States — Conditions of Statehood — Territory — Population — Government—Artificial island constructed by State outside its territorial waters and subsequently abandoned — Whether capable of constituting a State — Whether residents a people

Territory — Definition — Whether territory of a State must be part of the surface of the earth — Artificial island — Self-determination—Definition of a people

Sea—Islands—Artificial island—Whether capable of constituting sole territory of a State

Nationality — Individuals — Loss of nationality — Loss of nationality of birth by voluntary acquisition of new nationality—The law of the Federal Republic of Germany

In re DUCHY OF SEALAND[1]

Federal Republic of Germany, Administrative Court of Cologne. 3 *May* 1978

SUMMARY: *The facts:*—The plaintiff held the title of Foreign Secretary and President of the State Council of the so-called Duchy of Sealand, an entity established on a former anti-aircraft platform erected by the United Kingdom eight miles off its southern coast and attached by concrete pillars to the seabed. At all relevant times, the platform was outside United Kingdom territorial waters. The platform was abandoned after the Second World War and occupied in 1967 by a former British Army Officer who proclaimed the establishment of the Duchy. The plaintiff brought an action for a declaration that, as one of 106 persons who had acquired the citizenship of the "Duchy", he had lost his citizenship of the Federal Republic of Germany.

Held:—The action was admissible but unfounded.

International law required three essential attributes for Statehood. The State must have a territory, a people and a government. At least two of these requirements were absent in the case of the "Duchy". Territory must consist in a natural segment of the earth's surface. An artificial island, albeit connected to the earth's surface, did not satisfy this criterion. Whilst size was irrelevant, in order to constitute a people the group of persons in question must form a cohesive vibrant community. An association whose common purpose covered merely commercial and tax affairs was insufficient (pp. 685-8).

The following is a statement of the facts as reported in *DVBl.* 1978, p. 510:

On 14 November 1975 the plaintiff, a German citizen by birth, received a document issued on 26 August 1975 which granted him

[1] Case No. 9 K 2565/77.

citizenship of the so-called "Duchy of Sealand". The "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 metres. 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.

The plaintiff instituted proceedings challenging the decision on the basis that the "Duchy of Sealand" was an independent State. Consequently, he argued, pursuant to Section 25 of the Nationality and Citizenship Law (*RuStAG*) of 22 July 1913 (*RGBl.*, p. 583), his German citizenship had been lost. The island was permanently inhabited by between thirty and forty persons who were responsible for the defence of the miniature island 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. The plaintiff seeks a declaration that he has lost his German citizenship as a result of his acquisition of the citizenship of the so-called "Duchy of Sealand" from 14 November 1975.

The Administrative Court (*VG*) dismisses the action brought by the plaintiff.

[The following is the text of the grounds of the judgment of the Court:]

The plaintiff's action for a declaration, instituted pursuant to Section 43 of the Administrative Court's Order (*VwGO*) of 21 January 1960 (*BGBl.* I p. 17), is admissible.

Nevertheless the action is unfounded.

The plaintiff has not lost his German citizenship pursuant to Section 25(1) *RuStAG*.

According to this provision a German who is neither domiciled nor permanently resident within the country loses his citizenship if he acquires a foreign citizenship, if the acquisition of the new citizenship is at his own request. The plaintiff does not satisfy the conditions laid down in the provision in question. Although, since 28 October 1975, he has been neither domiciled nor permanently resident in the Federal Republic of Germany, nevertheless he has not lost his German citizenship since he has not acquired any foreign citizenship.

Since the so-called "Duchy of Sealand" does not constitute a State within the meaning of international law, the plaintiff did not acquire foreign nationality when he was issued with a document by the "Duchy of Sealand" on 14 November 1975.

International 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 (*cf.* Gerber, *Lehrbuch des Völkerrechts*, Vol. 1, 2nd edn. 1975, paragraph 14 c).

The "Duchy of Sealand" fails to satisfy even the first condition as it does not possess a State territory within the meaning of international law.

The former anti-aircraft platform is not situated on any fixed point of the surface of the earth. Rather, the miniature island has been constructed on concrete pillars. The preponderant view of legal writers is that only a part of the surface of the earth can be regarded as State territory. Gerber characterizes State territory as an enclosed part of the surface of the earth (Gerber, *loc. cit.*, pp. 314-15). Equally Strupp/Schlochhauer (*Wörterbuch des Völkerrechts*, Vol. 1, 1960, p. 617) and Verdross/Simma (*Universelles Völkerrecht*, 1976, p. 526) define State territory as "land territory".

The view expressed by these writers, that State territory consists of "a part of the surface of the earth" or "land territory", leads to the conclusion that only those parts of the surface of the earth which have come into existence in a natural way can be recognized as constituting State territory. 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" because it does not constitute a segment of the earth's sphere.

The fact that the former anti-aircraft platform is firmly connected to the sea-bed by concrete pillars does not transform the platform into a part of the "surface of the earth" or "land territory". On the contrary the terms "surface of the earth" and "land territory" demonstrate that only structures which make use of a specific piece of the earth's surface can be recognized as State territory within the meaning of international law. Furthermore both in international law and in colloquial speech the use of the term "*territorium*", derived from the

Latin word "*terra*" which is synonymous with "earth", clearly indicates that State territory within the meaning of international law must be either "mother earth" or something standing directly thereon (*cf.* with regard to the etymological significance of the words "earth" and "land", *Der Grosse Duden, Herkunftswörterbuch der deutschen Sprache*; Wahrig, *Wörterbuch der deutschen Sprache*, 1978).

The Court does not share the view of Professor Dr Leisner, upon which the plaintiff seeks to rely, that the so-called "Duchy of Sealand" does satisfy the requirements for designation as State territory.

In his opinion Leisner quotes examples of man-made formations of State territory, such as artificially reclaimed parts of the sea-shore which had been submerged by the sea but still retained the status of a part of the territory. The same does not apply, however, to the so-called "Duchy of Sealand". It is certainly true that territory which was once connected to land and then submerged by the sea can continue to be regarded as a connected part of State territory. But this case is not comparable to the creation of the artificial island of "Sealand". A piece of State territory which has been submerged by the sea continues to be connected to a firm piece of State territory to which the piece of territory submerged by the sea is to be regarded as belonging. In the case of the "Duchy of Sealand", however, no proper part of State territory is connected to the artificial island. Leisner is also incorrect when he takes the view that wherever a specifically delineated part of the surface of the earth is firmly connected to a submerged portion, the former is also to be regarded as a part of State territory (*cf.* Leisner, *Rechtsgutachten über die Völkerrechtliche Situation der Duchy of Sealand*, p. 4).

Leisner's conclusion, that submerged surface areas become part of territory, fails to take into consideration that the point at issue is not whether the surface of the sea-bed becomes part of the territory but rather whether the platform itself becomes part of the territory.

Leisner is also not convincing when he argues that what is decisive is not scientific and geographical terminology but rather the legal definition of the essential attributes of State territory. He considers that his view that the artificial island of "Sealand" does satisfy the criteria for designation as State territory is supported by Dahm, who defines State territory as "a particular organized surface area" (Dahm, *Völkerrecht*, Vol. 1, 1958, p. 76). This view is in fact contradicted by Dahm himself who states at another point that "any State territory must primarily be land territory" (Dahm, *loc. cit.* p. 617).

Finally Leisner's contention that, under international law, territory can be artificially extracted from the sea, does not provide a basis for the designation of the so-called "Duchy of Sealand" as State territory. The formation of land by the erection of dykes or dams and similar structures on the sea-shore or in coastal waters is not comparable to the construction of artificial islands such as "Sealand". The positioning

of dykes results in the enlargement of existing State territory by the acquisition of a new piece of the surface of the earth directly adjacent to existing State territory, which assumes the same status as that territory. By contrast, the artificial island of "Sealand" did not involve the creation of any new piece of the earth's surface.

In addition to the lack of State territory, the so-called "Duchy" also lacks a State people within the meaning of international law. At present the "Duchy" has 106 "citizens". Leisner is correct in his view that the size of a people is irrelevant to the question of whether or not it constitutes a State (Leisner, *loc. cit.*, p. 9; Rafell, *Die Rechtsstellung der Vatikanstadt*, 1961, p. 35). Nevertheless, in the case of the "Duchy of Sealand" it cannot be accepted that there is a "people" within the meaning of international law since the life of a community is lacking.

The State, as an amalgamation of many individuals, complements the family, which consists of only a few members, and 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 common destiny (Herzog, *Allgemeine Staatslehre*, 1971, p. 43; Doehring, *Straatsrecht der Bundesrepublik Deutschland*, 1976, p. 84; Krings/Baumgartner/Wild, *Handbuch Philosophischer Grundbegriffe*, Vol. 5, p. 1414; Brugger, *Philosophisches Wörterbuch*, 14th edn., 1976, entry under "Staat").

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 "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.

[Reports: *DVBl.* 1978, p. 510; *Fontes Iuris Gentium, Series A, Sectio II, Tomus 8,* 1976-80, p. 312 (in German).]

NOTE.—This decision may be compared with judgments of the courts of Italy (71 *I.L.R.* 258) and the United States (51 *I.L.R.* 225) dealing with the legal status of artificial islands.