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Is Seasteading the High Seas a Legal Possibility? Filling the Gaps in International Sovereignty Law and the Law of the Seas

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NOTES

Is Seasteading the High Seas a Legal Possibility? Filling the Gaps in International Sovereignty Law and the Law of the Seas

ABSTRACT

Seasteading—homesteading of the modern era—is a desire to develop above-water settlements in international waters known as seasteads. Once a fleeting dream, seasteading has entered the realm of possibility with the technological advancements and financial contributions of The Seasteading Institute (TSI). TSI's ultimate goal is ambitious: to establish permanent seasteads as sovereign states recognized by the United States and eventually by other members of the United Nations. Because international law promulgated by the United Nations addresses only state actors and TSI is a nonstate actor, this Note argues that international law does not prohibit the seastead communities from merely existing in international waters before they pursue their ambitions for international recognition. Whether a community is recognized as a sovereignty depends in large part on sociopolitical decisions of current nations. As such, the laws governing state sovereignty are secondary to the public policies of various nations. Considering historical practice and what guidance international law does provide, this Note concludes that the United States will recognize seasteads as envisioned by TSI in their ultimate state.

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I. INTRODUCTION

The United Nations champions the notions of self-determination and sovereignty: the international organization operates with “respect for the principle of equal rights and self-determination of

peoples.”¹ Since the inception of the United Nations, communities on multiple occasions have asserted their right to self-determination primarily by emerging as sovereign, independent states.² Even as recently as 2011, groups of people have declared their independence³ and have succeeded in becoming members of the United Nations.⁴ The League of Nations determined that having a defined territory is an essential element of a sovereign nation.⁵ Because land is a finite resource, sovereignty has traditionally and typically manifested itself in secession from an already existing country.⁶

The Seasteading Institute (TSI) and its members,⁷ in recognizing that land is limited,⁸ believe that they have no other option but to explore the final frontier: the international waters.⁹ With founder and entrepreneur Patri Friedman at its helm, TSI plans to build seasteads—structures that operate analogously to artificial islands—in international waters, with the eventual hope that the United

1. U.N. Charter art. 1, para. 2.

2. The United Nations lists three methods in which a community may assert its right to self-determination: (1) emergence as a sovereign independent state; (2) free association with an independent state; and (3) integration with an independent state. *See* G.A. Res. 1541 (XV), U.N. Doc. A/RES/1541 (Dec. 15, 1960) (describing principles the member nations should use to determine whether there is an obligation to transmit information under Article 73e of the Charter).

3. On July 9, 2011, South Sudan declared its independence. *See generally* Nima Elbagir & Faith Karimi, *South Sudanese Celebrate the Birth of Their Nation*, CNN WORLD (July 9, 2011), http://articles.cnn.com/2011-07-09/world/sudan.new.nation_1_civil-war-independence-celebrations-juba?_s=PM:WORLD (describing the reactions of South Sudanese to independence).

4. The United Nations gave admission to South Sudan five days after it had declared independence. *See generally* *Member States of the United Nations*, UNITED NATIONS, <http://www.un.org/en/members/> (last visited Apr. 11, 2013) (listing South Sudan as becoming a member of the United Nations on July 14, 2011).

5. *See* Convention on Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19, [hereinafter *Montevideo Convention*] (agreeing that “[t]he state as a person of international law should possess . . . (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States”).

6. *See* Elbagir & Karimi, *supra* note 3 (describing South Sudanese independence); *Member States of the United Nations*, *supra* note 4 (noting South Sudan’s date of admission into the United Nations).

7. TSI is a registered 501(c)(3) nonprofit, whose members are “working to enable seasteading communities.” SEASTEADING INST., <http://www.seasteading.org/?intro=close> (last visited Dec. 15, 2012).

8. As Mark Twain pointed out: “Buy land, they’re not making it anymore.” 24/7 Wall St., *Memo to Congress: “Buy Land, They Ain’t Making Any More of it,”* TIME (Jan. 28, 2009), <http://www.time.com/time/business/article/0,8599,1874407,00.html> (quoting Mark Twain) (internal quotation marks omitted).

9. As dictated by the UN Conventions on the Law of the Seas, international waters typically begin 224 nautical miles from a coastal country’s coast. *See* U.N. Convention on the Law of the Seas arts. 3, 33, 57, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994) [hereinafter *UNCLOS*] (describing the extent to which states may exercise control over territorial seas, contiguous zones, and exclusive economic zones (EEZs)).

Nations recognize them as independent sovereignties.¹⁰ TSI defines its communities as floating cities that will “allow the next generation of pioneers to peacefully test new ideas for government.”¹¹ In the wake of PayPal co-founder Peter Thiel’s continuous and generous financial contributions, TSI’s envisioned dream of international recognition is approaching a viable reality.¹²

There are certain characteristics that a community must possess in order to become a sovereign and independent nation.¹³ These factors can be distilled into two certifying criteria: (1) having governance over a territory in which people permanently reside and (2) being recognized as sovereign by already existing nations.¹⁴ This Note addresses the second factor: namely, whether the United States and, ultimately, the United Nations, would recognize TSI’s seasteads.¹⁵

This Note subdivides this issue into three distinct questions: (1) where and under what circumstances would TSI’s seasteads be able to operate free of intervention from the United States, notwithstanding their ambition for sovereignty;¹⁶ (2) whether the United States would recognize the communities; and lastly, (3) whether the United Nations would come to recognize them. Recognition by the United States is a prerequisite for recognition by the United Nations.¹⁷ However, as this Note explains, being recognized as sovereign by current nation-states is mostly a sociopolitical decision and less a legal one. Accordingly, separating questions (2) and (3) offers a comparison between the American

10. See Press Release, The Seasteading Inst. [TSI], Introducing The Seasteading Institute (Apr. 14, 2008), available at <http://www.seasteading.org/2008/04/introducing-the-seasteading-institute/> (describing the goal of TSI to use seasteading to allow people to choose their government).

11. *Vision/Strategy*, THE SEASTEADING INST., <http://www.seasteading.org/about/visionstrategy/> (last visited Apr. 11, 2013).

12. By August of 2011, Thiel had contributed a total of \$1.75 million. He donated \$500,000 in April 2008 at the inception of TSI, and most recently pledged an additional \$1.25 million in August 2011. See Liz Goodwin, *Silicon Valley Billionaire Funding Creation of Artificial Libertarian Islands*, YAHOO NEWS! (Aug. 16, 2011), <http://news.yahoo.com/blogs/lookout/silicon-valley-billionaire-funding-creation-artificial-libertarian-islands-140840896.html> (describing Thiel’s investment in and plans for TSI).

13. See Montevideo Convention, *supra* note 5, arts. 1–11 (describing agreed upon characteristics of sovereign statehood).

14. *Id.*

15. As of now, the seastead communities do *not* exist. While TSI believes that the communities will be a financial and technical possibility, this Note engages in a thought experiment of *were they to exist, would the seastead communities face legal barriers?*

16. In reality, seasteads will seek recognition from all nations. However, this Note will analyze the topic with respect to the United States, notably because the first seastead will operate in its primary phase in U.S. jurisdictional waters.

17. See *infra* notes 149–50 and accompanying text.

perspective and the non-American perspective.¹⁸ The combination of international law, historical cases, and recent examples of state practice can provide an answer as to the legal obstacles TSI's seasteads would face, if any.¹⁹

Part II expands on TSI: in particular, the concept of seasteading as engendered by TSI, the goals of TSI, and the structural and functional implications of creating seasteads. These details illustrate which legal, social, and political issues are triggered. Part III analyzes the body of international law of the seas as established by the United Nations, with respect to the actions of a nonstate actor. Specifically, Part III discusses in which circumstances and under what assumptions current nations can interfere, if at all, with the operations of seasteads acting as nonstate actors. Part IV explains the United Nations' perspectives on state sovereignty and self-determination, and concludes that the TSI seasteads will meet the preliminary requirements of becoming a nation—having governance over a territory in which people reside. Part V discusses the ultimate and dispositive criterion: whether current nations will recognize the TSI seasteads as sovereignties. This Note extrapolates from historical and modern examples of nonstate actors acting independently from the United States and from members of the European community, concluding that the United States is most likely to recognize the seasteads as sovereign nations.

II. THE SEASTEADING INSTITUTE (TSI) AND THE CONCEPT OF SEASTEADING

TSI has transformed seasteading from a lofty dream dating to the middle of the twentieth century into a realistic endeavor of current times. At the forefront of this progress, TSI envisions its ocean communities to be not only nexuses for political reform and governmental development, but also independent sovereigns recognized by the international community.

18. Moreover, TSI refers to acceptance by the international community and the United Nations at large and does not reference any specific countries in particular. However, this Note will divide recognition by the United States from that by the United Nations for two reasons: (1) the former is a precondition to the latter, and (2) the United States may have a particular interest (TSI's seasteads will operate closest to the U.S. coasts and its members are hoping to break free from the United States).

19. Of course, there may still be ultimate economic and technological barriers that could permanently preclude seasteading from becoming a reality. However, this Note does not take these economic and technological factors into consideration, and instead focuses on the pertinent and normative legal issues.

A. Seasteading as a Historical Concept, Giving Birth to TSI

Given the many failed attempts at seasteading in the second half of the twentieth century, it is difficult to accept that TSI's ocean communities are physically and financially possible. The 1960s saw Operation Atlantis, whose founder, Werner Steifel, was unsuccessful on numerous occasions.²⁰ In 1971, wealthy libertarian Michael Oliver created the Republic of Minerva by unloading barrels of sand on coral reefs; however, his short-lived Republic eroded into the ocean.²¹ More recently in 1993, the Oceania City project developed but was shortly abandoned due to inadequate funds and lack of interest.²²

Upon discovering the Oceania City website, software engineer Wayne Gramlich wrote a "modest proposal": the 1998 treatise *SeaSteading—Homestead on the High Seas*.²³ Gramlich writes that although he would be "delighted" if proven wrong, he believes that fanciful projects will never be realized because they are unrealistic and too extreme.²⁴ Instead, he posited a somewhat primitive and simplistic "floatation method."²⁵ Upon seeing this proposal, Patri Friedman—TSI's founder—contacted Gramlich, and the two collaborated in writing *Seasteading: A Practical Guide to Homesteading the High Seas*.²⁶ This became the foundational document of TSI.²⁷ As a response to those failed grandiose attempts,

20. Stiefel spent a substantial portion of his life attempting to create a sovereign society with free markets: he built a ferro-cement boat that made one successful trip on New York and New Jersey's Hudson River; he constructed a system of seabreaks off the coast of Haiti that was ultimately ejected by then-president François Duvalier's gunboats; lastly, he purchased an oil rig and placed it in the Caribbean Sea where it was decimated by a storm. See Chris Baker, *Live Free or Drown: Floating Utopias on the Cheap*, WIRED MAG. (Jan. 19, 2009), http://www.wired.com/techbiz/startups/magazine/17-02/mf_seasteading?currentPage=all (describing several failed seasteading projects).

21. See *id.* ("Minerva was soon invaded by the nearby kingdom of Tonga, and it dissolved back into the ocean shortly thereafter.").

22. See *id.* (Founder Eric Klien noted that "[t]he Libertarian party is small in number and too few members have the financial resources to bankroll their beliefs").

23. *Id.*

24. Wayne C. Gramlich, *SeaSteading—Homesteading the High Seas*, GRAMLICH.NET, <http://gramlich.net/projects/oceania/seastead1.html> (last visited Apr. 11, 2013).

25. Gramlich's concept involved using thousands of recycled two-liter plastic beverage bottles as the foundation for a floating nation. Baker, *supra* note 20.

26. See *id.* (describing Friedman's dissatisfaction with more "fantastical" projects and excitement at discovering Gramlich's practical ideas).

27. See PATRI FRIEDMAN & WAYNE GRAMLICH, SEASTEADING: A PRACTICAL GUIDE TO HOMESTEADING THE HIGH SEAS 2 (June 9, 2009), available at http://seasteading.wpengine.netdna-cdn.com/wp-content/uploads/2012/03/full_book_beta.pdf (describing how Friedman and Gramlich's ideas led Thiel to invest \$500,000 to begin the non-profit TSI).

TSI retains a realistic attitude as it approaches this enigmatic final frontier.²⁸

B. Motivations and Goals of TSI Seasteading

TSI's ultimate goal is two-fold: (1) to build artificial islands in international waters for the purposes of experimenting with new forms of government, regulation, and societal norms;²⁹ and (2) to have these islands recognized by the international community as sovereign states.³⁰ Friedman and his fellow "seasteaders" view the political system of the United States as irreparably damaged.³¹ Rather than trying to effect change from the inside, TSI hopes to offer a better solution on the outside.³²

TSI cites the response of the United States to two events—the attacks of September 11th (9/11) and the financial crisis of 2008 (Financial Crisis)—as the driving impetus to create seastead communities.³³ TSI states that the tragedy greater than the actual 9/11 attacks and the Financial Crisis was ultimately how the United States responded.³⁴ According to TSI, in the post-9/11 era, overzealous right-wing patriotism dominated the political arena to the point of "exclud[ing]" dissent and taking away "freedoms and civil liberties . . . in the name of protection."³⁵ These freedoms allow the United States to be "a better place to live," and TSI believes that the United States "lost [its] way as a nation" in the fight against terrorism.³⁶ Moreover, TSI posits that the stimulus plan, as a response to the Financial Crisis, is a "massive waste" that was "actually harmful to recovery"; specifically, "high taxes, . . . inflation, [and] capital controls" will make the country a far worse place in the eyes of Friedman.³⁷ TSI argues that the drastic diminishment of economic and social liberties in the past decade—a "truly dark"

28. "Far from being dreamy-eyed utopians, we are serious planners with realistic principles for bringing this strange vision to life. This realism dictates an incremental approach, modest political goals, reliance on mature technology, self-financing, and a willingness to make compromises." *Id.*

29. See *FAQ, THE SEASTEADING INST.*, <http://www.seasteading.org/about/faq/> (last visited Apr. 11, 2013) (addressing questions about the "[v]ision, [m]ission, and [g]oals" of seasteading).

30. See *id.* (addressing questions about the "[a]utonomy and [s]ustainability" of seasteads).

31. See *infra* notes 33–38 and accompanying text.

32. See *infra* notes 39–42 and accompanying text.

33. See *FRIEDMAN & GRAMLICH, supra* note 27, at 16–18 ("[I]t has been a truly dark decade. The need for a new frontier and new ways of organizing a society has never been more urgent.")

34. See *id.* (describing the responses of the United States to both events as "counterproductive").

35. *Id.* at 16.

36. See *id.* at 16–17.

37. See *id.* at 17.

time—is a motivating factor in its goal of pursuing seasteading communities.³⁸

Whether or not one agrees with TSI and Friedman's aforementioned opinions, the logical response is to ask the following: why not change the status quo by attempting to elect officials who share these concerns? TSI readily admits that the public sector is in "vital need" of change.³⁹ However, according to TSI, the political system is not amenable to change from within for several reasons. Firstly, neither the Democratic Party nor the Republican Party is ideal: both reacted independently and inadequately in the past decade.⁴⁰ Moreover, TSI deems the public sector to have a "barrier to entry" for new participants,⁴¹ who feel "alienated" and believe that modern democratic governments "are often unresponsive to the needs of their citizens."⁴² Lastly, TSI believes that the only way to enter the public sector would be via "violent revolutions or coups," an option that TSI clearly will not pursue.⁴³ For these reasons, TSI and its members believe that seasteading is the only viable option to achieve their goals.

1. Goal 1: Experimenting with New Forms of Government

Seasteading will enable individuals of various nations to escape "oppressive governments," thereby giving them "freedom to choose" a system of laws they desire, as opposed to being trapped by the government of their respective country.⁴⁴ Seasteads will create governments that allow for social and economic liberties, the "combination of which rarely exists in any permanent form."⁴⁵

38. See *id.* at 17–18 (noting the urgency of the need for "new ways of organizing a society").

39. See Press Release, TSI, *supra* note 10 ("[T]he Seasteading Institute will help bring more of that innovation to the public sector, where it's vitally needed.").

40. "Two very different crises. Two somewhat different political parties. Two horribly counterproductive responses, each wrecking what they claimed to be saving." FRIEDMAN & GRAMLICH, *supra* note 27, at 17.

41. See Press Release, TSI, *supra* note 10.

42. See Press Release, TSI, Vote with Your House (Aug. 18, 2008), available at <http://www.seasteading.org/2008/09/vote-with-your-house/>.

43. *FAQ*, *supra* note 29.

44. Press Release, TSI, *supra* note 10; *FAQ*, *supra* note 29.

45. See FRIEDMAN & GRAMLICH, *supra* note 27, at 86. Instead of abstract concepts, Gramlich cites specific examples to illustrate his desire that seasteads will embody the best of all governments. For instance, Switzerland is rather relaxed with respect to drug policy and enforcement (social liberties), and Monaco is a tax haven for those fortunate to gain citizenship with the principality (economic liberties). However, Switzerland is fiscally conservative and Monaco is socially conservative. Gramlich hopes to have a community and a new form of government that embraces both forms of libertarianism.

By “experiment[ing] with . . . legal systems,” seasteading will develop “more efficient, practical public sector models.”⁴⁶ Essentially, TSI sees seasteading as a survival-of-the-fittest, choice-of-legal-regime competition. If seasteads were to exist, dissatisfied citizens would leave their own countries for the seasteads. This theoretically would incentivize the governments of these abandoned nations to adapt and evolve so that they can retain their citizenry; otherwise, these countries would lose out to the seasteading communities.⁴⁷ Friedman sees this as a return to the lost roots of the U.S. government: the Founding Fathers “intended for the states to be laboratories of democracy, experimenting with different laws to compete for citizens. But so much power has been centralized by the federal government that now states have very little freedom to experiment.”⁴⁸ The seasteaders believe that their cities will restore that competition: “[I]magine the reduction in worldwide violence if Israel could just move away from Palestine, Georgia from Russia, or Hong Kong from China. On floating cities, this is actually possible!”⁴⁹ In this way, the seastead governmental system may perpetually evolve. Acting as the “world’s first political [research and development department]—a kind of incubator for governments,”⁵⁰ TSI seasteads will purportedly lead to the forms of government best suited for their citizens, as determined by them through this forced choice-of-government-regime competition.⁵¹

2. Goal 2: Gaining Recognition as an Independent Nation by the International Community

Several characteristics of seasteads in their final form trigger certain legal implications.⁵² In terms of structural design, TSI envisions that these communities will be anchored to the seabed using steel or concrete pillars, with a flat platform suspended above water to provide for living space.⁵³ The consequence of this conscious

46. Press Release, TSI, *supra* note 10.

47. See FAQ, *supra* note 29 (“Competition from new nations will incentivize old nations to adapt and evolve—or lose out to these new nations.”).

48. Press Release, TSI, *supra* note 42.

49. “Modern democratic governments are often unresponsive to the needs of their citizens. Our floating cities will change that—if you don’t like your government, you’ll be able to pull up anchor and sail to a better one, or start your own.” *Id.*

50. FAQ, *supra* note 29.

51. See Press Release, TSI, *supra* note 10 (“By making it safe and affordable to settle this frontier, we will give people the freedom to choose the government they want instead of being stuck with the government they get.”).

52. Economic factors weigh heavily into the determination of whether seasteading is a realistic possibility for obvious reasons; however, this Note does not discuss this consideration heavily. See *infra* note 59 and accompanying text.

53. See FRIEDMAN & GRAMLICH, *supra* note 27, at 122 (describing a “tension leg platform” that would combine features of a stationary platform with pillars on the

architectural design—being fixed to the seabed, as opposed to floating above—is that seasteads will operate as artificial islands and not as sea-faring vessels, which dictates the applicable law. Generally speaking, vessels include “all navigable structures *intended* for transportation,”⁵⁴ and the primary purpose of TSI’s seasteads is not for transportation.⁵⁵

Moreover, the daily operations of seasteads have certain legal ramifications. TSI anticipates that its communities will take advantage of their location in the high seas by harnessing wind and solar energy,⁵⁶ as well as engaging in the fishing and mining industries to trade for goods that can be produced more efficiently elsewhere.⁵⁷ Moreover, TSI knows that while initial participation may be temporary, seasteads eventually will become permanent residences for their members.⁵⁸ These steps towards self-sustainability speak to the fact that seasteading will necessarily use resources of the seas, implicating certain regulations and laws. Lastly, there are economic considerations that factor into whether seasteading is realistically possible. To date, TSI’s largest contributions have accounted for 2 percent of its expected costs.⁵⁹ If the initial prototype were fully occupied, it would sell at \$311 per square foot, which is comparable to average prices for homes in Manhattan, which may be cost prohibitive.⁶⁰ While these financial factors do not have any bearing on whether it is a legal possibility, they certainly have normative implications.

ocean floor with features of more mobile floating designs); Baker, *supra* note 20 (diagramming one potential design for a seastead).

54. Cope v. Vallette Dry Dock Co., 119 U.S. 629, 629 (1997) (emphasis added); see also Stewart v. Dustra Constr. Co., 543 U.S. 481, 497 (2005).

55. Although TSI will use a modular platform—in the sense that various parts of the platform will be able to move—the seastead as a single platform will be stationed on the seabed. See *FAQ*, *supra* note 29 (noting that modular platforms allow seasteaders the freedom to relocate to a different seastead while noting the long-term goal of “larger, less mobile designs”).

56. See Press Release, TSI, *supra* note 42 (noting the potential for a smaller carbon footprint than in land-based cities).

57. For instance, it would be more efficient to import beef and other meat products, as opposed to raising cattle on the seastead. See *FAQ*, *supra* note 29 (describing the potential industries seasteaders might enter and how food import patterns will likely evolve as seasteads become more adept at farming).

58. See *id.* (noting that “[m]ost early-adopters will live at sea part time, basing either their business life or vacation life there, but frequently returning to shore”).

59. See *id.* (describing a \$2 million donation where the costs of one prototype seastead were in excess of \$100 million).

60. TSI estimates that in order to build a long-term seastead, it would need nearly \$100 million in financial contributions. See *id.* It therefore plans to proceed in “self-financing, incremental steps.” See *id.* TSI’s largest contributions have come from Thiel, who has donated under \$2 million, which is significantly lower than the estimated minimum. See Goodwin, *supra* note 12 (noting Thiel’s recent \$1.25 million donation).

In order to achieve political freedom and legal autonomy, TSI envisions a process that goes through distinct and gradual phases.⁶¹ The first seastead communities would operate closely off the coast of California. Under this initial stage, the seasteads would manage themselves under the maritime laws as existing ships, registering with a nation for use of its flag and thereby availing themselves to the maritime laws of that country.⁶² Once the engineers at TSI are able to construct the aforementioned model of a platform sitting atop columns and develop ways to withstand harsh ocean conditions, TSI will move its seasteads outwards to international waters to escape the jurisdictional grasp of coastal nations.⁶³ While furthering this technological progress and moving outwards, TSI hopes that its seasteads will enhance their reputation among the international community, create tentative alliances, and then negotiate official treaties with other nations.⁶⁴ Finally, with enough mutual respect and dialogue between seasteads and current nations, TSI will pursue its goal of “recognition from the United Nations, and ultimately recognized sovereignty.”⁶⁵

This Note focuses on the concept of the TSI seasteads in their final form: as self-sufficient artificial islands in international waters, hoping to gain recognition by the international community. This Note overlooks seasteading in its primary phase for two reasons. Firstly, TSI hopes to progress past this stage; accordingly, an analysis of this temporary period is not as valuable as one of its final form.⁶⁶ Secondly, in this initial period there is very little legal uncertainty as to TSI’s duties and obligations: the initial seastead would be governed as an anchored ship under the norms of maritime law, within the territorial seas of the United States.⁶⁷

Interestingly, TSI is not concerned about legal barriers. Though Gramlich in 2002 stated that the “tangled morass” of international

61. See *FAQ*, *supra* note 29 (“When there are enough seasteaders—as well as mutual respect among the various seasteads and major world powers—seasteads are likely to seek recognition from the United Nations, and ultimately recognized sovereignty.”).

62. See *id.* (“In the interim, seasteads will first operate using so-called ‘flags of convenience’ from countries with open flag registries.”).

63. See *id.* (noting that “[e]ven unoccupied islands are the territory of various countries’ Exclusive Economic Zones, in which countries exercise valuable rights over fishing and mineral resources”).

64. See *id.* (“Eventually seasteads will create alliances and negotiate treaties with other nations.”).

65. *Id.*

66. Admittedly, whether or not seasteading will ever progress to the final stage hinges on whether it will pass muster under the initial incremental phases.

67. This Note will not address the duties and obligations of the TSI seastead community sailing under the flag of an already existing nation primarily because TSI’s eventual goal is to exist as an artificial island, not as a vessel, and the applicability and implications of maritime law do not affect TSI communities in this ultimate form.

maritime and state sovereignty law is a “[great] concern,”⁶⁸ TSI suggests to its lay audience that very few legal hurdles, if any, exist. Only the “ambitions of community and funding”—in other words, the psychological willingness and financial capabilities—“might stop [seasteading] from happening.”⁶⁹ More explicitly, TSI forthrightly states that “international law [will not] pose a significant threat.”⁷⁰

Accordingly, this Note will address the following points: (1) whether the United States and other countries would be able to prevent the activities of the TSI seasteads in international waters, as those of nonstate actors, even before they hope to achieve sovereign recognition; (2) whether the United States would recognize the final vision of the seasteads as independent nations; and (3) whether the United Nations would give admission to the seasteads as envisioned by TSI.

III. ARTIFICIAL ISLANDS IN INTERNATIONAL WATERS CREATED BY NONSTATE ACTORS

International law has not directly contemplated the concept of the archetypal seasteading community: nonstate actors building artificial islands as permanent settlements in international waters.⁷¹ The International Court of Justice (ICJ) outlines the three main sources of international law: (1) international conventions and treaties that establish recognized rules of law; (2) international custom, evidenced by common practice and accepted as law; and (3) general principles of law recognized by civilized nations.⁷² The ICJ considers several secondary sources—“judicial decisions and the teachings of the most highly qualified publicists”—as ancillary means for determining and distilling the aforementioned rules of law.⁷³

The treaties applicable to seasteading are the 1958 UN Convention of the High Seas (Geneva Convention)⁷⁴ and its successor,

68. FRIEDMAN & GRAMLICH, *supra* note 27, at 4.

69. FAQ, *supra* note 29.

70. *Id.*

71. Part III addresses the actions of TSI—building artificial islands in the water, initially near the coast of the United States and then ultimately in international waters—notwithstanding the desire to gain recognition, and in what situations the United States can exercise control over the seasteads. Self-determination and sovereignty are addressed in Part IV and Part V.

72. See Statute of the International Court of Justice art. 38, June 26, 1945, 22 U.N.T.S. 993 (providing what law the ICJ will apply when making a determination on an international dispute).

73. *Id.* art. 38(d).

74. See United Nations Convention of the High Seas art. 2, Apr. 29, 1958, 450 U.N.T.S. 11 [hereinafter Geneva Convention] (limiting the rights of states to subject the high seas to their sovereignty).

the 1982 UN Convention on the Law of the Seas (UNCLOS).⁷⁵ There have been a few situations in which independent nonstate actors have attempted to operate solely in the oceans. These cases can be treated as customary law: what a nonstate actor has done in the past and how then-existing countries have reacted in these scenarios may very well illustrate how those nations would react in the future to a similar situation.⁷⁶ The International Tribunal for the Law of the Sea (the Tribunal) is the judiciary body that would hear any applicable dispute, as the Tribunal was created by UNCLOS to arbitrate any controversies arising under the Geneva Convention or UNCLOS.⁷⁷ However, the Tribunal has only heard twenty cases thus far, and none relate directly or indirectly to seasteading.⁷⁸

A. *The Law of the Seas*

International treaty law, and in particular the Geneva Convention and UNCLOS, delineates obligations by which state actors must abide. As such, these bodies of rules dictate whether and to what extent countries may interfere with the actions of TSI as a nonstate actor operating in international waters. As a corollary to this limited applicability of international treaty law, this Note takes into consideration comparable examples in which nonstate actors operated as artificial islands in the waters of nearby countries. Specifically, this Note looks at cases of pirate radio stations, a community of leisure activities, and most similarly, an attempt to create a sovereign nation on a sunken ship. The confluence of these varying sources strongly suggests that as between the United States and members of the European Union, the former would be more willing to accept the concept of seasteading as TSI envisions.

1. International Treaty Law

International treaty law as promulgated by the United Nations does not speak directly to whether TSI is prohibited or permitted to build artificial islands in international waters: international law governs actions between member *states* of the United Nations, and TSI is a *nonstate* actor. While the applicable statutes do not forbid

75. See UNCLOS, *supra* note 9, art. 60 (covering artificial islands).

76. See *infra* Part III.A.2 for a discussion of the four relevant cases about artificial islands.

77. "The International Tribunal for the Law of the Sea is an independent judicial body established by the United Nations Convention on the Law of the Sea [UNCLOS] to adjudicate disputes arising out of the interpretation and application of the Convention." See *The Tribunal*, INT'L TRIBUNAL L. SEA, <http://www.itlos.org/index.php?id=15&L=0> (last visited Apr. 11, 2013).

78. For a listing of all the cases, see *List of Cases*, INT'L TRIBUNAL L. SEA, <http://www.itlos.org/index.php?id=35> (last visited Apr. 11, 2013).

nonstate actors from establishing sovereignty over international waters, they do not explicitly allow it either. The Geneva Convention and UNCLOS establish rules that govern the international waters in which TSI plans to eventually establish its seasteads. While the United States has not ratified UNCLOS, its bases for opposition are unrelated to seasteading.⁷⁹ Accordingly, this Note assumes that the United States does not disagree with, and would in fact apply, UNCLOS particulars that are relevant to seasteading. The Geneva Convention claims:

[N]o State may validly purport to subject any part of [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. . . .

...

These freedoms, and others which are recognized by 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.⁸⁰

This articulation does not explicitly preclude TSI from building artificial islands in international waters; the Geneva Convention applies only to state actors.⁸¹ Because the Geneva Convention is not per se preclusive, it facially permits a nonstate actor such as the TSI to build its seasteads in international waters.

However, a closer reading suggests that TSI's communities may encounter two problems if they attempt to pursue sovereign recognition by the United States and by the United Nations. That a *state* cannot subject any part of the high seas to its sovereignty—to colonize—does not necessarily imply the freedom of a *nonstate* actor to do so. This assumption does not inevitably follow merely because the Geneva Convention does not explicitly speak to nonstate actors. Additionally, if TSI were to petition for recognition by the international community, the artificial island would effectively be subjected to sovereignty, which *is* prohibited.

UNCLOS is equally silent on whether a nonstate actor can create artificial islands in international waters.⁸² However, UNCLOS

79. See Rene Kardol, 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 § 3.1.2 (Mar. 1999) (unpublished M.A. thesis, University of Amsterdam), available at <http://seasteading.wpengine.netdna-cdn.com/wp-content/uploads/2012/02/Proposed-Inhabited-Artificial-Islands-in-International-Waters.pdf> (explaining the five points of opposition that the United States had with UNCLOS).

80. Geneva Convention, *supra* note 74, art. 2.

81. See *id.* (use of the term *State* throughout the text of the article provides evidence that the Convention is applicable only to states).

82. As with the Geneva Convention, UNCLOS governs the relationships between *states* and does not speak to what *nonstate* actors may do. See UNCLOS, *supra* note 9, art. 2 (defining the legal status of territorial seas in terms of states).

theoretically gives the seasteads the freedom to act as they wish in these waters, by continuing to engender the notion that only states cannot subject the high seas to their control.⁸³ Moreover, UNCLOS defines the various zones of waters over which coastal nations such as the United States can exert jurisdiction, and TSI will only be entirely free from U.S. control if it is more than 224 nautical miles off the coast of the United States.

i. The Territorial Sea, the Contiguous Zone, and the Exclusive Economic Zone

The territorial sea extends twelve nautical miles from the baseline of a nation's coast,⁸⁴ and the United States' sovereignty extends to the "air space over the territorial sea as well as to its bed and subsoil."⁸⁵ The contiguous zone stretches from the edge of the territorial sea outwards another twelve nautical miles.⁸⁶ Here, the United States is allowed to exert limited control for two purposes: (1) to prevent the infringement of "customs, fiscal, immigration, or sanitary laws and regulations" and (2) to punish such infringement.⁸⁷ Even if seasteads were not recognized as sovereignties, merely establishing their own form of self-rule in contravention to the mores of the United States would give the United States jurisdiction over them; as such, being within either the territorial seas or the contiguous zone are the least desirable locations for TSI's seasteads.

The exclusive economic zone (EEZ) extends from the outer edge of the contiguous zone up to 200 nautical miles, for a total of 224 miles from a country's coastline.⁸⁸ In the EEZ, the United States has "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources."⁸⁹ These resources include the "living [and] non-living," as well as the "sea-bed and its subsoil."⁹⁰ Moreover, the United States has sovereign rights with respect to "economic exploitation" of the EEZ,⁹¹ which include harnessing energy from wind and water sources.⁹² Despite these

83. See *id.* (regarding the UNCLOS prohibition of a state subjecting the high seas to its domain).

84. *Id.* art. 3.

85. See *id.* art. 2(2) (providing parties to the convention rights to the air and sea floor adjacent to their territorial sea).

86. See *id.* art. 33(2) (explaining that the territorial zone and the zone contiguous to the territorial zone shall not be greater than twenty-four nautical miles from the same baseline from which the territorial zone was measured).

87. *Id.* art. 33(1).

88. See *id.* art. 57 (limiting the EEZ to two hundred nautical miles from the baseline).

89. *Id.* art. 56.

90. *Id.*

91. *Id.*

92. See *id.* (providing examples of permissible economic exploitation).

limitations, all states enjoy the freedoms of "navigation and overflight" in the EEZ of any country.⁹³ In other words, the vessel of another country has the right to navigate and loiter on the surface within the EEZ of the United States. Most importantly, UNCLOS speaks directly to artificial islands in the EEZ: the United States has the "exclusive right to construct and to authorize and regulate the construction, operation, and use of *artificial islands*."⁹⁴ For these reasons, it would also be undesirable for TSI as it hopes to create its communities operating within the EEZ of the United States.⁹⁵

If TSI were to operate solely in the EEZ, seasteads would be successful only under the following criteria: (1) if they are ships or freely floating platforms; (2) if they are not engaged in any type of resource extraction; and (3) if they are not harnessing energy from water, wind, or solar sources. Only if TSI satisfied these three qualifications would the United States be unable to interfere in its operations. However, to be self-sufficient, TSI seasteads envision precisely these uses of natural resources. Also, the seasteads would never be built or used in such a way that they will be considered ship-faring vessels. As such, although the communities could exist in this limited capacity, for practical purposes, they would not.⁹⁶

ii. International Waters

International waters extend from the limit of the EEZ outwards: anywhere past 224 nautical miles from the United States' coast and until the EEZ of the next coastal country.⁹⁷ The high seas "are open to all States,"⁹⁸ and the United Nations here again affirms the maxim that "no State may validly purport to subject any part of the high seas to its sovereignty."⁹⁹ If TSI were to operate in international waters, then the seasteads would necessarily have to argue that as a nonstate actor, TSI is not restricted by the Geneva Convention or UNCLOS. Because it is a nonstate actor, TSI would categorically and necessarily not be violating the mandate that no state may purport to subject any part of the high seas to its sovereignty. The relevant UN treaties neither prohibit nor sanction a nonstate actor from pursuing statehood in international waters. TSI would posit that not being

93. *Id.* art. 58.

94. *Id.* art. 60(1) (emphasis added).

95. *See supra* notes 56–57 and accompanying text (laying out criteria that could prevent seasteading from taking place within the U.S. EEZ).

96. *See supra* note 57 and accompanying text (arguing that a seastead could be self-sustaining in the future).

97. *See* UNCLOS, *supra* note 9, art. 86 (stating that Part VII of UNCLOS applies to all parts of the sea that are not covered by the terms *EEZ*, *territorial sea*, or *internal water*).

98. *Id.* art. 87.

99. *Id.* art. 89 (repeating Article 2 of the Geneva Convention).

precluded is essentially the same as being allowed; however, this argument has no legal foundation.

Ultimately, whether the seasteads may petition for sovereignty as artificial islands in international waters is not to be decided by legal treatises. TSI is a nonstate actor, and neither the Geneva Convention nor UNCLOS governs nonstate actors. Instead of focusing solely on the body of international law, this Note's scope includes the following historical cases, which speak more concretely to whether TSI's communities are going to meet opposition.

2. Cases of Artificial Islands

While international treaty law as established by the United Nations does not directly address the legal possibility of TSI's seasteads, there have been four situations—one in the Netherlands, one in the United Kingdom, and two in the United States—that indicate the United States is potentially less opposed than the European community to recognizing the rights and activities of nonstate actors in the formation of artificial islands.

In 1964, Reclame Exploitatite Maatschappij (REM) operated as a pirate radio station six miles off the coast of the Netherlands.¹⁰⁰ The station, which was the property of non-Dutch citizens but operated by a private Dutch company, was not within the jurisdiction of the Netherlands because it predated UNCLOS and its establishment of territorial waters.¹⁰¹ The Netherlands was interested in regulating the operations of REM because it had been interfering with state-approved radio stations and communications between ships, and the station had also been evading taxes.¹⁰² In response to REM's actions, the Dutch government proposed and passed the North Sea Installations Act, which allowed the country to exercise jurisdiction over all installations erected on its continental shelf, no matter for what purpose.¹⁰³ The government held that REM, as a nonmovable

100. See NIKOS PAPADAKIS, *THE INTERNATIONAL LEGAL REGIME OF ARTIFICIAL ISLANDS* 35 (1977) (introducing pirate broadcasting stations as an issue that has developed in the last fifty years). *Reclame exploitatite maatschappij* is Dutch for "advertising exploitation company."

101. UNCLOS was opened for signature on December 10, 1982, and was entered into force more than a decade later on November 16, 1994 upon deposition of the sixtieth instrument of ratification. See *The United Nations Convention on the Law of the Sea (A Historical Perspective)*, UNITED NATIONS DIVISION OCEAN AFF. & L. SEA, http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm.

102. See Papadakis, *supra* note 100 (discussing the interests nation-states had in pirate broadcast stations due to the adverse ramifications the nation-states suffered).

103. See *id.* at 150 (explaining that the scope of the North Sea Installation Act extends further than would have been necessary to shut down the pirate broadcasts in that it covers all fixed installations).

installation mounted on piers that rested on the seabed, was within the new legislation's scope. As such, REM was immediately shut down.¹⁰⁴

In the same year, Radio Caroline operated off the coast of the United Kingdom, for the purpose of evading BBC Radio and the recording industry's control over broadcasting.¹⁰⁵ The United Kingdom did not take immediate action as the Netherlands did; the country was reluctant to interfere with the freedoms of the high seas and believed that scenarios such as this should be addressed only through international agreements.¹⁰⁶ As a result, the Council of Europe established the Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories (the European Agreement) in 1965.¹⁰⁷ The European Agreement made punishable the "establishment or operation of broadcasting stations,"¹⁰⁸ and contracting states applied the law to both "nationals" as well as "non-nationals."¹⁰⁹ While the European Agreement did not speak directly to artificial islands or installations fixed to the seabed similar or analogous to TSI's seasteads, it explicitly stipulated that nothing in the agreement shall prevent parties from applying its provisions to such fixtures.¹¹⁰ Upon its enactment, the European Agreement ended Radio Caroline's operations.

In 1967, the Atlantis Development Corporation (Atlantis Group) attempted to build on several coral reefs, all within a range of 4.5–10

104. See *id.* at 101 (noting that because the government considered REM to be an artificial island, it was found to be a fixed installation rather than a ship, bringing it within the scope of the act).

105. See PAUL HARRIS, BROADCASTING FROM THE HIGH SEAS: THE HISTORY OF OFFSHORE RADIO IN EUROPE 1958–1976, at 10 (1977) (stating that the idea for Radio Caroline formed when O'Rahilly, a music agent, could not get anyone interested in his singer since he was not part of the big four record companies).

106. See *id.* at 26 (finding that the Post Master General's step back from immediate enforcement was informed by his belief that action should be taken by all of Europe's nations, rather than by the United Kingdom alone).

107. See *id.* at 27 (responding to the dangers of pirate radio, the seventeen member countries of the Council of Europe aimed to eliminate transmitting radio stations at sea).

108. European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories art. 2, Jan. 22, 1965, E.T.S. No. 53.

109. *Id.* art. 3.

110. Nothing in this Agreement shall be deemed to prevent a Contracting Party: (a) from also treating as punishable offences acts other than those referred to in Article 2 and also applying the provisions concerned to persons other than those referred to in Article 3; (b) from also applying the provisions of this Agreement to broadcasting stations installed or maintained on objects affixed to or supported by the bed of the sea.

Id. art. 4.

miles off the coast of Florida.¹¹¹ Atlantis Group had hoped to construct facilities for a variety of leisure activities, including a hotel, casino, marina, and fishing club.¹¹² When Atlantis Group initiated its construction plans, the U.S. Army Corps of Engineers asserted that permission was needed to erect certain structures on two of the reefs.¹¹³ Invoking authority under the U.S. Code,¹¹⁴ the U.S. Court of Appeals for the Fifth Circuit held that no construction could be undertaken in the “navigable waters” of the United States without the approval of the Department of the Army, whose authority “extended to artificial islands and fixed structures located upon the Outer Continental Shelf.”¹¹⁵ Because the attempted structures were located within the 224 nautical mile zone, Atlantis Group’s proposal sat within the United States’ jurisdictional waters. Accordingly, the U.S. Army Corps of Engineers denied Atlantis Group permission to continue its project, on the basis that it would be a hazard for navigation purposes.¹¹⁶

In 1969, the USS Abalonia planned to anchor itself with cement to the Cortes Bank and to create a new state called Abalonia.¹¹⁷ The Cortes Bank—a seamount that is one hundred miles off the coast of San Diego—was rich in shellfish, and the company would station there, put a processing plant on the boat, and harvest the largely untapped resources of the area.¹¹⁸ However, shortly after its maiden voyage, the USS Abalonia sank.¹¹⁹ Afterwards, a second company began similar plans in the hopes of declaring itself the nation of Taluga, and would position itself above the sunken ship.¹²⁰ Immediately, the U.S. Army Corps of Engineers gave notice that the new project would be a hazard for purposes of navigation—the same reason for which Atlantis Group’s proposal was rejected.¹²¹

111. See *Atlantis Dev. Corp. v. United States*, 379 F.2d 818, 820 (5th Cir. 1967) (presenting the crux of the case to be about control rights to coral reef discoveries).

112. See *id.* (describing the “discovery” of the reefs and what William Anderson had hoped to do with them).

113. See *id.* at 821 (requiring the Atlantis group to attempt to persuade the U.S. Army Corps of Engineers that the reefs were not within the United States’ jurisdiction).

114. See 33 U.S.C. § 403 (2006) (“The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited.”).

115. See *Atlantis*, 379 F.2d at 827.

116. See *id.* at 821 (stating that the U.S. Army Corps of Engineers required permits, which were not granted, to erect structures on the reefs).

117. See PAPANAKIS, *supra* note 100, at 36 (providing Abalonia as an example of companies that have attempted to create independent states for commercial benefits).

118. See *id.* (providing commercial reasons why the company desired to form a new sovereign island state).

119. See *id.* (finding that the plan failed in part due to the sinking of the base of the new “state”).

120. See *id.* at 36 n.130 (describing the effort to construct four islands on the Cortes Bank).

121. See *id.* at 36 (noting the response from the U.S. Army Corps of Engineers).

Reaffirming its previous position, the U.S. Army Corps of Engineers declared that the Cortes Bank was a part of the outer continental shelf and under the jurisdiction of the United States, and prohibited the Taluga project from developing.¹²²

3. Analysis

These cases suggest that the United States would be welcoming toward TSI's anticipated project. In the Netherlands, REM had operated in a legal vacuum where its existence was neither prohibited, nor sanctioned, yet the government's reaction of creating new legislation solely to subject REM to the Netherlands' jurisdictional control is especially indicative of one point of view. The function and purpose of an artificial island are dispositive in assessing whether a country will accept and allow for its existence. REM had two purposes: to escape licensing and taxation laws, and also to be able to broadcast radio signals to the people of the Netherlands. These endeavors precipitated the Netherlands to take matters into its own hands. In response to Radio Caroline, a pirate radio station that operated almost identically to REM, the British government successfully encouraged the international community to exert control. While the Dutch and the British governments both recognized that there existed a legal vacuum in international law with respect to artificial islands, the two countries reacted in different manners: the Netherlands saw that it was its own responsibility to enact regulatory laws, whereas Britain waited for the European Agreement, albeit by enacting the very same type of regulations. Despite divergent approaches, the same outcome resulted: new legislation applied retroactively to make radio stations illegal. Extrapolating from the 1960s to the present day, members of the European Union could realistically enact regulations to police and prohibit the behavior of TSI's seasteads.

On the other hand, the United States' response to both the Atlantis Group and the Cortes Bank developments was not focused on the regulation of interfering activities. Instead, the government's concerns were the unauthorized use of state property—since both developments were on the outer continental shelf—and the potential and actual dangers to navigation and shipping. With the very close proximity of Atlantis Group's project to the Florida coast and the USS Taluga's attempt to anchor itself above an already sunken ship, the United States' concerns are valid. While UNCLOS has since been enacted, giving ratifying member states jurisdiction within 224 nautical miles of its borders, the United States would be less willing

122. *Id.* at 36 n.130 (explaining the U.S. Army Corps of Engineers' rejection of the Taluga project).

to interfere with or forbid the operations of TSI in the EEZ than would the European nations.

Additionally, these cases speak to the issue of state sovereignty. TSI is aware that within the United States' EEZ, the United States would be able to exert control over the types of activities in which its seasteads would engage. For this reason, the ultimate seasteads must exist in international waters. Once the seasteads are in the high seas, no state would be able to exercise jurisdictional control over them.¹²³ As discussed below,¹²⁴ state sovereignty is essentially a sociopolitical question of recognition by current states, and these four cases further illustrate that the United States may categorically be willing to recognize the seasteads as sovereign nations.

IV. SELF-DETERMINATION AND SOVEREIGNTY

The United Nations' treatment of self-determination has transformed from a mere principle into a fundamental right of all peoples. The United Nations thereafter outlined three ways in which a group of peoples can attempt self-determination, and the seasteads appropriately fit into the category of emergence as a sovereign independent state. Since TSI hopes to build artificial islands in international waters, seasteads will not involve secession from or disruption to a current nation, which are traditional byproducts of self-determination. The most challenging factor in determining whether a community can become an independent state is its capacity to enter into diplomatic relationships with currently existing countries, but the only way to do so is if these nations recognize a community as a country. Therefore, this circular criterion underscores the conclusion that whether a group of peoples can become sovereign hinges primarily on current countries' sociopolitical choice of recognition.

A. *The United Nations and Self-Determination*

Self-determination is a fundamental pillar of the United Nations. In its Founding Charter of 1945, the United Nations asserts its devotion to "develop[ing] friendly relations among nations based on respect for the principle of equal rights and *self-determination* of peoples."¹²⁵ The Charter repeats the term "self-determination": the United Nations shall act "with a view to the creation of conditions and stability and well-being which are necessary for peaceful and

123. See *supra* Part III.A.1 (covering freedom of the high seas provided for by UNCLOS).

124. See *infra* Part IV (discussing self-determination and sovereignty).

125. U.N. Charter art. 1, para. 2 (emphasis added).

friendly relations among nations, based on respect for the principle of equal rights and *self-determination* of peoples.”¹²⁶

Although the Charter appears to enshrine self-determination, it explicitly states “rights *and* self-determination,” and specifically not the right of self-determination.¹²⁷ If self-determination is not a right, is it a principle? If it is merely a principle, is the United Nations sincerely committed to this idea? To which “peoples” does the notion of self-determination apply?¹²⁸ These questions, which existed when the United Nations was founded, were answered with the movement to decolonize in the 1960s. During this era, the United Nations shifted its philosophical paradigm away from the principle of self-determination—a “meager and tentative” foundation—and towards an “an edifice of practice in which, increasingly, full external self-determination—preferably to result in independence—was viewed as an imperative and immediate.”¹²⁹

UN General Assembly Resolution 1514 of 1960—the Declaration on the Granting of Independence to Colonial Countries and Peoples—can be regarded as the beginning of this “revolutionary process.”¹³⁰ Resolution 1514 states that “[a]ll peoples have the *right to self-determination*; by virtue of that right they freely determine their political status and freely pursue economic, social, and cultural development.”¹³¹ Resolution 1514 also asserts that the “[s]ubjection 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.”¹³² While Resolution 1514’s title may lend credence to the idea that self-determination applies only to colonized people, the right as promulgated through the Resolution is applicable to all; “all peoples” have the right, not just colonized peoples.¹³³ Specifically, Resolution 1514 “aims at a universal application of the right of self-determination of *all* peoples, not just of all colonial peoples.”¹³⁴

While Resolution 1514 began to develop the concept of self-determination, Resolution 1541 of the same year represents the “culmination of an evolutionary” process in which the United Nations

126. See *id.* art. 55. (emphasis added).

127. *Id.* (emphasis added); see also *id.* art. 1, para. 2 (providing rights and self-determination to be amongst the purposes of the United Nations).

128. See *id.* art. 1, para. 2 (promising rights and self-determination “of peoples”).

129. MICHLA POMERANCE, *SELF-DETERMINATION IN LAW AND PRACTICE: THE NEW DOCTRINE IN THE UNITED NATIONS* 10 (1982).

130. *Id.* at 11.

131. Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), ¶ 2, U.N. Doc. A/4684 (Dec. 14, 1960) (emphasis added).

132. *Id.* ¶ 1 (emphasis added).

133. See *id.* ¶ 2 (defining fundamental rights).

134. JORRI DUURMSA, *FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES: SELF-DETERMINATION AND STATEHOOD* 18 (1996).

instructed its member states in determining whether a group of peoples has appropriately attained self-determination.¹³⁵ There are three possible ways in which a community may do so:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.¹³⁶

The United Nations has evolved the language of self-determination in two fundamental ways. The first is that self-determination has transformed into a right and not merely a principle: Resolution 1514 explicitly replaces the “and” with a “to,” enabling “the right to self-determination.”¹³⁷ Secondly, the United Nations qualifies the people to whom self-determination applies: to “all peoples,” as opposed to merely “peoples” in general.¹³⁸ These two resolutions—1514 and 1541—have formed the bedrock of what some dub the “New UN Law of Self-Determination.”¹³⁹ Lastly, and of particular pertinence to the TSI seasteads, the United Nations in Resolution 2625 proclaims that “all peoples have the right freely to determine, without external interference, their political status . . . and every State has the duty to respect this right in accordance with the provisions of the Charter.”¹⁴⁰

The language of the UN Founding Charter and relevant resolutions that followed suggest that TSI’s hopes of self-determination are not in vain. Initially, self-determination was merely a principle; yet, in response to the desire to free the colonized world, the United Nations began to treat self-determination as a right. Additionally, because this right was granted to “all” peoples who are entitled to “freely determine . . . their political status,” TSI and its members are definitively included in those granted this right.¹⁴¹ With this right, Resolution 1541 enumerates three options for peoples similarly situated, and the first choice, “[e]mergence as a sovereign independent State,” is a viable option for TSI.¹⁴² As such, the next logical obstacle is how the role of secession interacts with the right of self-determination from the perspective of the United Nations.

135. See generally G.A. Res. 1541 (XV), *supra* note 2 (guiding in the determination of territories “of the colonial type”).

136. See *id.* princ. VI (identifying methods of asserting self-determination).

137. G.A. Res. 1514 (XV), *supra* note 131.

138. *Id.* (emphasis added).

139. See POMERANCE, *supra* note 129, at 12 (noting the coinage used to describe the two resolutions).

140. G.A. Res. 2625 (XXV), at 123, U.N. Doc. A/8082 (Oct. 24, 1970).

141. *Id.*

142. G.A. Res. 1541 (XV), *supra* note 2, princ. VI.

B. *The Right of Self-Determination and Secession*

Secession and disruption of the state are the inevitable by-products of traditional self-determination.¹⁴³ However, these two notions appear to contradict directly with “another fundamental principle of international law, namely with sovereignty,” and in particular, with the “territorial integrity” of state actors.¹⁴⁴ Indeed, the United Nations illustrates this inconsistency. In Resolution 1514, the United Nations upholds the notion of territorial integrity: “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is *incompatible* with the purposes and principles of the Charter of the United Nations.”¹⁴⁵ On the other hand, in Resolution 2625, the United Nations confirms the right to self-determination: “The 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.”¹⁴⁶ The language here echoes with resounding clarity the three methods with which “all peoples” can exercise their right of “self-determination” as articulated in Resolution 1541.¹⁴⁷

However, while secession and disruption of the state have *historically* been the by-products of peoples seeking self-determination, TSI seasteading implicates neither of these issues strictly. Secession can be thought to involve a group of peoples wishing to claim the lands or territory of an existing country as its own. Disruption can generally refer to an unusual interruption of the regular activities of a nation’s governmental system. TSI hopes to establish, in its final form, artificial islands in international waters,¹⁴⁸ which are categorically not the territory of any nation.¹⁴⁹ Specifically, nations are unable to subject any part of the high seas to

143. The United States most recently recognized Kosovo as a state in 2008, but the country of Kosovo as it exists involved the secession from, and the disruption of, the Serbian state. *U.S., European Powers Recognize Kosovo*, NBC NEWS (Feb. 18, 2008, 6:26 p.m.), http://www.msnbc.msn.com/id/23219277/ns/world_news-europe/t/us-european-powers-recognize-kosovo/.

144. Dietrich Mursweik, *The Issue of a Right of Secession—Reconsidered*, in *MODERN LAW OF SELF-DETERMINATION* 21, 22 (Christian Tomuschat ed., 1993).

145. G.A. Res. 1514 (XV), *supra* note 131, ¶ 6 (emphasis added).

146. G.A. Res. 2625 (XXV), *supra* note 140, at 124.

147. See G.A. Res. 1514 (XV), *supra* note 131 (identifying the methods of asserting self-determination).

148. See *supra* Part II.B.1–2 (considering the motivations and goals of TSI seasteading).

149. See UNCLOS, *supra* note 9 (asserting that “the area of the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction . . . are the common heritage of mankind”); Geneva Convention, *supra* note 74, arts. 1–2 (defining the “high seas” and their independence).

their sovereignty.¹⁵⁰ Therefore, were TSI seasteads to exist in international waters, they would not be seceding from or disrupting the United States—or any other member of the United Nations—in the traditional sense.

C. Sovereignty

As an initial matter, the question of statehood is distinct from that of membership into the United Nations.¹⁵¹ On the one hand, recognition as a sovereignty is determined by the customary practice of nations. On the other hand, membership in the United Nations is facially a procedural process, beginning with a unanimous vote of approval by the five permanent members of the UN Security Council, on which the United States holds a seat.¹⁵² However, the United States, as well as any other permanent member of the Security Council, can veto membership to any potential member state for its own reasons. Accordingly, whether the United States will recognize TSI seasteads as sovereign states is a necessary precondition for membership into the United Nations.

Although recognizing an independent sovereignty is largely a decision that a nation makes detached from legal obligations, the Montevideo Convention on Rights and Duties of States of 1933 (the Montevideo Convention) lists criteria that a group of people ought have if the community hopes to be recognized as sovereign. The Montevideo Convention states: “[T]he 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.”¹⁵³ A population is “an organization of human beings living together as a community,” and the population of a state “compromises all individuals who, in

150. See UNCLOS, *supra* note 9 (noting the need for a “legal order for the seas and oceans” to govern the use of international waters); Geneva Convention, *supra* note 74, art. 2 (“[N]o State may validly purport to subject any part of [the high seas] to its sovereignty.”).

151. It is possible for a member of the United Nations not to be a sovereign state, as India was before it had fully realized full independence from the United Kingdom; similarly, it is possible for a sovereign state not to be a member of the United Nations (as Kosovo currently is). See generally John Cerone, *The UN and the Status of Palestine—Disentangling the Legal Issues*, 15 AM. SOC’Y INT’L L. INSIGHTS, Sept. 13, 2011, available at <http://www.asil.org/pdfs/insights/insight110913.pdf>.

152. “Decisions of the Security Council on all other matters [other than purely procedural matters] shall be made by an affirmative vote of nine members including the concurring votes of the permanent members.” U.N. Charter art. 27, para. 3. The ICJ, in a 1950 Advisory Opinion, affirmed that the Security Council’s recommendation must be in favor of admission in order for a state to be admitted to membership by the General Assembly. Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, 1950 I.C.J. 4 (Mar. 3).

153. Montevideo Convention, *supra* note 5, art. 1.

principle, inhabit the territory in a permanent way.”¹⁵⁴ As much as there is no minimum number of individuals that are necessary to form a recognized state, there is no absolute minimum size for the territory.¹⁵⁵ Additionally, with regards to the territory, the borders do not have to be strictly defined, despite the words of the Montevideo Convention.¹⁵⁶

D. Analysis

TSI's seasteads in their final form will easily meet the first three requirements. TSI hopes that its communities will have permanent populations—while a few individuals will necessarily have to travel between seasteads and other nations, there is no reason to believe that the communities would not be able to sustain permanent populations.¹⁵⁷ With regard to a defined territory, the structural design of seasteads will satisfy this condition.¹⁵⁸ Moreover, even its modular design of moving neighborhoods¹⁵⁹ will not run afoul of the territory requirement. Lastly, TSI envisions its seasteads as having governments—this is the precise and motivating purpose of the organization—and therefore the seasteads will comply with this third standard.

The last criterion—the capacity to enter into diplomatic relations with other states—invites a somewhat circular logic. For instance, take aspiring state A and already existing state B. A and B can enter into diplomatic relations only if B recognizes A as a state and invites A into formal relations. In other words, the fourth requirement can be reworded as to whether B recognizes A as a state. This ultimately leads to the circular conclusion: in order for A to be recognized as a state, it has to be able to enter into relations with other states, and in order for A to have this capacity, it has to be recognized as a state.

154. DUURSMA, *supra* note 134, at 18.

155. See generally Kardol, *supra* note 79 (noting the lack of population requirements). The Vatican, for example, has an estimated population of eight hundred residents and a size of 0.2 square miles. *Geography*, VATICAN CITY ST., <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/note-general/ geografia.html> (last visited Apr. 11, 2013); *Population*, VATICAN CITY ST., <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/note-general/ popolazione.html> (last visited Apr. 11, 2013). And of the eight hundred residents, the vast majority are not permanent residents of this confined area. *Population*, *supra*.

156. See Kardol, *supra* note 5_ (noting that “absolute certainty . . . is not required,” despite the Montevideo Convention’s qualifications).

157. See FAQ, *supra* note 29 (responding to frequently asked questions about the viability of seasteads).

158. This modular design is meant to further experiment with social living so that no one neighborhood remains static. See *supra* note 55 (explaining the structure of seasteads).

159. See *supra* note 54 (explaining the structure of seasteads); *supra* note 154 and accompanying text (explaining that under the requirements for statehood, borders do not need to be strictly defined).

This circularity highlights the importance of currently existing nations' *choice* of recognition as the dispositive factor.

V. RECOGNITION BY THE UNITED STATES AND THE UNITED NATIONS

Examples of the modern era indicate whether the United States and, as a corollary, the United Nations, will recognize TSI communities as independent nations. As a recent example, the sovereign nation of Kosovo is particularly illustrative because the United States has chosen to recognize the country,¹⁶⁰ whereas the United Nations has declined to follow suit.¹⁶¹ As previously mentioned, whether the United States accepts TSI's seasteads is a necessary precondition to acceptance by the United Nations.¹⁶² The divergence of the opinion regarding Kosovo is a useful analogy in concluding that the United States most likely will recognize the TSI seasteads.

A. *The United States and Recognition of Kosovo*

In 2009, the United States responded to the UN General Assembly for an advisory opinion on the "Accordance with International Law of the Unilateral Declaration by the Provisional Institutions of Self-Government of Kosovo." The United States strongly encouraged the United Nations to recognize Kosovo as a nation, concluding that Kosovo's declaration of independence was in accordance with international law.¹⁶³

The United States posits that international law does not, generally speaking, regulate declarations of independence.¹⁶⁴ The United States notes that the Charter of the United Nations, other international agreements, and customary international law all do not

160. See generally *United States Recognizes Kosovo as Independent State*, AMERICA.GOV (Feb. 18, 2008), <http://www.america.gov/st/peacesec-english/2008/February/20080218144244dmslahrellek0.9832117.html> (discussing U.S. acceptance of Kosovo's declaration of independence).

161. See generally Nicholas Kulish & C.J. Chivers, *Kosovo Is Recognized but Rebuked by Others*, N.Y. TIMES (Feb. 19, 2008), <http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html?pagewanted=all>.

162. See *supra* notes 150–51 and accompanying text (noting the role of the United States and the United Nations in confirming the legitimacy of seasteads as sovereign states).

163. See generally U.S. Dep't of State, *Written Statement of the United States of America, Request for Advisory Opinion on the Question of the Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*, transmitted by letter dated Apr. 17, 2009 from the U.S. Acting Legal Advisor to the Registrar of the Int'l Court of Justice (April 2009) (presenting the U.S. position with regard to Kosovo's declaration of independence from Serbia).

164. See *id.* at 50 (characterizing international law).

police these declarations.¹⁶⁵ The United States rationalizes that international law governs relations among states, and communities hoping to establish independence are categorically not states.¹⁶⁶ As such, declarations must therefore be in “accordance with international law.”¹⁶⁷

The United States further proclaims that the “process of state formation presents a matter of fact,” as opposed to a question of law.¹⁶⁸ While “other events associated with a particular declaration of independence” may very well come within the ambit of international law, the declaration itself is a matter of fact: a declaration is “a fact that precedes the law, and which the law acknowledges only once it has materialised, by attributing certain effects to it, including a certain legal status.”¹⁶⁹

However, the nature of these “other events” may prove dispositive in the final legitimacy of declarations of independence. On the one hand, a declaration of independence violating domestic law, such as a “rebel regime attempting to overthrow the government of the state or to secede from the state,”¹⁷⁰ does not indicate that such a declaration necessarily violates international law. On the other hand, when a declaration of independence violates international laws—such as the attempt to establish an apartheid regime—the declaration will be considered unlawful by international standards.¹⁷¹

Moreover, the United States believes that the concept of territorial integrity does not preclude a declaration of independence.¹⁷² This principle is only important when considering the actions and “conduct of states.”¹⁷³ The United States notes that all the treaties that Serbia (an opponent of Kosovo’s independence) cites in favor of finding that Kosovo has violated territorial integrity in fact confirm that territorial integrity “applies [only] as between states.”¹⁷⁴ The United States concludes, “[N]o rule of international law would prohibit non-state actors from declaring independence.”¹⁷⁵

165. See *id.* (characterizing international law).

166. See *id.* at 50–51. The United States notes that there are certain exceptions, such as those found in international humanitarian law; however, “declarations of independence do not by themselves fall into these exceptions.” *Id.*

167. See *id.* at 50 (suggesting that nothing in Kosovo’s declaration would not be “in accordance with international law”).

168. *Id.* at 51.

169. *Id.* at 52 (quoting GEORGES ABI-SAAB, *Conclusion to SECESSION: INTERNATIONAL LAW PERSPECTIVES* 470).

170. *Id.* at 51 (quoting OPPENHEIM’S INTERNATIONAL LAW § 49 (9th ed. 1992)).

171. See *id.* at 56 (discussing acts of independence that constitute “serious international law violations”).

172. See *id.* at 69 (considering the relationship between territorial integrity and statehood creation).

173. See *id.* (noting relevance).

174. *Id.*

175. See *id.* (reaffirming the United States’ rejection of Serbia’s arguments).

Consistent with these ideas, declarations of independence are matters of fact and presumptively allowed; accordingly, the United States looked to whether there were surrounding circumstances that would render Kosovo's declaration in violation of international law.¹⁷⁶ Finding none, the United States instead deemed certain provisions of the declaration to be "consistent" with international law—particularly, Kosovo's emphasis on human rights.¹⁷⁷ Ultimately, the United States believed that Kosovo's declaration of independence was in accordance with international law, and thus that the United Nations should follow suit and recognize Kosovo.¹⁷⁸

*B. The International Court of Justice's Commitment
to Recognizing Kosovo*

In 2010, the ICJ concurred with the United States, advising that Kosovo should be recognized as a nation by the United Nations. The ICJ similarly held that the general body of international law does not actively prohibit declarations of independence.¹⁷⁹ Accordingly, the ICJ stated that Kosovo's declaration of independence as a preliminary matter, in and of itself, does not violate international law.¹⁸⁰ From here, the ICJ agreed with the United States in that, within the framework of UN Security Council Resolution 1244, Kosovo's declaration is not in violation of international law.

The ICJ characterized Resolution 1244's purposes as resolving the "grave humanitarian situation" of the Yugoslavian area.¹⁸¹ The ICJ noted that there are three unique features of Resolution 1244 relevant to determining its object and purpose regarding Kosovo's status.¹⁸² The first was the establishment of "an international civil and security presence in Kosovo," with untethered authority and autonomous responsibility for governing Kosovo,¹⁸³ and this governing body would be titled the United Nations Interim Administration Mission in Kosovo (UNMIK). The second was recognizing that the purpose of UNMIK's presence was humanitarian in nature and specifically, to reestablish "basic public order" and to

176. See *id.* at 56 (considering acts of independence that may constitute "serious international law violations").

177. See *id.* (asserting the legitimacy of Kosovo's declaration of independence).

178. See *id.* (noting the declaration's conformance with the highest "international human rights protections").

179. See Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, ¶ 84 (Jul. 22) (confirming general international law).

180. See *id.* (summarizing the court's holding in paragraph 84).

181. *Id.* ¶ 58 (quoting the Security Council's resolution).

182. See *id.* ¶ 96 (following the court's initial reasoning).

183. See *id.* ¶ 97 (quoting the ICJ's interpretation of Security Council Resolution 1244).

stabilize the region.¹⁸⁴ The United Nations envisioned that these goals would be achieved through a four-pronged approach—the so-called four pillars of an “interim civil administration, humanitarian affairs, institution building, and reconstruction.”¹⁸⁵ Thirdly, the regime established by Resolution 1244 was temporary and did not “put[] in place a permanent institutional framework [within] Kosovo.”¹⁸⁶

The ICJ found that the declaration of independence did not violate Resolution 1244. Resolution 1244 was designed to create UNMIK, an interim regime, with the pursuit of “channeling the long-term political process to establish [the area’s] final status.”¹⁸⁷ However, even though Resolution 1244 had this goal in mind, it did not contain any provision that dealt with Kosovo’s final status or how the community would achieve this.¹⁸⁸ Alternatively, Kosovo’s declaration of independence *was* an attempt to determine this final status.¹⁸⁹ The ICJ saw this disparity merely as “operat[ing] on a different level,” and as such, found that the declaration did not violate Resolution 1244.

C. Analysis

A trajectory from the United States’ response in the 1960s to Atlantis Group and the USS Abalonia, combined with the position the United States held with respect to Kosovo’s declaration of independence, suggests that the United States would be willing to recognize and accept TSI seasteads as sovereign entities existing in international waters. Looking solely at the two situations in the 1960s, the United States appeared more concerned with controlling its territorial waters than with restricting the activities conducted there. The United States was able to control Atlantis Group and the USS Abalonia because they were within its jurisdictional waters and therefore prohibited them for navigation-safety purposes.¹⁹⁰ On the other hand, the Netherlands and the United Kingdom dismantled pirate radio stations operating in international waters precisely in an effort to control behavior against the mores of both nations, but responding in somewhat different ways: the Netherlands created laws that retroactively applied and made these stations illegal, and the United Kingdom took a loss formidable but equally indicative

184. See *id.* ¶ 98 (noting the goals of Resolution 1244).

185. *Id.* ¶ 98; accord ¶ 60.

186. See *id.* ¶ 99 (quoting the court’s assertion of the temporary nature of the regime).

187. *Id.* ¶ 114 (quoting the court’s interpretation of Resolution 1244’s intent).

188. See *id.* (highlighting the court’s observation of the problem).

189. See *id.* (distinguishing the Declaration of Independence from Resolution 1244).

190. See *supra* Part III.A.2.

approach, by encouraging the European community as a whole to enact similar laws.¹⁹¹

Given the United States' response to Kosovo's petition for independence and the current gaps in international law regulating nonstate actors in international seas, TSI seasteads would most likely be recognized by the United States. The international law of seas promulgated by the United Nations governs the relationships between state actors alone; as such, the activities of the seasteads in international waters as private citizens are not explicitly prohibited.¹⁹² If the United States determines that, because declarations of independence are not prohibited, they therefore are allowed, then there is no reason why the seasteads petitioning for independence would be deemed a violation of international law. If TSI's communities do not violate international law, then their declaration of independence would not encounter obstacles. The seasteads would be wise to incorporate in its declaration that the notions of state sovereignty and self-determination are paramount, much like Kosovo did with respect to humanitarian law. The United States found that Kosovo's declaration, because of its acknowledgement to adhere to the principles of international humanitarian law, was not only not in violation of international law, but also affirmatively in accordance.¹⁹³ As a result, if the seasteads' declaration of independence acknowledges and adheres to self-determination and sovereignty, then the United States' recognition will be based on their conforming to international law.

The ICJ looked to see whether Kosovo's declaration of independence violated Resolution 1244 and determined that the two are not in conflict with each other. Resolution 1244 was enacted by the United Nations in response to the political situation surrounding the Yugoslavian area; with respect to seasteads, however, there has been no UN resolution regarding the use or control of international waters by private citizens. Because of this legal gap, the seasteads' declaration of independence could not violate international law, and therefore would be more likely to be accepted by other members in the international community.

VI. CONCLUSION

Despite the obvious structural and financial obstacles that may be prohibitive, the seastead communities as envisioned by the TSI encounter various issues of international law. With regards to the law

191. See Part III.A.2.

192. See *supra* Part III.A.1.

193. See *supra* Part V.A (considering the stance of the United States on statehood recognition).

of the seas, the activities of TSI as a nonstate actor are not be prohibited. However, this results because the laws promulgated by the United Nations deal primarily with the interactions among states. Even if, *arguendo* a lack of prohibition constitutes an implicit allowance, it appears that TSI may exist as a private, nonstate actor in international waters if it so desires.

However, TSI will not stop there: the organization hopes to create nations, for the purpose of experimenting with social norms and governmental structures. In order to do so, and in particular, to compete with currently existing forms of government, TSI's communities *need* to be recognized as nations. The only way that the choice-of-government regime will necessarily work is if the communities are sovereign states. Individuals can choose between competing legal regimes only if both—for instance, that of the United States and that of the TSI seastead—exist independent of one another. For these reasons, TSI will inevitably continue to pursue independence.

Whether or not a community is recognized as a sovereignty is by and large a sociopolitical question and not a legal one: other nations may *choose* to recognize a group of people as independent, and no country is *legally obliged* to do so. Whether TSI will succeed in this endeavor illuminates several gaps in international law of state sovereignty and self-determination. Equally important is the seasteads' unique means of achieving independence: instead of seceding from a currently existing country, TSI wants to build its own countries in international waters. The body of international law does not facially govern this; however, because the law is not dispositive as to whether a country is recognized, the most informative tool is historical state practice.

This Note concludes that the United States would most likely come to recognize a TSI seastead community as a sovereign state. Based on its interactions with attempts to create artificial islands within its jurisdiction, the United States seems more concerned with nonstate actors taking what belongs to the United States than in regulating the activities of these communities from a normative standpoint. Moreover, the United States, through its acceptance and recognition of Kosovo, has indicated that unless declarations of independence are connected with events or conditions that violate international law, they are, as a matter of fact, valid. Here, TSI's actions will not violate international law, and its declaration of independence should enshrine the values of self-determination and sovereignty to verify its adherence to international law.

Despite these guiding doctrines, whether the United States will recognize the seastead communities is admittedly uncertain, and therefore membership into the United Nations is equally unclear. Normatively speaking, this Note holds that current nation-states should be willing to accept and recognize the seastead communities,

precisely because of their choice-of-government purpose. If people are content with the status quo of their governments, then seasteading will cease to exist because no one will seek out new forms of government. On the other hand, if people are dissatisfied with their respective governments, as the members of TSI are, then having the seasteads as an outlet for experimentation can be a fruitful exercise in political-thought processes and should be encouraged for two worthy reasons. First, the alternative is undesirable: a disgruntled body—albeit a minority—of citizens that may gain enough traction to attempt internal revolt or secession. Secondly, and more importantly, these incubators of political experiment could very well lead to the betterment of governmental systems and countries as they exist today. If citizens leave their respective countries for seastead communities that are recognized and operate as sovereign states, this will force their abandoned nations to compete with the seasteads. In other words, nations will strive to refashion their governments in a manner to maintain their citizenry. If countries are able to develop new or better forms of government that are attractive to both the malcontented as well as the satisfied citizenry, then this logically would lead to the most socially desirable political systems. Whether seasteading as envisioned by TSI will ever come into fruition, or stay in existence, is ultimately dependent on a plethora of factors that are not directly related to the goal of political experimentation. However, it is precisely because of this goal that today's society should not only hope that seasteading becomes a reality, but also actively promote its realization: seasteading is a Darwinian choice-of-legal-regime competition that could very well result in the most efficient international community of nations.

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