

**Proposed Inhabited Artificial Islands in International Waters:
International Law Analysis in Regards to Resource Use,
Law of the Sea and Norms of Self-Determination and State Recognition**

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1. Introduction

The opportunities and benefits that could be obtained from exploiting the vast mineral resources of international waters have already been recognized by United Nations Conference on the Law of the Sea, with the creation of the International Seabed Authority and the formation of several commercial groups for obtaining raw materials from the seabed. Temperature differentials, nitrogen rich deep sea levels and vast. A "free space" could also be used to produce energy, food and provide a housing platform for earth's geometrically growing human population. However, the means of tapping these resources may require a novel way of social and financial control of the extraction method and also in how these resources are processed and consumed.

In this thesis I will fabricate a situation in which a hypothetical law firm, specializing in cases related to international law, is approached by an organization that wishes to construct an artificial island in international waters. The success of their project depends on the ability to use the raw materials of the sea unhindered, and, more fundamentally, on the creation of new type of society free from the ties of any traditionally recognized entity in international law. They have asked the law firm to research the basis, for first, determining the legality of constructing artificial islands in international waters and use of resources in international waters, and second, to provide an overview of the policies on self determination and to review the possibility of international recognition of their new community.

The problem is to determine which principles of international law and policy apply to the proposed project, which cases of state practice have relevance and what would they predict for the project, and finally, to offer a reasonable legal summary of what possibilities exist for a group of people from various states, building an artificial island in international waters and using the resources of such, within the confines of a new, independent Astate@.

To answer this question the methodology I will employ is to review the relevant legal materials derived from United Nations resolutions and academic discussions of the principles on international law and bring in some recent examples of state practice and discussions of related cases in three main categories; international resources, the law of the sea, and self-determination and international recognition. Finally, I will analyze the proposed project in terms of these arguments and give an interpretation of the literature as it relates to the project.

The first part of the thesis is an outline of the project including the technical aspects, a brief overview of the assumptions of the project and an introduction of a critical points in the analysis of these assumptions.

The second part of the thesis will concentrate on relevant issues of theoretical and practical international law and relate this to the proposed project. Each of these sections will first discuss the theoretical background, including articles of

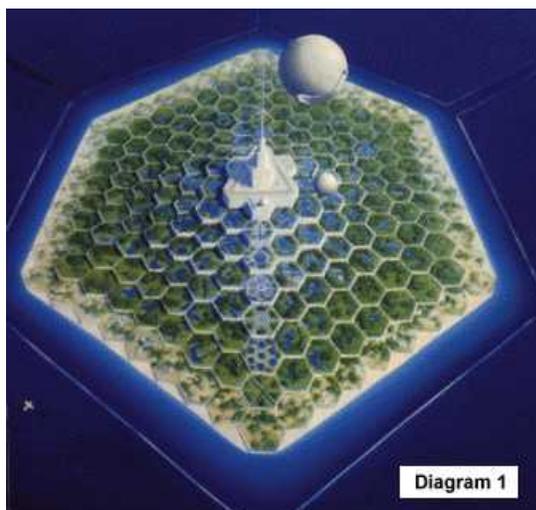
international law and policy and go on to outline some of the current, ongoing academic arguments. Each section will also contain an outline of recent state practice and a discussion of relevant cases. Finally the information obtained in the preceding sections will be used to analyze the proposed project, especially in terms of the project assumptions.

The final section of the thesis will discuss current issues of international recognition and relate this to the possibilities of recognition for the project and outline what alternatives may exist and what types of problems, if any, this may entail for the international community.

2. Discussion of Proposed Project

2.1. Technical Aspects of Project

The artificial island proposed by the organization consists of a self-sustaining structure composed of “sea concrete.” The island could indefinitely support a population of about one hundred thousand people who would, for the most part, be engaged in processing the materials produced on the island, as well providing the services necessary to support the infrastructure, educational and administrative needs of the residents. Each artificial island would have an area of about one hundred square kilometers and a mass of about eight million tonnes. The energy requirements would be met solar power and by seven OTEC generators at the core (center of above diagram) which would supply the Asea city@ directly above it and the surrounding productive area that would produce the food and material resources necessary for the support of the population. The projected production would be far in excess of that required by the island=s population and surplus products would be exported around the world.



The central power generators (OTEC - Ocean Thermal Energy Converters) are based on the conversion of temperature differentials in tropical waters. Cold water is drawn from a depth of between eight hundred and fourteen hundred meters into the converter and mixed with the warmer surface waters. The steam created by mixing water temperature differentials spins a turbine which in turn produces electric current. The anticipated net power production of seven OTEC generators

would be about four hundred megawatts. OTECs of such a scale have already been proven feasible with the construction, testing and operation of facilities in Japan and an experimental facility in Hawaii.

The initial OTEC would be used to Agrow@ the platforms on which the city and remaining OTEC generators are anchored. The OTECs should produce surplus power and the waste products of shellfish, calcium carbonate, and sea water are the component elements of magnesium production. The electrical energy is applied to pre-formed magnesium-manganese alloy wire mesh, which attracts minerals from the surrounding waters (much like reinforced concrete). The magnesium central conducting rods and the attached mesh would form the base of each successive structural element eventually producing an island pictured above. The ongoing process of sea-crete accumulation will eventually form the central core of the island and the surrounding breakwaters of the artificial island. As the process of mineral accumulation occurs, the size of the island would also increase. Each section would be anchored with Teflon cables to the ocean floor to prevent the island from drifting and also to provide lateral stability. Once the island is accreted, magnesium production would be continued and would actually be one of the industrial outputs of the island. The OTECs should produce surplus power and the waste products of shellfish, calcium carbonate, and sea water are the component elements of magnesium production.

The cooler, deep water pumped up by the OTECs is very rich in nitrogen. This nitrogen rich water, surrounding the core island, is used to grow algae and in turn more complex organisms such as fish, shellfish and algin rich seaweeds (used for manufacturing textiles) for consumption by the inhabitants and eventual export. In fact, the anticipated industrial output of the island is far greater than the material needs of islanders, in fact magnesium production alone could supply 25% of the global requirement. Raw materials, pre-processed industrial inputs, food and finished goods would become important income generating exports. In terms of potential economic strength these artificial islands (if enough were built) could have a tremendous effect in international economics - for the production of food, raw materials and minerals, textiles, and surplus electricity. It is for this fact alone that, if these islands were built and became feasible, they would cause an uproar in not only international law but global political economy as well.

2.2 Resource use and sustain ability.

As outlined above, the raw materials of the sea would be of central importance to this project. The energy and raw minerals of seawater would be the initial use of resources. With the completion of the construction, the temperature differentials of deep tropical sea, ultimately solar energy, would continue to supply the island with

unlimited and sustainable power, aside from the required periodic maintenance. The structure of the island itself is indefinitely sustainable with any structural damage simply being repaired with surplus electrical power and sea minerals.

The second most important resource input (after sea/solar energy) is nitrogen, obtained by pumping up nitrogen rich deep sea water. This nitrogen along with solar energy would be the primary components of organic (algae, both for food and textiles) production. Higher forms of organic matter, such as fish and shellfish, use the naturally occurring (with sunlight and nitrogen) elementary food particles and sea minerals (especially calcium) to grow. The above water vegetation is also grown with the assistance of sunlight, nitrogen and trace minerals available from the sea. This is also indefinitely sustainable, since the amount of nitrogen fixed in deep sea water is continually replenished from the air.

In actual figures, the amount of raw resources required for the construction of the island would amount to about .0000004% of the total amount of solids dissolved in the world's oceans. Other than the harvesting of small amounts of manganese nodules for the production of conducting reinforcing rods for the initial construction of the island and the production of magnesium (which would affect world magnesium markets, although anyone with access to their own territorial sea could make magnesium) the actual amount of resources consumed would be quite minuscule (even if a thousand islands were built).

2.3 Project assumptions - Law of the Sea and resource use

The organization quotes the 1958 Geneva Convention of the High seas as the legal basis to construct artificial islands in international waters, A...no State may validly purport to subject any part of them [the high seas] to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law.@ They interpret this clause to mean that the 1958 convention gives any person (or non-state group) the freedom to place structures in international waters, and prevent state(s) action on these Aspecial territories@. They propose that the island be constructed on the Coco Mer sea-mounts, due north of the Seychelles, off the East coast of Africa and outside of the two hundred mile economic zone of any nearby country. Due to the technical anchoring requirements of the artificial island in its current conception, the island should be positioned over sea-mounts, which lie closer to the sea surface. What is of primary importance is the groups= assumption that: A..international waters, unclaimed by any sovereign power ...are still available for colonization.@

The group is also aware that it may be possible to build the islands as floating cities that are not anchored to the seabed. In this regard, the international law for ships (an

unanchored, movable platform or floating device) is quite substantial, clearly defined and generally accepted by the international community. However, the technical requirements for this would increase the costs dramatically and also compromise the safety of the island. For this analysis it is understood that the islands will be permanently anchored and defined by international law as >artificial islands=.

The second assumption of the group is that the 1958 convention inherently includes the freedom (right?) to gather mineral deposits; magnesium, manganese (from the seabed) and calcium carbonate and to employ these minerals as the Acolonists@ see fit, including the freedom to sell or trade surplus production of these minerals as well as the sale of surplus electrical production and aqua-culture products. As such, the group understands Article 2, sections 1 and 3, regarding fishing and laying of pipelines and cables, to be the main legal principles permitting the establishment of the enterprise. They also want to point out that Section 3, regarding living resources, is especially applicable; A1. All states have the right for their nationals to engage in fishing on the high seas...@ and due to the sustainable nature of the island, they would fall within the principles of Article 2. As a side-note one could point out that the gathering and sale of these items has historically been accomplished by people or companies operating from or through specific, established states -- multinational corporations notwithstanding.

The primary focus of the island is to be an economically profitable and sustainable enterprise and as such, the ability to freely engage in trading activities, free from the Aclutches@ of any state form an important part of the legal philosophy and figures largely in the economic feasibility for the construction of this island. The group is not completely aware of the provisions of later treaties, including the UNCLOS treaty and the mandate of the International Seabed Authority. The point of this research is to discover what these principles are and to advise them of the possible legal ramifications, as well as offer a criticism of their assumptions.

2.4 Project assumptions - self-determination

The primary assumption for the social-political organization of the one hundred thousand colonists on the island is one of Aindividual sovereignty.@ By this the founding group would like to establish a Afoundation@ in which each member of the new colony is A...entitled to live his life with perfect autonomy. The individual must be free of coercion and interference, free to choose his or her own ways and means, and free to express their own unique character.@ While this may seem like either anarchy or utopia, the secondary intention of the organization, aside from sustainable resource use, is one of establishing a new type of social organization that would eventually replace the modern state (at least on the island).

The administrative and organizational structure of the island would be embodied in a type of corporation. This corporation would initially have a monopoly in the provision of goods and services for the inhabitants of the island. The author envisages that the corporation would be owned in whole and exclusively by the residents and would in effect be controlled by them. Revenue earned from the production of goods and services would first go to the colonists to provide for their needs and the surplus profits used to either construct more colonies or used to expand the colonial experiment into space.

As a legal basis for their assumptions, the group quotes the UN General Assembly Resolution 2625, section 2; All peoples have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development...@ They interpret this to mean that any group of people (including one or two hundred thousand artificial island colonists - coming from an existing states), have an inherent right to form new political associations - leading to the formation of a new state, especially in areas, like the high seas, in which no particular state has control. As opposed to traditional societies based on the rule of few over many, the group proposes a society based on individual, absolute power. The limitations of this power are defined only by the corresponding and equal powers of every other individual sovereign.@

For the analysis following, I will interpret this Aprofit sharing@, resident owned corporation and the idea of political autonomy from other states and individual sovereignty, as a new concept of nation or state, although not in the usual historic treatment of these terms. It is the assumption of the organization that it is possible and legal for a group of one hundred thousand people to form a new, autonomous community based on individual and corporate freedom, in international territory, outside of the jurisdiction of any current state. It will be my conjecture that this group may have to form a traditional type of Amicro-state@ to enable it to have legitimacy in international law and to enable it to trade in goods and services.

3. Theory, case law, and analysis of proposed project

3.1 International waters and resource use

3.1.1 Law of the sea, common property and the International Seabed Authority mandate

According to the International Court of Justice there are three main sources of international law and several secondary sources, A...such as judicial decisions, and teachings of the most highly qualified publicists of the various nations.@ The three main sources include: treaty law (international conventions), customary law (state practice) and Ageneral principles of law recognized by civilized nations.@ The third source of law, although not necessarily binding in all cases, and as Czaplinski and Danilenko argue: A...only constitute evidence of international practice..@) is derived from Judicial decisions and more specifically for the case at hand, the Tribunal for the Law of the Sea. This tribunal is a relatively new institution and so far has heard few cases and none relating to the subject matter of this case. For the arguments considered here, treaty agreements, and UN General Assembly resolutions should take priority over accepted practice, due to the non- existence of established artificial islands (at least inhabited and self sustaining) outside of any exclusive economic zone (200 mile limit). The customary law that does exist in relation to the case discussed here, is scarce and the cases cited in this paper can generally be taken to be analogies of customary law in this regard. The 1958 Geneva Law of the Sea convention could be applicable in some cases despite being superceded by the 1982 UNCLOS agreement, with both being qualified by state practice and acceptance. In addition to this, as stated by Malanczuk, treaties are becoming more important in international law and have A...to some extent, replaced customary law.@ Although there is a move to codify customary law, the behavior of the United States and its opinion in regards to the UNCLOS agreement (to be discussed) and the mandate of the ISA, would certainly cause a substantial problem in trying to determine whether customary law informs treaty law or vice versa.

Before the acceptance of the UNCLOS, the Geneva Convention on the Sea, was generally regarded as the legal basis for rights and obligations in International waters. Under the 1958 Geneva convention, Article 2 states that:

AThe high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal states: 1. Freedom of navigation; 2. Freedom of fishing; 3. Freedom to lay submarine cables and pipelines; 4. Freedom to fly over the high seas. These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.@

Due to the fact that the UNCLOS agreement has not been universally ratified, this paper will employ both the 1958 Geneva convention and the 1982 agreement in the analysis of the foregoing model.

The 1982 UNCLOS agreement also outlines the formation of the International Seabed Authority (ISA) and provides a further definition of international waters (The Area) dealing specifically with resource extraction and exploitation. Resources, defined by Part XI, Article 133, are: A...all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the sea-bed, including poly-metallic nodules@ and as such, Article 136 states that: AThe Area and its resources are the common heritage of mankind.@ and (Article 137): A1. No state shall claim or exercise

sovereignty or sovereign rights over any part of the Area or its resources...@ and (3.)
A No state or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part.@

The International Seabed Authority, established by Article 157, is vested with the authority stated in Article 153:

A 4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.@

and is, in effect, a legal document establishing the Authority as the primary agency through which the resources of the seabed of international waters are obtained and subsequently distributed as outlined by the following principles (Article 157):

1. The Authority is the organization through which States Parties shall, in accordance with this Part, organize and control activities in the Area, particularly with a view to administering the resources of the Area.
2. The powers and functions of the Authority shall be those expressly conferred upon it by this Convention. The Authority shall have such incidental powers, consistent with this Convention, as are implicit in and necessary for the exercise of those powers and functions with respect to activities in the Area.
3. The Authority is based on the principle of the sovereign equality of all its members.
4. All members of the Authority shall fulfil in good faith the obligations assumed by them in accordance with this Part in order to ensure to all of them the rights and benefits resulting from membership.

Companies, representing states, (or having a >flag state) have >options= on the exploitation of the sea bed and if interested in deep seabed activities, must file a plan of work and be approved by an international board represented by the ISA.

3.1.2 State practice and discussion of relevant cases

In terms of the newly formed International Seabed Authority (ISA) and the Division of Ocean Affairs and the Law of the Sea, the organization vested with the mandate to manage the UNCLOS agreement, there have not been any directly related cases (legal cases brought before the International Tribunal for the Law of the Sea) in relation to resource use and exploitation. Most importantly, several key nations had not ratified,

in whole, the 1984 UNCLOS agreement. This includes the United States, the United Kingdom and Germany (the United Kingdom and Germany have since ratified, in 1997 and 1994, respectively). This section will outline the position of the American opposition, as key differences in opinion between the American, European and the developing countries.

The U.S. had five points of inclusion (the basis of opposition) for the treaty including: 1) the treaty should not deter development of any deep sea-bed mineral resources to meet national and world demand; 2) the treaty should ensure national access to these resources by current and future >qualified entities= to enhance American security and supply, to avoid the monopolization of the resources by the operating arm of the proposed International Sea-Bed Authority, and to protect the economic development of these resources; 3) the treaty should supply a decision-making role in the deep sea-bed regime which fairly reflected and effectively protected the political and economic interest and financial contributions of participating states; 4) the treaty would not allow for amendments to come into force without the approval of participating states; and 5) would not set undesirable precedents for other international organizations.

The main principles of the United States= opposition were concerns that, according to the voting structure of the Council (Sea-Bed Authority), developing nations, by majority vote, could exclude private companies from participating in the mining of the region and provide instead for a monopolizing, global cartel. To counter the American position, Ambassador Paul Bemela Engo (United Republic of Cameroon), A...the developing countries have reiterated their consistent view that the system was never conceived in terms of competition between the Enterprise and private enterprise of State Parties.@ The United States also requested the removal of the provision requiring that private companies sell their technology to the ISA and instead that developed countries help the Authority find the technology in the open market.

In December 1982, President Reagan decided that the United States should not pay its required one million dollars per year to the UNCLOS Preparatory Commission, claiming they were >destined to finance the very aspects of the Law of the Sea that were unacceptable to the United States=. The National Oceanic and Atmospheric Administration of the U.S. Department of Commerce issued licenses to several consortia to prospect for manganese nodules in the Pacific Ocean, which was denounced by the then Soviet Union as a violation of the UN convention and stated that it would not recognize >arbitrary= American decisions on matters of the international area of the sea-bed.

Tommy Koh, president of the UN Conference, proposed that the United States should no longer be invited to periodic meetings of consortia interested in enjoying rights as >pioneer investors=. He also stated that:

AThe Convention was an indivisible whole and that it was >not possible for a state to pick what it likes and to disregard what it does not like=; that it was >factually incorrect and legally insupportable= to

argue that apart from the sea-bed mining section the Convention merely codified customary law or reflected existing practice...that any attempt by any state to mine the resources of the deep seabed...would incur grave political and legal consequences.@

The Deutscher Bundestag introduced the A Bill on the Interim Regulation of Deep-Seabed Mining@ in 1978, with the intention to provide a provisional regulatory instrument until the adoption of an International agreement for deep seabed mining by the United Nations Conference. This bill provided for (Section 3.1): A The development of hard mineral resources of the deep seabed by residents of the Federal Republic of Germany...is permitted only if authorization has been granted under this Act or by a reciprocating state.@ The bill also intended to (Section 1.1): A...contribute to the development of the >common heritage of mankind= to the benefit of all nations on the basis of the freedom of the high seas, without claiming sovereign rights over the deep seabed and its mineral resources.@ This indicates that Germany, in establishing this act, was already trying to reconcile the American opinion of >free for all use= with that >benefit to mankind= perspective favored by the Group of 77 (see below). Although Germany eventually signed the agreement (see note 34), in 1984 it had not ratified the convention but indicated that it would not oppose the ratification of the convention by the European Community (which it did in December 1984).

The 1982 conference adopted four resolutions (at the time, opposed by the U.S. and Turkey, with seventeen abstentions, including the U.K., Germany and the Netherlands): 1) to establish a Preparatory Commission to set up the Law of the Sea Tribunal provided for in the Convention; 2) to govern preparatory investments in pioneer activities by states and private consortia relating to polymetallic nodules in the deep sea-bed; 3) to deal with rights and interests of territories which had not yet attained independence; and 4) to grant national liberation movements the right to sign the Final Act of the conference.

In regards to point two of the resolutions, four countries (France, India, Japan and the Soviet Union) and three multinational consortia (Kenecott Group [American]- composed of six mining companies, Ocean Mining Associates - composed of four mining companies, and Ocean Minerals Company - composed of five mining companies) were recognized as pioneer investors, stating that prior to 1983, they had expended no less than thirty million U.S. dollars in pioneer activities (mineral extraction) and that the size of one pioneer area should not exceed one hundred fifty thousand square kilometers.

3.1.3 Analysis of proposed project

The group=s assumption that international waters are available for colonization forms the core premise of resource gathering and use. Initially, the group has a

logical problem when it interprets >...no State may validly purport to subject any part of them [the high seas] to its sovereignty= to mean > ..international waters, unclaimed by any sovereign power ...are still available for colonization=. Given that international waters should be free from appropriation of states does not necessarily imply the freedom to colonize, which in actual fact, would be subjecting a >part of them to sovereignty=, if the colonized island were to be recognized as a new, independent state. However, this is really an end argument, in that sovereignty and subjection of the area to sovereignty would be an issue after the establishment of the island and a claim to statehood. That is to say that it is more useful to examine the issue in terms of an organization (non-state, or multi-national) wishing to exploit the resources of the high seas, (an organization without territory) while temporarily disregarding the legal issue of territorial acquisition, and centering the current argument on the principles of the 1958 and 1982 Treaties and the broad concept of Athe benefit to mankind@, as stated in Section XI, Article 140 of the 1982 agreement.

Although the organization has based their assumption on the 1958 Law of the Sea Agreement, the 1982 UNCLOS agreement has largely superceded, or at least enhanced the 1958 agreement with one vital abstention; the United States. With the introduction of Section XI in the 1982 agreement (the establishment of the Area and the ISA), the options for the organization are more clearly defined in the following ways:

The group is intending to use manganese nodules (as well as other mineral, liquid and gaseous substances) for raw materials and export. This metal is clearly in world wide demand, as indicated by the plans of mining companies already listed as >pioneer partners=, and as argued by Buzan, the rise in the economic value of the seabed has caused the issue to politicized and subsequently causing state action ultimately leading to the desire for a legal regime. The group is also intending to use nitrogen, a gaseous substance, and as such would also be included as a resources in Part XI, Article 133 of the agreement, A...=resources= means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the sea-bed, including poly-metallic nodules.@ Strictly interpreting the mandate of the ISA, the group would have to be licensed as an interested party intending to explore and subsequently mine >the area= in regards to solid and gaseous materials. However this strict interpretation was precisely the point of contention between the industrialized powers (especially and still the United States) and developing countries (Group of 77). During the Law of the Sea Debates, prior to the 1982 agreement, the arguments presented fell largely into three categories: 1. opposed to establishing international machinery (ISA), 2. in favor of establishing a weak machinery/weak licensing regime and 3. in favor of establishing strong machinery and licensing. In most cases the developed countries= position was that of establishing an organization with a weak supervisory role, whereas the developing countries wished to establish an organization with a strong regulatory role.

In light of the Margue Report and subsequent rulings by the Council of Europe it can be deduced that the European community would be opposed to the plans of the group in terms of resource use. Especially considering its point that:

A...For we can regard maritime areas which do not come under the control of any one State but are available to all as forming, so to speak, the public property of the international community [and]...Domestic legal systems define public property {le domaine public} as >property put at the public=s disposal=, and only allow exclusive use thereof [artificial islands specifically] in exceptional circumstances. The exclusive occupancy of a place must be compatible with its assignment to public property and should not cause excessive inconvenience to other users.@

In terms of the project, it would, in fact, be an exclusive occupation of international property and an exclusive use of the resources in the immediate area. The anchoring cables and water displacement activities of the project would effectively block other activities in the direct area and if other activities were to occur in the area, it would cause significant problems for the colonists. However, in terms of actual space occupied and resources used, the concern of >exclusive occupation= should not be very significant and could constitute grounds for an exception. The exclusive zone would be no larger than two hundred square kilometers (as compared to the sixty-thousand square kilometers claimed by DeepSea Ventures [see below]) and as noted above, the total input of resources would amount to only microscopic levels in relation to the vast expanses of international waters.

The dichotomy, between a more >fair= idea of common heritage and that of >laissez faire= economics or more direct understanding of freedom of the high seas forms the backdrop to this argument in that a >free for all= policy could permit anyone (state or otherwise, as argued by the United States) to exploit the resources of the area, with a simple licensing procedure as opposed to a more regulated and economically distributed policy in which the project could be seen as a long term benefit, not only to its inhabitants, but to the developing world (in terms of surplus power, material and food production).

Judge Shigeru Oda notes that:

AThe concept of benefit to mankind is so vague, however, that it is extremely difficult to derive from it any clear-cut regime for the deep ocean floor, although it does see to set forth an unchallengeable principle that no part of the ocean floor should be appropriated by any State.@

It is possible to argue that the colonization efforts of the islanders are more beneficial to mankind than the seabed resource extraction (only mining) carried out by mining firms licensed by the ISA. One solution for the colonists, is one in which the resources (and subsequent benefit derived from the processing and trading of these resources) are shared with nearby developing countries. This is a solution shared by Oda who suggests that: A...claimant enterprises [under a ISA licensing or registration system] would undoubtedly be prepared to dedicate some of the fruits of their exploration and exploitation [to developing countries].@

In terms of living resources, the group would not be exploiting any of the current wild species, in that all plant and animal material on the artificial island would, be produced by the activities of the islanders. Although the organic production of the island is derived from the non-organic resources (and solar energy), the group would not be in violation of conservation efforts and would, in fact, be helping conservation efforts through its production of alternative seafood sources, and in so doing, abide by the principles of the 1958 Convention on Fishing and Conservation of Living Resources of the High Seas, specifically Article 2 which states that:

As employed in this Convention, the expression >conservation of the living resources of the high seas= means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.@

The Council of Europe is also concerned with the level of pollution and the depletion of (living) resources on the high seas. From the Margue Report it is quite clear that this is the most pressing problem of un-regulated use of international resources. Their statement that:

The present anti-pollution campaign bears special witness to the effort to co-operate and draw up international laws, and of a new awareness of the international community [and] the tendency of States to extend their zones of sovereignty does not derive only from selfish and appropriative motives inspired by the desire to exploit natural resources {fisheries, continental shelf}, but often stems from the imperious and legitimate need to maintain a certain degree of international law and order.@

indicates the wish of the Council of Europe to integrate conservation efforts and regulatory aims. In this sense, the proposed project would agree with the conservation and anti-pollution concerns of the Council of Europe but would cause difficulty in terms of being acceptable as a member of the international community and judging from the tone of Section 7 of the Margue Report, could be interpreted as a move to >escape= state control, which is one of the goals of the project.

The position that the United States would take in regards to an independent organization exploiting the resources of the high seas, is less clear, with its unilateral licensing of mining companies and its refusal to accept the terms of the UNCLOS agreement (see above). In 1974 DeepSea Ventures issued a >Notice of Discovery and Claim of Exclusive Mining Rights, and Request for Diplomatic Protection and Protection of Investment= to the U.S. Secretary of State. In this notice, DeepSea Ventures indicated that it had taken possession of and asserted its exclusive rights to develop, evaluate and mine@a deposit of seabed manganese nodules, one thousand kilometers off of the coast of California (in international waters). The company claimed an area of sixty thousand square kilometers and projected a yield of about two hundred and fifty tonnes of manganese per year. As its backing in regards to international law, the company quoted that: It is certainly the position of the United States that the mining of the deep seabed is a high seas freedom and I think that would be a freedom today under international law.@

In two interpretations of the proceedings of the Third United Nations Conference on the Law of the Sea (1975), the United States admitted that it could not grant or recognize exclusive mining rights to mineral resources beyond its national jurisdiction, however, the U.S. Department of State concluded that: A...pending the outcome of the Law of the Sea Conference, mining of the seabed may proceed as a freedom of the high seas under existing international law@, indicating its interpretation of the 1958 agreement (see above and note 50) to mean that non-state agencies and private enterprises could freely use the resources of the high seas. Canada, on the other hand, A...did not accept the assertion of DeepSea Ventures Inc. that it has exclusive mining rights or some priority in time over that portion of the international seabed area as described in the notice to the Secretary of State or that it has acquired any rights to that area or the resources thereof through its activities.@ This is not to say that Canada didn't disagree with the American position in terms of implied freedoms, but disagreed with the opinion of the mining company in regard to exclusive occupation and title - expressing an interpretation similar to that of the Council of Europe (see above).

While some of the European countries, the Council of Europe and the Group of 77 members are more interested in a regulatory approach, the United States is primarily concerned with the ultimate ability to exploit the resources of the high seas in an enterprising fashion so that these resources actually can be used instead of getting bogged down in bureaucratic struggles. It then appears that the colonists have three options: the first being the formation of a(n international) corporation and the subsequent application for licensing by the International Seabed Authority, second, to form a United States company and give notice in much the same manner as DeepSea Ventures, however, the United States will most likely become a full member of the International Seabed Authority and fully ratify the UNCLOS agreement and therefore must abide by its principles and in so doing compel nationals to also uphold the ISA mandate. Finally, the third option is to apply for >special= provisions from the United Nations, arguing that it should have >unique= and >exceptional= considerations to enable an appreciation of a more idealist interpretation of >benefit to mankind=. By employing this argument the organization could suggest a working transfer of technology and resources with developing nations, especially nations in close proximity to the project.

3.2 Islands in international waters

3.2.1 Articles of international law in relation to islands and artificial islands

In considering the legal position of artificial islands on the high seas, it is possible to begin with an outline of the juridical position of natural islands. The history of the settlement and ownership of natural islands is a long one and can provide a few

useful examples as an analogy for artificial islands. This discussion can be centered around two main ideas; that of discovery and ownership and subsequent claims and counterclaims and secondly, the person of ownership - whether state, multinational company, international organization or private individual.

An uninhabited island (in international waters), previously unclaimed by any state could be claimed on discovery, A...simply by the first state which establishes an effective occupation.@ Title could also be passed through a treaty of cession, for both uninhabited and inhabited islands. However, to effectively pursue a claim, a state should be able to demonstrate a continuous display of sovereignty over an island, or if inhabited, demonstrate an administrative capacity on the island. This is also supported by the opinion of United States Secretary Hughes (1924) A...that actual settlement was required for a valid claim of sovereignty over a discovered country.@ Section 3.2.2. will outline the specific cases in this regard and subsequent discussion in relation to the proposed project.

In terms of the person of ownership, Bowett concludes that: AThe acquisition of sovereignty is a state act and if the act of a discoverer is to have any validity in international law it must be endorsed by the state; the animus occupandi ultimately must be that of the state, not the individual.@ Bowett also claims that A...it is not expected that corporations, however powerful, can acquire and confer sovereignty at the present time.@, however, as mentioned above, the actions of DeepSea Ventures constitute an act of sovereignty because the company stated that it held exclusive rights to the resources of this specific area. In addition to this, Jennings and Watts state that; A..Unless the corporation in question was invested by its state with the public power of acquisition and administration, the corporation=s acts could not serve to enable the state to acquire territorial sovereignty, unless accompanied by, or followed by, a certain measure of exercise of authority by the state itself.@ They also state that; A...If the individual or corporation which made the acquisition required protection, he could either declare a new state to be in existence and hope for its recognition by the powers.@ Historically, states have authorized companies, military officers and private individuals to claim territory on the state=s authorization.

Bowett states that the 1958 convention does not specifically permit the construction of artificial islands. He also insists that the freedom to construct artificial islands (derived from the AInformal Composite Negotiating Text@), is specifically reserved for states and that A...beyond national jurisdiction, [there is no suggestion] that private entities should be free to construct islands or installations.@ On the contrary, Waldock argues that; ABoth the Geneva Convention of 1958 and State practice thus support the view that the erection of an artificial structure on the sea-bed of the high seas is an act which in itself falls within and is sanctioned by the principle of the freedom of the high seas.@ Mouton, a Dutch maritime expert concurs in that; AWe maintain that building constructions in the high seas is using the freedom of the seas just as much as navigating on these seas, or fishing in these seas or laying telegraph cables on the bottom of these seas.@ On a less, strictly legal note, Papadakis argues that, AUltimately, of course, the establishment of new sovereign

states by private individuals and/or corporations may be legitimized through general recognition by the existing subjects of international law. The establishment of the International Seabed Authority and its prerogative to license agents in the extraction and exploitation of resources could imply a different interpretation in terms of establishing artificial islands in this process, in that private corporations may be licensed (under a flag state) to perform these activities.

With the signing of the 1982 UNCLOS agreement, a specific clause in relation to artificial islands substantially added to the legal definition (artificial islands) of the 1958 treaty. This states that: A1. The high seas are open to all states, whether coastal or landlocked...[and] It comprises, inter alia, both for coastal and landlocked states: d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI Part VI deals with matters involving the continental shelf stating that (relating specifically to artificial islands, Article 80): AArticle 60 applies mutatis mutandis to artificial islands, installations on the continental shelf.

Article 60 lays out the rights and obligations of coastal states in their exclusive economic zones. This deals with: 1. authorization to construct, regulate and use artificial installations; 2. jurisdictional rights, in regard to customs, fiscal, health, safety and immigration laws and regulations; 3. notice of construction (and removal), environmental impact and advisement to other users of the high seas; 4.-7. establishment and rules regarding safety zones and navigation; and 8. limitation of status: Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Bowett asserts that the purpose of the island is central in determining its legal position but this paper takes the position that these are unrelated matters - that the construction of artificial islands is independent of its purpose and also a freedom in the widest interpretation of the word. He states that A...the >text= does not envisage an unfettered freedom but one to be exercised according to agreed rules and standards and relates Article 87 (1.d) to Articles 137, 150 and 151. This is not the case as Article 87 (1.d) refers to Part IV of the treaty (relating to The Continental Shelf) and only refers indirectly to the function of the ISA and its mandate for the Area (Section 87.2) while Articles 150 and 151 make no mention of artificial installations or islands.

As a result of concerns raised by European countries, especially in regards to artificial islands and the use of the islands in international affairs, the Council of Europe commissioned the Margue Report. The essential points to the argument of this paper are included below to indicate the level of concern that the European legislators had for the rapidly increasing development of offshore resources and possible attempts to escape national jurisdiction by corporations and/or private persons:

3.2.2 State practice and discussion of relevant cases

In terms of state practice and relevant cases, this section will first discuss several instances of natural islands and also discuss several instances of artificial islands in national waters. Due to the changing nature of territorial waters, from three to five miles for the many coastal European states, to twelve miles to the now accepted two hundred mile exclusive economic zone, classifying an artificial island in international waters is difficult at best. Historically, the >normal= territorial waters that could be claimed by a state was considered to be at the most twelve miles (confirmed in Part II, Section 2, Article 3 of the 1982 UNCLOS agreement) and the continental shelf, deemed to include the seabed and subsoil of the submarine areas adjacent to the coast (including areas outside of the territorial sea), to a depth of two hundred meters. However the Area as defined in Part 1 of the 1982 UNCLOS agreement, is the Asea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.@ This implies that the area between the twelve mile territorial sea, the 200 meter continental shelf and the beginning of the >Area= is not precisely defined and is generally considered to be a two hundred mile exclusive economic zone (EEZ) in which the coastal state has jurisdiction. The cases dealing with artificial islands below were once considered to be in international waters. However, due to the introduction of Geneva Convention on the Continental shelf (Article 76.1) which provides: AThe continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edges of the continental margin, or to distance of two hundred nautical miles from the baselines...[the EEZ]@, most artificial islands, including oil drilling platforms (95% of exploitable offshore resources [oil] are located within the EEZs of various countries) and cargo terminals (as well as abandoned forts off of the U.K. coast), would now be considered to be in waters under the control of one or more states.

International law is quite straight forward in dealing with natural islands in international waters. Several cases can be elaborated here to enable a comparison to the proposed project and set some type of parameters in terms of state behavior in this regard. Historically the Islands of Palmas case and Clipperton Islands Case are two examples of judicial factors deciding ownership of contested islands. In the Islands of Palmas case, the United States claimed that it had obtained the territory by cession from Spain in 1898, while the Netherlands was in fact performing administrative duties. In arbitration, judge Huber awarded the islands to the Netherlands, on the grounds of its administrative functions and A...denied that any legal requirement existed for Holland to notify other Powers of its claim to sovereignty.@ It should also be noted that the agreements between two individuals, Prince of Tabukan (the ruler of Palmas) and the Dutch East India Company, established, for judge Huber, Aextensive rights of suzerainty.@ In this sense, the

establishment of a new colony on an unoccupied and unclaimed island, is possible by individuals and/or corporations as authorized by states. As well as this authorization by states, individuals have also acquired and established independent states. In 1841, Sir James Brooke acquired Sarawak in North Borneo (a British protectorate until 1946 when it was ceded as a Crown colony) and became the sovereign of an independent state. It could be possible, in this regard, for the organization to find an unclaimed, uninhabited island in the vicinity of its planned project and directly connect its artificial island to this natural island, thereby enabling it to >stake= a claim for discovery and subsequent occupation based on international laws for natural islands.

There are many cases of artificial islands being constructed within controlled waters (or on the continental shelf within the exclusive economic zone of one or more states), including oil drilling platforms, offshore ports and airports. The first pertains to the establishment of offshore (just outside of territorial waters) radio transmitters, Radio Veronica and Reclame Exploitatie Maatschappij off of the coast of the Netherlands and Radio Caroline, off of the coast of England. The legal debate between the Dutch Government and the owners of the radio stations focused on two issues, the definition of the objects; as ship or artificial island, and the interpretation of the clause >freedom of the seas=. In the first instance the Dutch government took the position that R.E.M. was an >artificial installation= due to the fact that it was a non-movable installation mounted on piers resting on the sea bottom, and that Veronica was a ship, due to its mobility (or at least potential mobility). The resulting action (taken against R.E.M. due to more definitive legal prescriptions for ships) and legislation, the >North Sea Installations Act=, eventually resulted in the shut down of the radio station by Dutch police. While the Dutch government did take action the United Kingdom did not take action against Radio Caroline, and was reluctant to take action on the premise that such action could interfere with the freedom of the high seas and would not take unilateral action, insisting that such problems could only be solved by international agreement. What emerged as a result of the pirate radio stations dispute and future problems related to the uses of the North Sea, was the Margue Report of the Consultative Assembly of the Council of Europe (see above).

Three similar cases occurred in the United States; both in relation to the establishment of artificial islands off of the U.S. coasts by private persons. The first was off of the south-east coast of Florida, in which a private company, the Atlantis Development Corporation (Bahamian registration), A...whose charter authorized it to occupy and develop property in international waters@, proceeded to establish a new country to be called >Atlantis, Isle of Gold=. The company succeeded in constructing part of its island, which was unfortunately destroyed by a hurricane. The United States Army Corps of Engineers informed the company that A...no construction could be undertaken in the navigable waters of the United States without the approval of the Department of the Army and that the Department=s authority extended to artificial islands and fixed structures located upon the Outer Continental Shelf.@

Subsequently, a second company, Acme General Contractors, Inc., an American company, applied for and was denied permission to develop the same area. The company commenced with dredging and consequently the United States filed action on the grounds that (1) the area was under the jurisdiction of the United States and as such the defendants action constituted trespass upon Government property, and (2) their activities violated the Rivers and Harbors Act of 1889 and the Outer Continental Shelf Lands Act of 1953. The Atlantis group also filed a claim, stating that the defendants were attempting to divest it of its property and argued that the defendants trespass was actually against its own property. The court decided that since the U.S. did not actually own Outer Continental Shelf, but only had jurisdiction, there could be no recovery based on trespass. This decision was based on the Truman Proclamation on the Continental Shelf, which held that the United States did not assert title to the Continental Shelf but declared that the seabed and subsoil were subject to its jurisdiction and constructions on the Continental Shelf were subject to authorization by the Department of the Army outlined in the Rivers and Harbors Act and the Outer Continental Shelf Act.

Another company attempted to create a new state, >Abalonia=, one hundred miles off of the coast of San Diego, California. A concrete base was to be placed over the sea-mounts in this area and the shellfish rich environs were to be harvested with the catch being processed on the island. Unfortunately, the concrete >ship= sunk, and the United States Corps of Engineers gave notice that the ship was a hazard to navigation. The United States Government subsequently declared the area to be part of the Outer Continental Shelf.

Finally, the Republic of Minerva, designed by the Ocean Life Foundation, was established in the South Pacific, on the Minerva Reefs. The low-tide elevations were raised above sea level at high-tide and a twelve mile territorial sea was claimed. The plan called for twenty five hundred acres of reclaimed land to be used as a >free enterprise= base on which ships could base their registration. The Island was outside the Territorial Limits and Continental Shelf of any country and the First Provisional Government of Minerva was announced with a declaration of sovereignty in January, 1972.

This project soon became a dispute with Tonga, when it [Tonga] also decided to build artificial islands on the reefs and subsequently claimed a twelve mile territorial sea for the reefs, including the territory of the Republic of Minerva. Tonga was a party to law of the sea conventions, while Minerva was not [or more aptly, could not be]. No further information could be obtained in relation to the Republic of Minerva, however, Tonga proposed plans for the reefs indicating a claim to and an effective control of territory. Moreover, the Minerva Reef lays within the 200 mile Exclusive Economic Zone of Tonga (which it claims) and as such is subject to its jurisdiction.

3.2.3 Analysis of proposed project

The assumptions of the group in relation to the construction of artificial islands in international waters, is closely related to their intentions for the resources of the area. The group interprets the 1958 LOS treaty to imply that anyone (state or not) has the freedom, and in fact, the right to build an island on the high seas. In this regard they would be following the opinion of Waldock and Mouton and would especially appreciate the comments of Papadakis (noted above). In terms of theoretical law and state practice, the plans of the group seem to pose no problems in terms of complying with international law. The organization would have to comply with the technical requirements, such as notification for navigational purpose, determining the placement of submarine cables, and disposal in the event of the abandonment of the project. As in the resource use discussion above, the pro and con argument could again be placed in an American versus the Group of 77 and European (the Council of Europe, but not certain individual countries, such as the United Kingdom and Germany) perspective.

The European perspective is one of concern and subsequently, calls for regulations in respect to >constructions on the seabed=. The Margue Report outlines many of European points in this regard and several important items that should concern the colonizing group. The Report deals specifically with questions regarding the intentions of individuals in establishing new states, or at least, entities that are not subject to the control of other states. The Radio Veronica case shows how Netherlands, was particularly rigorous in applying its control over a perfectly legal (internationally) artificial island. This indicates that the function of an island is especially significant in how the international community would accept its existence. The purpose of the Veronica >island= was to broadcast pirate radio signals to the Netherlands, to escape [I assume] strict licensing and taxation requirements. It was the argument of the Netherlands that there existed a >legal vacuum= under international law in regards to artificial islands, and it was the responsibility of the affected state to enact laws to protect its interests in this regard. The American delegation, on the other hand, argued that there was no legal vacuum and in fact A...the high seas are an area under a definite and established legal status which requires freedom of navigation and use for all.@

British unwillingness to actively pursue the Radio Caroline pirate station, also indicates a hesitation on the part of some states to interfere in what are clearly matters of international rights. However, the end result of the affair was the enactment of laws, specifically outlawing artificial islands built for the purpose of pirate broadcasts. It is quite logical to assume that if it became feasible and economical (profitable?) to build artificial islands [in the vicinity of the EU] to function as tax havens, free enterprise havens, and potentially destabilizing production centers, the European Community would quickly enact laws to regulate this behavior.

The American perspective is less opposed to the idea of establishing artificial islands as new states per se, as it is to the strictly technical aspects of the islands and their existence in U.S. law. None of the examples above were opposed by the U.S. government on similar grounds to the European concern for order and regulation of activities. The U.S. government involved itself only in the matters of, primarily, unauthorized use of state property, and secondarily, hazards to shipping and navigation with the destruction and subsequent abandonment of attempted construction efforts. Specifically, in its ruling on the activities of construction of Atlantis and Abalonia, the U.S. government could only claim jurisdiction on the Outer Continental Shelf and that there is a difference between A...complete sovereignty over its territorial sea [the U.S.] and the lesser interest it has its Outer Continental Shelf.@ As a side note, in the Grand Capris Republic and the Atlantis, Isle of Gold cases, the district court found evidence that the reef was submerged at mean high water, and could not be a natural island. Since the reefs were an island, the court refused to comment on the claims as to occupation, colonization, and possible ultimate sovereignty.

As noted in the Margue Report, the Council of Europe questions the territorial aspect of artificial islands, concluding that A...sovereignty is a territorial concept which cannot be applied to artificial islands.@ This is one of the major problems with the proposed project, as this concept has not yet been applied to actual (sustained) cases and the establishment of an artificial island with the intent to establish a new type of state, would create an entity that is presently outside of definition of international law. Part of the reason for including the legal aspects of natural islands in this paper, is to explore the possibilities of establishing the artificial island next to an unclaimed natural island (or sea-mount) and thereby include a defined territorial aspect to the project. The group intends to construct the island over the Seychelles sea-mounts, and could theoretically raise the low-tide elevations above sea level at high-tide and directly connect the artificial island to this natural island - similar to the activities of the >Republic of Minerva= - noted above - although it would be in their best interest to ensure they located the island outside of the EEZ of any nearby state.

In terms of legal standing, the organization could establish the modified natural and artificial island as a territory, which would be defined by international law, and lay claim to this territory. However, here a second problem comes to light, in that historically and legally, only states, or persons authorized by states, have had the >right= to claim new territory. One solution for the group is to >attach= itself to a landlocked (probably African) state, and in so doing, obtain for the landlocked state a way in which to more concretely enjoy its right of access to the high seas. Another possible solution is to >force the hand= of the international community, in which the colonist construct the island, colonize it, effectively administer the >territory=, and subsequently apply to the United Nations for special consideration based partially on the precedents established in the Palmas Islands case. It would be up to the group to show and prove its capability to become part of the international community, as outlined below.

3.3 Self-determination

3.3.1 Articles of international law in relation to self-determination

The concept of self determination and the freedom to associate and form states is one of the founding principles of the United Nations and closely linked to Human Rights declarations of the United Nations. The founding Charter of the United Nations states that the purpose and principles of the United Nations is to (Article 1, Paragraph 2): A To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.@ As expounded by Duursma, the development of self determination as a right developed after this initial declaration of principle and developed into several covenants regarding the exact nature of self-determination as a universal human right.

The most important clause in regards to the granting of >nation= status is the General Assembly Resolution 1514 - Declaration of the Granting of Independence to Colonial Countries and Peoples - which declares that:

(Paragraph 1) The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

(Paragraph 2) All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

It was also not clear during the drafting of the resolutions, what exactly was meant by >peoples= and in the end is understood in A...its most general sense and means >(...) peoples in all countries and territories, whether independent, trust or non-self-governing=@. For the argument presented here it is important to discuss how the term >peoples= can be interpreted and understood. Again, Duursma presents arguments for different ideas of determining the nature of >peoples=. There is the objective view, which looks for criteria based evaluations such as race, ethnicity, culture, tradition, history, language and religion, sometimes including these in a common territory. The subjective view holds that there is a type of >psychological group thinking=, in which a group may possess one or more objective characteristics, but more importantly, wish to live as a defined group, and is conscious of, and wishes to preserve its characteristics.

However, given these arguments, what emerged in 1970 was Resolution 2625, which pronounces:

By virtue of the principle of equal rights and self-determination of people enshrined in the Charter of the United Nations, all peoples have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Chowdhury argues that nations should be constructed on the basis of A...multi-racial, multi-lingual, secular, non-discriminatory pluralistic nation based on the recognition of human rights and fundamental freedom for all.@ This being the case, the objective principles stated above should not be the criteria in determining a >peoples= and the formative reason for a nation, and given the intentions of the United Nations resolutions, the subjective principle should be the primary determining principle.

Another author summarizes claims of self-determination into two basic categories:

A1. Claims involving establishment of a new entity - that is claims by a group within an established entity to form a new entity from part of the pre-existing entity.

2. Claims not involving establishment of a new entity, notably

a) claims of an entity to be free of external coercion;

b) claims of a people to overthrow their effective rulers and establish a new government in the whole of an entity;

c) claims of a group within an entity to such special protection as autonomy.@

This construction is realized in trying to encompass the ideas of internal self-determination, in which the relationship between a state and its (internal) population is expressed in a democratic fashion, and that of external determination in which the status of a group of people is expressed in relation to another group of people.

At this point it becomes important to discuss the idea of succession and the relation of rights of self-determination to this idea. Mursweik states that:

Aln a world consisting only of Sovereign States, secession from an existing sovereign State is the only possibility peoples have in order to found a new sovereign State, except when a State has ceased to exist....Secession and disruption of a State, these two results of self-determination, seem to conflict with another fundamental principle of international law, namely with sovereignty, and especially with the territorial integrity of States.@

This contradiction is also acknowledged in the very principles of United Nations. Firstly, the Declaration on Friendly Relations states that:

AThe establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.@

However, the Declaration on Decolonization states that: AAny attempt aimed at the partial or total disruption of national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.@

Territorial delimitation in terms of self-determination is very important to the proposed project. Mursweik claims that: A...Sovereignty encompasses the right to preserve the territorial status quo, whereas the right of self-determination is at least potentially aimed at territorial change.@ But how does this relate to the territorial status quo in terms of new territories which have never been under the jurisdiction of any state? Emerson states that; AGiven a geographically distinct territory, secession or some form of territorially based self-government is at least conceivable, whatever the political complications, particularly if the territory is wholly separate from the state concerned, as in the case of an island or overseas dependency.@ Mursweik goes on to discuss that perhaps the right of self-determination must guarantee a right of secession if the people in question have no other chance of self-determination. Quite logically he states that the formation of rights of self-determination (as agreed to by Sovereign States) would certainly not include an automatic right of secession (leading to the destruction of these States), but, the conservation of the status quo in this regard also has no legal value. He concludes that, perhaps the best way to interpret this contradiction is to somehow validate the right of self-determination without calling into question the territorial integrity of states. This is exactly the case for the proposed project. While the people do come from various states, a claim to secession would not alter the territorial/political geography of their home countries, but only have a bearing in terms of the new territory.

The form of self-determination could also be manifested in different ways. Self determination does not necessarily imply the formation of a sovereign or independent state. Other options include free association or integration with an independent state and the A...emergence into any other political status freely determined by the people@. There would however, remain the problem of A...reconciling the freedom of choice of the people concerned and the viability of the State in the form chosen.@ Given the assumption that the population of the island would be drawn from a number of states, the matter of political representation for the group as a whole would be difficult to achieve for any one home state (due to its territorial distance and multinational character - and fitting in with the general political and economic aims of the group). However, Emerson notes that the 1970 Declaration of the Special Committee on Friendly Relations allows for the principles of self-determination and independence to be achieved in association with an established state and in fact several >alternative relationships= between independent states and small peoples and territories which provide for self-government and at the same time allows for representation in the world at large.

3.3.2 State practice and discussion of relevant cases

In looking at state practice in regards to self-determination, this paper will briefly outline an historical approach which includes a brief discussion of several key cases illustrating first, changing opinion in regards to the increasing deference to the United Nations and second, a move towards a more open interpretation of the idea of self-determination.

The Aaland Islands, composed mainly of people of Swedish origin, were part of the territory of Finland which was ceded to Russia in 1809. Finland declared itself as independent in 1917, and subsequently the Aaland Islanders requested to be politically joined to Sweden and asked Sweden to back their claim. After diplomatic attempts by Sweden failed to secure Aaland's wishes, Finland sent troops to Aaland and proceeded to arrest the leaders of the Aalanders on charges of treason.

The matter was brought before the League Council, (with the objection of Finland, who claimed that the Council was not competent to rule in this matter) who decided that: AThe right of disposing of national territory is essentially an attribute of the sovereignty of every State [under normal conditions], [however] ...the dispute between Sweden and Finland does not refer to a definite established political situation.@ In this decision, it was determined that a Commission of Inquiry be set up. However, this Commission then decided that:

A...to concede to minorities, either of language or religion, or to any fraction of the population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure would be to destroy order and stability within states and to inaugurate anarchy in international life; it would uphold a theory incompatible with the idea of the state as a territorial and political unity.@

In this situation the ultimate solution was to establish a set of guarantees (from Finland) that if not granted, would form the grounds for a plebiscite to the Aalanders and subsequent separation from Finland. Sureda concludes that the question of the disposal of part of a territory is a domestic jurisdiction of the state and that this state has the ultimate authority on whether or not to allow a plebiscite to be held, with the exceptional circumstances in which the population is treated in a discriminatory manner. It is interesting to note that Malanczuk casts a different perspective on this case in which Sweden applied to the Council of the League on the basis of Finnish aggression-- Finland was erecting fortifications on the islands. In this matter the Council decided that the 1856 treaty was actually designed as a balance of power in Europe in which Sweden could claim the benefit of the treaty, and could be invoked by >directly interested= parties, including Sweden, but was not actually party to it.

In this case it is evident that the power of the individual states concerned, in relation to territorial claims, had considerable input into how sovereignty was determined, while the will of the people was only held up as a threat to the status quo and not a determinate of this sovereignty. If this could be applied to the proposed project, (and supposing that a majority of the population were from a specific country) the will of

the people would have little bearing in deciding ultimate self-determination if another country were to claim jurisdiction based on proximity.

Before the dissolution of the League of Nations and the creation of the United Nations, a mandate system was set up in which certain territories (colonies and territories which were no longer under the sovereignty of states which formerly governed them), were deemed to be entitled to self-determination (although, this was decided beforehand by the Allied Powers) and therefore should be under the supervision of the international community. Palestine, then under the mandate of the United Kingdom, became one of the first cases under the mandate system, to be granted a self-determinate position (although this was completed by the United Nations and the drafting of Resolution 181). What is important in this discussion, indicating a move away from the >right of disposing of national territory as an attribute of the sovereignty of every state=, is that the United Kingdom decided (in small measure still indicating the state=s right to dispose of territory), that: AThey [the U.N.] had to decide who was to assume the central responsibility in Palestine for law and order and all the administrative and economic functions of government.@

The trusteeship system, similar to mandate system of the League of Nations, was also restricted to territories that were detached from enemy states. The General Assembly and the trustee=s Administering Authority would together decide on claims of self-determination within the Trust Territory. Several claims, involving British Togoland and Cameroons and Ruanda-Urundi (under Belgium administration), were initiated. British Togoland became part of Uganda, and the northern British Cameroons became part of Nigeria, while the southern part became independent with the creation of the Republic of Cameroon. Ruanda-Urundi gained independence in the form of two states: the Republic of Rwanda and the Kingdom of Urundi. In terms of the process of self-determination, several plebiscites were held in each section of the territories. However, the ultimate wishes of each territory as a whole were largely influenced by the interpretation of the General Assembly and at the consent of the Administering Authority in each territory. Here we can see a further integration of the idea of self-determination as a separate entity in that it was no longer states (or previous trustees - although consent was required) that determined the status of a territory but to a greater extent, the will of the people (demonstrated through plebiscites) and the general movement towards an acceptance of the United Nations as the final authority in this matter.

The Declaration regarding Non-Self-Governing Territories, was established to further dealing with the colonial situation. The evolution of the competence [and authority] of the U.N. to deal with cases of emerging states became more clear with the contents of resolution 567(VI) which made no mention in regards to this issue and resolution 742(VII) which states that: A...a decision may be taken by the Assembly on the continuation or cessation of the transmission of information required by Chapter XI of the Charter [in which a Non-Self-Governing Territory is one in whose people have not yet attained a full measure of self-government].@ The competence of the General Assembly was re-affirmed in 1961, in deciding that Athe territory of

Southern Rhodesia is a Non-Self-Governing Territory within the meaning of Chapter XI of the charter@.

In 1965, elections were held in the Cook Islands to decide on a draft constitution in which the Islands were to become a Self-Governing Territory in association with New Zealand (which administered the territory as a Non-Self-Governing Territory since 1946), and if the people wished in the future, achieve complete independence. Under resolution 2064(XX) the General Assembly decided that the transmission of information was no longer necessary and that: A...the responsibility of the United Nations under General Assembly resolution 1514(XV), to assist the people of the Cook Islands in the eventual achievement of full independence, if they so wish, at a future date.@

Finally, on more humorous note, the Internet community of New Utopia was established (in Tulsa, United States) in September 1996, based on the Aprinciples of free enterprise and capitalism, embracing a tax free economy, with assurance of freedom and privacy in connection with any commercial enterprise.@ The country has even written to the Secretary General to apply for membership in the United Nations. While this is intended to be a humorous example, the intent of the group is very similar to goals and aims of the organization that is the subject of this paper.

3.4 International recognition

3.4.1 Theoretical overview and state practice

Given the preceding context, it is possible to examine the possibility of creating a new state, or, given the context of the proposed model, a micro-state. There are several clearly defined criteria for a >region= or >group of people= to be considered a state in international law. This is expressed in the Montevideo Convention on Rights and Duties of States Article 1:

AThe State as a person of international law should possess the following qualifications:

- a) a permanent population;
- b) a defined territory;
- c) government; and

d) capacity to enter into relations with other states.@

Duursma defines population as A...an organization of human beings living together as a community [and] the population of a State comprises all individuals who, in principle, inhabit the territory in a permanent way.@ This population could be of any ethnic, linguistic, cultural or religious composition as outlined by United Nations resolutions above and A...it would be absurd to legally require a such homogeneities@ in terms of national composition, and A...the essential aspect, therefore, is the common national legal system which governs individuals and diverse groups in a state.@

There is no minimum number of individuals necessary to form a state. Nauru has eight thousand inhabitants, Liechtenstein and Monaco with around thirty thousand inhabitants and Pitcairn, which has the legal option to form a state has only ninety-two residents.

Territory requirements follow similar arguments to population requirements. There is no absolute minimum size, with the Vatican city at half a square kilometer and Monaco at two square kilometers. However, a state does need either, a A...defined territory, [...] a reasonable well-defined territory, [...or] a fixed territory.@ Malanczuk adds that Athe control of territory is the essence of a state@, which in effect, A...allows legal action within the territory and excludes other states from exercising jurisdiction in said territory.@ He adds that A...the concept of territory is defined by geographical areas separated by borderlines from other areas and united under a common legal system@, although A...absolute certainty about a state=s frontiers is not required.@

Most cases of self-determination and subsequent formation of (new) states, occurred with the decline of colonialism and the newly gained independence of what were previously colonies. In this regard the formation of new states based on the desire of a group of (whether previous colonies or not) could pose a problem for the U.N. which may be weakened by a large number of mini-states which, due to small populations and low economic resources couldn=t meet their Charter obligations.

With the break-up of the Soviet Union and Yugoslavia, recognition became much more of a political issue and a factor in the ability of the international community to intervene in what were previously civil wars. This was certainly the case with the recognition of Slovenia, Croatia and Bosnia-Herzegovina, who were, until their recognition as independent states, constituent republics of Yugoslavia. This is true even for Bosnia-Herzegovina, which lacked the ability to effectively govern its territory, although, as discussed below, is not an essential criteria for statehood. What is important, is the matter of political expediency in the matter of Yugoslavia: as a legal consequence of recognition, the prohibition of the use of force (Chapter 7, Article 2 of the U.N. Charter) was to become applicable, and the international community could then legally intervene in the prevention of genocide.

On the other hand, non-recognition of >formative states= could have negative implications, in that by casting the state in question as an >outlaw=, the international community would effectively prevent it from performing its international obligations and responsibilities. Hillgruber concludes that:

A...non-recognition is only considered an option if the unreliability of the new state as a partner in international relations appears to be so serious that the community of states, on account of its self-image as a legal community, refrains from integrating the new state and keeps it away from the international community...@

In fact, Hillgruber also argues that the phrase >able and willing to carry out these obligations [international responsibilities]= set out in Article 4(1) of the U.N. charter is becoming the overriding criteria for the recognition of new states. He also states that by focusing on the ability and willingness of new states to carry out international obligations, it enables a flexibility in terms of international law and subsequent international recognition. However it is not only the external properties of the state that should satisfy this requirement but the internal qualifications as well. The European Community, committed to the principles of the Helsinki Final Act (1975) and the Charter of Paris (1990) sets up more concrete guidelines in which a new state should also be able to meet the CSCE obligations: acceptance of the rule of law, the acceptance of democracy and human rights standards, and must guarantee the Arights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE.@

Duursma interprets the criteria of >government and sovereignty= as a criteria of independence for several important reasons. The first being that some authors argue that sovereignty is equivalent to independence or, Athe ability to act in their territory at the exclusion of other states.@ Others argue that sovereignty is not a criteria for statehood but a product of statehood and should be considered separately from independence. It is also possible for states to share sovereignty and government, despite still being considered a separate state (or states) such as the states of the European Union. It should also be mentioned that the absence of government or effective control does not alone diminish the state to be qualified as such. Malanczuk cites the case of Alack of governmental control@ in Somalia, in which the United Nations authorized humanitarian intervention. The state of Somalia did not cease to exist during this period. What is important in respect to governmental control, is the exclusion of control of other states. Internal politics and form of government are incidental to state criteria (with due regard to Resolution 2625). As Malanczuk states: AThe legality or legitimacy of such an establishment [internal government] are not decisive for the criteria of the state...[and] international law ... does not generally inquire into the question of whether the population recognizes the legitimacy of the government in power.@

Although the above criteria define what could be a state an important qualification for the actual existence of a state, is recognition by other states. This follows two lines of argument, the constitutive and declarative theory. The constitutive theory argues that: A...a state or government does not exist for the purposes of international law

until it is recognized. @ In effect recognition causes the creation of the state. Declarative theory on the other hand argues that: A...recognition has no legal effects...the existence of a state or government is a question of pure fact, and recognition is merely an acknowledgment of the facts. If an entity satisfies the requirements of a state objectively, it is a state with all international rights and duties and other states are obliged to treat it as such. @ Each theory has been used in different political circumstances. East Germany was not recognized as a state until 1973, despite having met other criteria of statehood and in this sense, with recognition, was constituted (at least for western countries) in 1973.

There is very little precedent and accepted practice >law= in regards to the establishment of new states in previously unclaimed international waters. In regards to unoccupied land, customary law accepts that: A...unoccupied dry land is *res nullius*, and sovereignty over it may be acquired by a State which establishes an effective occupation @. Further to this, Bernfeld concludes that: AClaims of dominion by right of discovery are reserved to nations and sovereigns alone. It is a principle which cannot be asserted by an individual. @ This is also not to say that international law and its subjects don't change over time. The Foreign Relations Law of the United States (1986), describes international law as dealing with Athe conduct of states and of international organizations, and with their relations *inter se*, as well as some of their relations with persons, whether natural or personal. @ Despite the fact that for the most part, individuals are still regarded as merely objects of international law, it is unclear what a group of one hundred thousand individuals from different states would become.

Papadakis cites several examples of attempts to establish >sovereign states= in international waters (Atlantis - Isle of Gold, Minerva Republic, Grand Capris Republic) but these attempts did not fulfil the requirements of the Montevideo Convention and concludes that:

Aa) Private individuals and/or corporations cannot establish new independent States, under existing international law, through the construction of artificial islands. Ultimately, of course, such establishment may be legitimized through general recognition by the existing States; and

b) States must be capable of acquiring the generally accepted criteria of independent statehood as described above [Montevideo Convention]. None of the attempted new >sovereign States= so far would appear to possess the said criteria of statehood, and they cannot, therefore, claim and independent existence as States in present international law. @

In light of the points above, it is possible to conclude that, in relation to unclaimed territories, such as a natural island in international waters, it is possible for a state and in certain cases for individuals and corporations to annex the territory. However, as concluded by Hackworth, ATitle by occupation is gained by the discovery, use and settlement of territory not occupied by a civilized power. Discovery gives only an inchoate title, which must be confirmed by use or settlement. @ In contrast, Von der Heydte maintains that: AWithout prejudice to the general principle which requires effective occupation, sovereignty over a region completely uninhabited and seldom

frequented is acquired merely by symbolic annexation. @ In terms of claims by groups of individuals (or corporations), Okeke states that; A...though in terms of international expenditures they do not approach states in importance, nonetheless, the resources and attention of the larger philanthropic foundations...can be critically important in specific sectors of other societies. @ He goes on to cite Arnold Wolfers who noted that

At the Vatican, the Arabian-American Oil Company, and a host of other non-state entities are able on occasion to affect the course of international events. When this happens, the entities become actors in the international arena and competitors of the nation state. Their ability to operate as international or transnational actors may be traced to the fact that men identify themselves and their interests with corporate bodies other than the nation state. @

3.4.2 Self-determination and international recognition in regards to the proposed project

In terms of self determination, the model of individual autonomy proposed by Mr. Savage would work quite well and would in fact be the most direct manifestation of Resolution 1514 paragraph 2, in that the colonists would be pursuing a new model of economic, social and cultural development, which would lead to a new and perhaps ideal determination of political autonomy. With this line of reasoning the formation of the new state would essentially follow the subjective model. Any objective qualification would be meaningless, except for that of common territory, and the inhabitants would optimally be forming a new political group >thinking= based on a common purpose, that being the scientific, economic, social and political advancement of an entirely new way of utilizing the earth=s resources.

From the point of view of the authors of the constitution of >New Utopia= and the ideas of the group discussed in this paper, the level of taxation and individual control by modern states is grounds for establishment of new communities. Dissatisfaction with and claims of tyranny have historically been the grounds for claims of self-determination and wars of secession (in various forms amongst other factors - such as >national identity= etc.) Frowein states that Aself-determination was invented as a rule creating counter-rights. @ The Netherlands when it declared independence from Spain in 1581, referred to tyranny exercised against them by the Spanish kings, and French recognition of the United States in 1776 also refers to unjust oppression exercised by the King of England against the American colonies. The problem with this position is the question of the political, and if necessary, the military force, to bring about self-determination. Both the Netherlands and the United States resorted to military action to enforce its claims. The question is whether or not the international community has reached a point in which it will accept instead the substitution of international decisions.

In terms of further qualifications for fulfilment of United Nations requirements of establishing a pluralistic society, the colonists would also be drawn from many different nationalities, and would have a wide variety of ethnic, linguistic and religious backgrounds. In this regard the formation of a this type of pluralistic society would certainly be in agreement with Resolution 2625 and given the context of individual autonomy would also fit in line with the founding charter of the United Nations; in respect to the principle of equal rights and self determination of peoples. Of course it could also be possible for the inhabitants of the sea city model to form a political association with a nearby state, and with the current proposal, a neighboring African state, in which case the assumed prosperity in terms of food, energy, raw material production and most importantly, technology transfers, would certainly be beneficial to struggling African economies. Another option is to dispose of the state model altogether and given the corporate model proposed, the colonists on the artificial island could simply be a contracting company authorized by the ISA, to exploit and utilize a specified section of the international seabed for an indeterminate length of time.

One significant problem, as already mentioned in the context of territorial concerns for the establishment of artificial islands, is the question of territorial sovereignty and territorial delimitation in context of independence. Most cases of self-determination are bound to the claim of territorial rights in an existing country. Given the concerns raised in the U.N.'s Declaration on Decolonization, the proposed project would not disrupt the status quo in terms of internal territorial boundaries. However, for external territorial questions the project would create a major paradigm shift and if many such colonies were established, would establish a significant need to redefine territorial concepts. For example, if colonists were successful in a claim to self-determination and the establishment of a new state, they would also have the right to claim a territorial sea. If many such islands and groups were formed, the amount of territory claimed would quickly cover much of the international sea. One solution is the setting out of conditions (one being >no territorial sea=) to be met pending recognition by other states.

If the colonists did wish to pursue the separate state option, how would the proposed model work in regards to the Montevideo Conventions? The colonizing organization anticipates a permanent population of at least one hundred thousand inhabitants. Given that there are currently micro-states (such as the Solomon Islands and Andorra) with smaller populations, the proposed colony would certainly fulfill the population requirement. How permanent the population is, is another question. Because of the scientific nature of the proposal, it would be assumed that large numbers of the population would be temporary, perhaps employed as contract workers to fulfil certain temporary technical requirements. It could also take quite some time before the population of the artificial island reached its full capacity.

In relation to territory, the size of the island, one hundred square kilometers, should not significantly impact its qualification as a state. Nauru, with an area of twenty one square kilometers, is smaller. It would also be a permanent territory, with the facility

having a definite size (although, theoretically the colonists could increase the size by >growing= more concrete), shape and structure, and anchored to the sea bottom, in a specific location, in international waters. However, as Papadakis argues, the island (in this case qualifying as a >sea city=, or urbanized artificial island) may have to be considered a new legal entity for several reasons. First, it shares characteristics of natural islands -- being surrounded by water and showing permanently above water at high tide. Second, it theoretically has the essential characteristic of a portion of territory, in that it is capable of being subjected to the sovereignty of a state. Given that thousands of people will be living here and the >territory= is a self-sustaining, productive, economic and social enterprise, it would certainly qualify as territory according to the Montevideo guidelines.

In terms of forming a government, this would be one of the natural functions of an artificial island manned by one hundred thousand people. The island would have to be managed in a sustainable fashion and activities governed to ensure productivity. To ensure the orderly utilization of resources, the colonists would effectively control the territory of the island. With the level of technical expertise and specific knowledge required in the operation of the island, it would appear that the best qualified >government= should be an autonomous, island centered and as noted by Savage, independent corporation of colonists.

On the other hand, the exclusion of other states may be a problem for the colony. If the proposed model were constructed and proven to be viable, the amount of energy and food produced by such a colony could be a challenge to the established global political-economy status quo. Established states may be interested in obtaining (or, at least politically influencing) the artificial islands for their own ends, in terms of increasing their international competitiveness, and as seen in the case of Tonga, which annexed the Minerva reefs, now wishes to exploit the area for its own commercial gain. This could especially be true for poorer African states who could benefit substantially from gains in technology inputs (as well as surplus energy, material and food production). How the colony would protect itself from military or other actions of other states could be a problem as military defense expenses could detract from the viability of the project. Mr. Savage does propose sharing the technology, economic and food benefits with neighboring African coastal states, however, this could aggravate already serious inequality problems on the African continent and >force= some states to intervene militarily.

The final Montevideo qualification, recognition, is the most difficult to deal with in a systematic way. Recognition by other states always carries political ramifications, such as the Palestinian-Israeli and China-Taiwan issues. Despite fulfilling territory, population and government requirements, some >proto-states= have not been recognized and as argued above, are not states in the true sense of the word. Recognizing a myriad of micro-states and admitting them to the United Nations could have serious implications for the status-quo and voting characteristics of the United Nations. If enough micro-states were recognized the General Assembly could quite possibly become very biased to countries with very small populations at the

expense of bigger, more historically established states. However as noted by Duursma, A...their [Micro-states] participation [in international organizations] did not obstruct the decision making process of the organization and that the cooperation of the micro-state could add to the overall work of the organization. @

This being said, the recognition of micro-states per se, is not generally a problem for other states in the United Nations. The problem remains, in terms of the proposed model, of recognizing a newly created state, with no historical background, situated on international waters on an artificial island and composed of peoples from already established states. However, as argued above, the subjective model is beginning to take precedence not only in international theoretical law but state practice as well. Duursma contends that: AThe subjective element, i.e., the will to form a community, an the attachment to the territory are the fundamental factors which determine the recognition of the right of self-determination of micro-peoples. @ Alexandrowicz-Alexander, also notes that AUnrecognized communities are treated in many respects as if they were subjects of international law, and unrecognized governments are often considered as endowed with quasi-governmental capacity. @

4. Conclusion

In terms of resource use in international waters the proposed project could be considered in two ways. First, it could be conceived of as an expression of the >laissez faire= economic philosophy argue by the United States and follow the same lines of establishment as DeepSea Ventures= exclusive claim to the resources of the seabed. However, with the eventual ratification of the UNCLOS treaty by the United States, this could be a risky proposition especially considering the European position that this would be an exclusive exploitation of international property, notwithstanding the >special provisions= and that the island would not cause a >significant inconvenience= to other states. Second, and more advantageous in the long run, the use and subsequent processing and sale of resources could be seen as a >benefit to mankind= as envisioned by the Group of 77. The project could apply for special consideration to the United Nations and also apply for a license from the International Seabed Authority. This course of action would ensure an international legal conformity as well as more defined position with the international community.

The right to construct an artificial island in international waters is legal if the Convention were interpreted in line with Mouton=s argument, but would be an exclusive occupation of international property according to the Council of Europe. With the 1982 UNCLOS agreement, which more specifically sets out rights concerning artificial islands, it would be legal, by international treaty law to construct an artificial island in international waters. However, this >legality= would be circumvented by the intended use of the island. If the intention was to exploit the

resources of the seabed, then the >owners= of the island, ideally corporate/state partnerships, should obtain authorization and licensing from the newly formed, International Seabed Authority. Despite these arguments it is my conclusion that it is legal for states (and private corporations) to construct artificial islands without special authorization (based on Article 87 of the UNCLOS agreement).

If this proposal became a reality and the island were built and then legally challenged, most likely by a coastal state, the legality of such an island could be argued on two fronts. The first being that the long term technological, and economic benefit to mankind would be in agreement with the >spirit= of international protocols, especially Resolution 2749, Paragraph 1. The second contention being that the exploration and exploitation of, as well as the construction of artificial islands in international waters (not the seabed) is guaranteed in the UNCLOS agreement (Article 87). Conversely the illegality of the island could be argued on the basis of exclusive occupation of international territory as well as the exploitation of (mostly water borne) minerals and resources without ISA licensing. If the colonists did not form an >association= with an existing state, the legality of individuals (or corporations) occupying international waters (by building a permanent artificial island) could pose a problem since individuals are not typically objects of international law, given that the UNCLOS agreement only makes clear and distinct reference to the rights of states.

In terms of self determination and state formation, results can be drawn from two general lines of thought. First of all, in extent to general rights and principles, especially expressed in U.N. Resolution 1514, Paragraph 2 and Resolution 2625, the rights of communities of people to self determination are quite clear, and as such the formation of a self governing colony of >peoples= would be quite legal. Following the subjective principle and the wishes of the colonists to form a new model of social, economic and political governance, the formation of a new state would in fact agree directly with Article 1, Paragraph 2 of the U.N. Founding Charter. Conversely, one could argue that there are no objective qualifications of the group of colonists. There would be no shared history, traditions, religions, ethnicities, or cultures on which to base this new >nation=. However, given the history of warfare and national internal civil relations, one could ask if these were actually desirable distinctions to make.

The second line of reason, follows from the Montevideo qualifications, objective but yet abstract general principles of state formation. As argued the proposed model would theoretically fulfil of these conditions; territory, population and sovereign control. Yet, arguably the most contentious condition, recognition by other states, is difficult to predict and would be subject to various political maneuvering of other states. The micro-states recognized above all have historical basis= and some unrecognized states which fulfil the other Montevideo conditions, and do have long histories and >group-thinking= have not been recognized for political reasons (for example, Taiwan).

Perhaps the best legal solution for the proposal would be the formation of a corporation, owned by the colonists (and perhaps a few interested corporate sponsors). This corporation should then form an >loose= political-economic association with a land-locked African state to ensure recognition as an international legal >object=. Once this partnership is completed, the corporation, via the participating state, could apply for licensing from the ISA to ensure at least partial title to the minerals and other resources located in >the Area=. Once the feasibility of the project is demonstrated, new policies in regards to artificial islands (or better, sea-cities) would have to be enacted by the United Nations. In this respect, accepted practice would become much more clear as existing states would then have to account for the existence of such islands and international law would be redefined by necessity, rather than conjecture. This being said, the most important aspect of such a proposal is the way in which the resources of seventy percent of the earth could be utilized in an environmentally friendly way, with spin-offs in technology, energy and food production that could actually benefit the southern hemisphere and therefore a greater proportion of mankind. In summary, the idealistic conception of the term *Benefit to mankind* and the more ideal conceptions of self-determination could be expressed concretely if the proposed project were initiated and these concepts were embodied in its constitution.

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*Diagram 1: Savage, Plate 2