resort

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121. Stang, *supra* note 71, at 184 & n.163.

122. Stang goes on to note some facts about the provision of services and the general setup of life on Aurora:

A 5,000 kilowatt generating system would provide the electrical power, while the water supply would be compartmentalized into two systems: potable and nonpotable. The former would, in part, be stored in barrels and be derived partly from rainfall, while the latter would be pumped from the ocean for toilet flush tanks, street washing, and fire fighting. The island would also have a modern sewage system.

The “Notice of Intent” specified:

The administrative building and personnel apartment will be of a modest but modern design compatible with the environment. Pavements will be limited to design to allow only pedestrian traffic and vehicles no larger than a golfer’s electric go-cart. No gasoline driven vehicles will be permitted. . . . Street lights would be installed only on the promenade.

*Id.* at 185.

123. *Id.* at 186.

City of Taluga; (2) Bona Ventura, The Free Port City of Taluga; (3) Villa de Pace, Estate Manor of Taluga. The four islands were to be connected by bridges and collectively named Island of Taluga-Isla Nova De Edward Mario De Sarro. Construction costs were estimated at less than \$3,000 per capita, and the plan would take approximately fourteen years to complete.<sup>124</sup>

Taluga's promoters intended this sovereign nation to have a 12-mile territorial sea. Any interference with the construction of the islands would be considered an act of piracy. Attorneys for the state of Taluga soon began speaking with the Seattle press, dropping tidbits of information not included in the "Notice of Intent." Such information included reports ranging from the price that Taluga land would sell for, to whether the State would join the U.N.<sup>125</sup>

However, such forecasts were short-lived. A letter, dated November 29, 1966, from the District Engineer, Corps of Engineers, stated that the Cortes Bank was part of the U.S. outer continental shelf, and that any unauthorized construction there was unlawful. The District Engineer also enclosed a booklet entitled, "Permits for work in Navigable Waters."<sup>126</sup>

Since it was likely that both the Abalonia and Taluga entrepreneurs knew of the Triumph Reef litigation, it appears that these promoters ceased action on these projects until the conclusion of the *U.S. v. Ray* actions. Stang, writing in 1968, noted that "in the unlikely event that Ray should win, it seems highly probable that the Cortes Bank projects will immediately return to life."<sup>127</sup> Ray did not and *they* did not.

#### IV. "POLITICAL PLATFORMS:" THE ERECTION OF STATES ON ARTIFICIAL STRUCTURES

As the creation of states in shallow waters was theoretically linked to the establishment of sovereignty over reefs and low-tide elevations, so the use of totally artificial platforms for a country has parallels with such endeavors as the sinking of the *S.S. Jalisco* to form the nucleus of Abalonia.<sup>128</sup> Examples of this approach to nation-building include a) New Atlantis, b) Iola Delle Rose, and c) the Duchy of Sealand.

##### A. "Sunk Beneath the Waves:" *The New Atlantis*

Little has been written about this statelet, but George Demko, director of the U.S. Office of the Geographer considered it "[t]he closest a dreamer

124. *Id.*

125. *Id.*

126. *Id.* at 186. See also Eckhardt, *supra* note 120, at 498-99 n.64.

127. Stang, *supra* note 71, at 186.

128. See *supra* text accompanying note 120.



has come to official recognition."<sup>129</sup> In 1964, Ernest Hemingway's younger brother, Leicester, received a note from Lyndon Johnson thanking him for issuing a stamp in his honor from his newfound nation. Shortly thereafter, however, the young nation of New Atlantis, which consisted of "a bamboo platform anchored by a railroad axle and an old Ford engine block" six miles off the coast of Jamaica, was destroyed by a storm.<sup>130</sup>

*B. Isola Delle Rose: "A State by Any Other Name . . ."*

The Isola Delle Rose was constructed by two Italian citizens, Rosa and Chierici, off the Port of Rimini in the Adriatic, about 300 meters outside Italian territorial waters.<sup>131</sup> It was an artificial island of 20 square meters with visual and auditory signals built for several purposes, some of which were apparently unclear.<sup>132</sup> In response to a demolition order issued by the harbor office of Rimini, the two entrepreneurs "appealed to the Council of State arguing that the Geneva Convention on the High Seas, ratified by Italy, granted a right to the free use of the high seas both to States and to individuals."<sup>133</sup>

The Council, however, ruled that the Geneva Convention on the High Seas, like that of the Territorial Sea and Contiguous Zone, "only creates rights and obligations of an international character for the Italian State with respect to other nations of the international community. The appellants cannot deduce from it any rights worthy of protection either according to international law or under Italian municipal law."<sup>134</sup>

[W]e can deduce from the Convention [on the High Seas] . . . the existence of a duty [*potere-dovere*] of the Italian State with respect to its own citizens and legal persons incorporated under its law, to intervene when such persons are carrying out an activity which might restrain or interfere with the exercise of one of the freedoms of the high seas which the Convention itself recognizes for all contracting States. Conversely a State which did not fulfil its international obligations in that regard could not avoid the resultant responsibility with respect to other members of the international community.

. . . It is indeed true that Italy has not yet acceded to the Geneva Convention of 1958 on the Continental Shelf, but it is nevertheless subject

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129. Ron Arias, with Michael Weiss, *On the Job: George Demko, U.S. Geographer, Keeps a Watchful Eye on States That Border on the Absurd*, PEOPLE WEEKLY, May 30, 1988, at 101, 103.

130. *Id.*

131. See Chierici v. Ministry of the Merchant Navy, 71 I.L.R. 258 (Nov. 14, 1969) (partial English translation and fact summary) (citing 1 ITALIAN Y.B. INT'L L. 265 (1975)); Pasquale Paone, *Il Caso Dell' 'Isola Delle Rose,'* 51 RIVISTA DI DIRITTO INTERNAZIONALE 505 (1968) (Italian article on this "state").

132. Chierici, 71 I.L.R. at 258-59 (fact summary; which notes that *one* "included drilling the seabed in order to find a source of fresh water.").

133. *Id.* at 259 (fact summary).

134. *Id.*

to those customary rules of international law which have already been formed in the international community of States with respect to the exclusive exploitation by the coastal States of the resources of the continental shelf, and concerning control of the superjacent waters.

Finally we must also bear in mind that the coastal State has other powers over the contiguous zone by virtue of the Geneva Convention on the Territorial Sea and Contiguous Zone . . . .

. . . Article 24 of that Convention confers on the coastal State a series of powers, in a list which is illustrative and not exhaustive, to prevent and to punish infringements of its customs, fiscal, immigration or sanitary regulations, committed by anyone in the contiguous zone. We are here concerned with powers which, even if they are not easy to classify from the point of view of international law, are certainly very close to those which belong to sovereignty, and certainly require the assumption by the coastal state of international legal responsibility whenever the State permits the carrying out in the contiguous zone of activities which may restrict or prevent the exercise by other States of the freedom of navigation, fishing, laying submarine cables and other uses of the zone, which remains part of the high seas as indeed is specified by Article 24 of the Convention.<sup>135</sup>

Based on the Convention on the High Seas, that of the Territorial Sea and Contiguous Zone, and customary international law, the State has the duty to prevent activities obstructing exercise of the freedom of the high seas, and to order the cessation of such activities

if they do or it is considered that they may, even merely potentially, cause a breach of the international obligations of the coastal State. In the case before us the Italian State, within the wide scope of its discretion, considered that the construction and the existence of the island a mere 300 metres outside territorial waters was in conflict with the principles which govern the freedom of the high seas because of its structure and position in that it permanently withdrew part of the high seas from common use. Hence we are bound to uphold the validity of the decree under appeal, which after due notice ordered the destruction of the artificial island . . . .<sup>136</sup>

### *C. Robbing Roy?: The Duchy of Sealand*

Roughs Fort was one of several constructed during the winter of 1941-42 to protect Britain's coastal approaches from the Germans.<sup>137</sup> Towed and sunk seven miles off the coast, it consisted of two sixty foot high and twenty four foot wide reinforced concrete legs, which were mounted on a boat-like float. It contained ballast tanks and a valve system in order to allow water in at a controlled rate. The hollow legs held the living quarters and were

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135. *Id.* at 260-61.

136. *Id.* at 261.

137. Others included Knock John Fort, Sunk Head Fort, and Tongue Sands Fort. Another fort design, approved for shallower water resulted in Nore Fort, Red Sands Fort, and Shivering Sands Fort. See GERRY BISHOP, OFFSHORE RADIO 120, 121 (1975).

joined together at the top by a deck-like structure which held the guns.<sup>138</sup> Abandoned after the Second World War, Roughs Fort and its fellows received renewed attention when their locations made them prime sites for pirate radio broadcasts.<sup>139</sup>

One of the pirate radio entrepreneurs was Roy Bates, who ran Radio Essex and later BBMS (Britain's Better Music Station) from Knock John Fort between 1965-1967 after "persuading" interlopers from Radio City to leave.<sup>140</sup> In a court action at Rockford Magistrates Court and a subsequent appeal to Chelmsford Quarter Sessions, Knock John was found to be covered by British broadcasting law.<sup>141</sup> During the case's appeal, in late 1966 or early 1967, Bates dismantled all his equipment and moved it to Roughs Fort.<sup>142</sup> Roughs had attracted attention as early as August 11, 1965 when Jack Moore, a ship's stoker from Harwich, and his daughter landed to "claim" it. "They would not say who was paying them, and all the radio stations claimed they had no part in the operation. . . . Later it came to light that Ronan O'Rahilly [of Radio Atlanta and Radio Caroline South] was involved. He planned a health farm/fun palace and converted the roof into a helicopter landing pad."<sup>143</sup> The conflicting interests of these entrepreneurs led to a series of clashes. Bates declared the Fort to be The Independent Kingdom of Sealand in 1967,<sup>144</sup> and in June of that year

a full scale war erupted. Offshore Two set out from Harwich with seven men on board to land a party on the tower. On their arrival the two occupants, Michael Bates and David Barron, threw petrol bombs and other

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138. *Id.* at 120-21.

139. These included Radio Sutch (1964) and Radio City (1964-67) on Shivering Sands Fort; Radio Invicta (1964-65), KING Radio (1965), and Radio 390 (1965-67) on Red Sands Fort; Tower Radio, Radio Tower, and Tower TV (1965-67) on Sunk Head Fort, which was subsequently demolished by the Royal Engineers. *See id.* at 97-98, 44-46, 68, 69, 114-16, and 102-03. Nore Fort had been demolished in 1958 as a hazard to shipping. *Id.* at 121. Ironically, the use of these forts appears to have been suggested by the 1963 construction of a purpose-built offshore structure, the REM Island, for Radio Noordzee and TV Noordzee, in international waters off the coast of the Netherlands. *See id.* at 80-82. *See also* H.F. van Panhuys & Menno J. van Emde Boas, *Legal Aspects of Pirate Broadcasting: A Dutch Approach*, 60 AM. J. INT'L L. 303-41; NIKOS PAPADAKIS, *THE INTERNATIONAL LEGAL REGIME OF ARTIFICIAL ISLANDS* 36 (1977). Many of the British forts were deemed to fall under UK jurisdiction as being within British territorial waters. *See* BISHOP, *supra* note 137, at 46, 57, 115. The status of others, such as Sunk Head Fort, were more problematical, suggesting at least one reason for that edifice's destruction.

140. *See* BISHOP, *supra* note 137, at 56-58, 44. Bates also "stated that he would be setting up [Radio Albatros] on Tongue Sands Fort off Margate." *Id.* at 118.

141. Bates argued that "Knock John was in international waters and for as long as he had lived this had been so. Indeed French and Belgian trawlers often fished there and nobody had been able to stop them." In response, Mr. J. Roland Adams QC noted that: "It appears to us that Knock John Tower is about one and a half miles inside inland waters." *Id.* at 57.

142. *Id.* Another reason given for Roy's move was that "other pirate [radio] operators tried to claim the sea fort." Carol Wallace, *It's Sea for Two as Britain's Roy and Joan Bates Rate Their Own Do-It-Yourself Little Island*, PEOPLE WEEKLY, June 18, 1984, at 55, 56.

143. BISHOP, *supra* note 137, at 121-22.

144. *See id.* at 122; *Emerging Nations: Prince Valiant*, NEWSWEEK, Aug. 28, 1978, at 40.

missiles at the tender, which was forced to move away leaving one man clinging to a rope ladder. Walton lifeboat was called out, and after negotiations was allowed to rescue him. The raiding party claimed shots were fired at them, and although the police interviewed several people, no charges were brought.

Roy Bates told a reporter "You would never believe the fantastic things that are going on out there. My son Michael has been holding off most of these commando raids, usually with the aid of only one other man . . ." He added that there had been seven raids on the tower in three months. In one thirty men armed with guns and knives had been repelled, after which no more attempts had been made.<sup>145</sup>

While Bates subsequently referred to the harassment of his group "by British customs officials and marine patrols,"<sup>146</sup> it appears that much of the trouble resulted from the Fort's indeterminate jurisdictional status. Indeed, when "'Crown Prince' Michael," Bates' son, was prosecuted "for shooting over the heads of an unwelcome boarding party," the British judge "ruled that the government had no jurisdiction because Sealand was outside the 3-mile limit."<sup>147</sup> This put a crimp in the British campaign, which was allegedly to prevent Sealand from being used "to launch an enemy invasion or as a haven for drug smugglers,"<sup>148</sup> but it hardly settled the site's status. *Newsweek* noted in 1978, that in the ten years since the 1968 court case, "Bates has collected several legal opinions supporting Sealand's independence. He also has issued 180 passports,<sup>149</sup> printed up postage stamps (which for some reason are accepted only in Belgium) and even created a Sealand dollar (which, unfortunately for Sealand, is pegged to the U.S. dollar)."<sup>150</sup>

One case which did *not* support Sealand's claims of independence resulted from a document issued on August 26, 1975 to a German national, granting him citizenship as the Duchy. The facts set forth by the Administrative Court of Cologne in *In re Duchy of Sealand*, noted that

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145. BISHOP, *supra* note 137, at 122.

146. Wallace, *supra* note 142, at 59.

147. *Emerging Nations: Prince Valiant*, *supra* note 144, at 40. See also Wallace, *supra* note 142, at 59. A LEXIS search had not revealed this opinion, suggesting that it *may* have been in a lower court. This jurisdictional limbo has attracted other would-be nation-builders. Du Bois, for example, notes the involvement of Michael Oliver, see Du Bois, *supra* note 85, at 5, in a scheme "investigating the possibility of establishing a sea city near an old anti-aircraft tower in the English Channel" which was subsequently dropped. Du Bois, *supra* note 85, at 24.

148. Wallace, *supra* note 142, at 56.

149. *But see id.* at 56, noting that "[l]ast week they began selling passports for a 'privately negotiated' price."

150. *Emerging Nations: Prince Valiant*, *supra* note 144, at 40. See also Wallace, *supra* note 123, at 56, which notes that (in 1984) Sealand does have a flag (red, white and black), stamps, currency, a constitution and 2,000 "citizens," most of them lawyers, painters, electricians and others who live elsewhere but have rendered service to Sealand. The tiny outpost is listed in the *Guinness Book of World Records* as the world's smallest sovereign territory. It also provides Roy with a tax haven; as an Independent sovereign territory in international waters. Sealand is exempt from taxes by other nations.

[t]he "Duchy" is a former British anti-aircraft platform situated approximately eight nautical miles off the southern coast of Great Britain. After the end of the Second World War the British abandoned this platform. It constitutes a small island which is situated outside the British three-mile zone. In 1967 a British Major, R.B., occupied the former anti-aircraft platform and proclaimed the "Duchy of Sealand." This "Duchy" is connected to the sea-bed by strong concrete pillars and has a surface area of approximately 1300 square meters. At present 106 persons possess the so-called "citizenship of Sealand." In 1975 R.B. issued a constitution for the former anti-aircraft platform, designating himself as "Roy of Sealand." The plaintiff holds the post of "Foreign Secretary" and "Chairman of the Council of State" of the "Duchy."

On 2 August 1976 the plaintiff made an application to the defendant for the determination of his citizenship. After the defendant had established the date on which the plaintiff had been issued with the so-called "naturalization document" by the "Duchy of Sealand," the plaintiff was notified that he had not lost his German citizenship because the "Duchy of Sealand" did not constitute a State within the meaning of international law. In this regard it had neither State territory nor a people nor a State government.<sup>151</sup>

Proceedings were instituted challenging this decision by the plaintiff, who argued that Sealand was an independent State. "The island was permanently inhabited by between thirty and forty persons who were responsible for the defence . . . and the maintenance of the community. Furthermore, he contended, his island was on the verge of being recognized as a State by Ceylon, Paraguay and Cyprus."<sup>152</sup>

In denying that this "state" possessed a territory, the Administrative Court noted that the platform "is not situated on any fixed part of the surface of the earth."<sup>153</sup> "A man-made artificial platform, such as the so-called 'Duchy of Sealand,' cannot be called either 'a part of the earth's surface' or 'land territory'" and "only structures which make use of a specific piece of the earth's surface can be recognized as State territory with the meaning of international law."<sup>154</sup>

Similarly, the Court found that "the so-called 'Duchy' also lacked a State people within the meaning of international law.

The State, as an amalgamation of many individuals . . . has the duty to promote community life. This duty does not merely consist of the promotion of a loose association aimed at the furtherance of common hobbies and interests. Rather it must be aimed at the maintenance of an essentially permanent form of communal life in the sense of sharing a

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151. *In re Duchy of Sealand*, 80 I.L.R. 683, at 684 (3 May 1978). See also DVBI, 510 (1978); 8 FONTES JURIS GENTIUM, Series A, Sectio II 312 (1976-78) (German). See also *In re Duchy of Sealand*, 80 I.L.R. at 685 noting that "[i]nternational law lays down three essential attributes for statehood. The State must have a territory, that territory must be inhabited by a people and that people must be subject to the authority of a Government."

152. *In re Duchy of Sealand*, 80 I.L.R. at 684.

153. *Id.* at 685.

154. *Id.*

common destiny. . . .

The so-called "nationals" of the "Duchy of Sealand" do not satisfy these criteria for community life. Apart from the 30 to 40 persons permanently living on the platform, who are responsible for its defence and the maintenance of its installations, the presence of the other so-called "nationals" is limited to occasional visits. The territorial extent of the "Duchy" of merely 1300 square metres does not satisfy the requirements for the permanent residence of all its "nationals." Even if the plans of the "Roy of Sealand" to extend the size of the platform to approximately 13,000 square metres were to come to fruition, there would still not be suitable living space for all "nationals." The life of the State is not limited to the provision of casinos and places of entertainment. Rather a State community must play a more decisive role in serving the other vital human needs of people from their birth to their death. These needs include education and professional training, assistance in all the eventualities of life and the provision of subsistence allowances where necessary. The so-called "Duchy of Sealand" fails to satisfy any of these requirements.

Regardless of the material prerequisites which an entity must have in order to constitute a "people" under international law, the "nationals" of the "Duchy" themselves fail to satisfy an essential condition for their classification as a people. These "nationals" have not acquired their "nationality" in order to live with one another and handle all aspects of their lives on a collective basis, but on the contrary they continue to pursue their individual interests outside the "Duchy." The common purpose of their association is limited to a small part of their lives, namely their commercial and tax affairs. This degree of common interest cannot be regarded as sufficient for the recognition of a "people" within the meaning of international law.<sup>155</sup>

Nor did legal decisions stop the physical squabbles associated with control of the Fort. As alluded to in the German court's decision, "Bates's dream was to build a casino, a tanker port and other facilities in his tiny nation."<sup>156</sup> During 1978 he negotiated with a group of German investors to construct a \$70 million hotel and gambling complex, but the talks stalled in early August.

As Bates tells it, the Germans sent 30 men—mostly lawyers, accountants and the like—to occupy the platform themselves. They found Michael aboard and locked him up for four days before packing him off to Holland on a passing trawler.

Bates was enraged. "No crook will rule Sealand. I will blow it up first," he vowed. Instead, he gathered a posse of twenty friends, hired a helicopter and assaulted the offshore platform. After the battle [a dawn attack with wooden staves], he bundled all but three of the Germans aboard the chopper and sent them to Holland. "We kept three to clean up after the others," . . . But ["Princess" Joan] indicated that the three Germans might be held until their colleagues offered to pay for what she claimed

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155. *Id.* at 687-88.

156. *Emerging Nations: Prince Valiant*, *supra* note 144, at 40. See also Wallace, *supra* note 142, at 59 (noting that "Ray hopes someday to turn Sealand into a three-mile-long, man-made island . . . complete with airport, hotel, casinos and banks.").

was "hundreds of thousands of pounds worth of damage."<sup>157</sup>

#### V. "ALL AT SEA:" A SUMMARY OF THE STATE OF "REEF REPUBLICS"

The beginning of this study promised an attempt to draw a few generalizations as to the reasons for the failure of these "reef republics." Reviewing the examples which have been covered, most, if not all, flourished during the 1960s and '70s. This convergence appears to be far from fortuitous, for the period represents a *gap* between the enactment of the 1958 Geneva Conventions, encouraging the exploitation of the ocean's resources, and the ensuing court interpretations and state action which indicated the extent to which this activity would become a coastal state hegemony. It was a period, if not of unclaimed islands, then of reefs and banks which had hitherto escaped the embrace of neighboring States. Again it may be more than chance that many of these "statelets" were located just beyond the restricted three-mile limits of nations such as the United Kingdom or the United States. To a degree the demise of these "alternative societies" may be seen as early warning signs of the Great Sea Rush, which was to result in the extensive ocean claims of today and the 1982 Convention on the Law of the Sea. It appears unlikely that "nation-building on the continental shelf" (or elsewhere) will be an activity for the '90s and the coming century without a change in international law, the way in which established States behave, or a major advance in ocean technology.

"Reef republics" have the further disadvantage of being delicate political ecosystems, open to disruption through the most minor external pressures (a Corps of Engineers permit) or internal rivalries. Their communities can be levelled by a single hurricane, moved by a parted mooring line, sunk without trace in a typhoon. Dependent for their revenues on offshore banking, commemorative coins, postage stamps, flags of convenience, or gambling, they are continually open to exploitation, and their very vulnerability makes them a danger to others. In time some might acquire the paraphernalia of statehood—territory, citizens, a government, recognition—but time is what they do not have; they are continually open to the challenges of all and sundry. If in the future such states are to rise with their flags from the deep, it seems likely they will be either secessionist slivers of larger entities, or else catspaws, sponsored by nations with ulterior motives. Until that day, may they lie in peace, with the drowned hopes of their founders—gone but not forgotten.

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157. *Emerging Nations: Prince Valiant*, *supra* note 144, at 40.

