

# OF NATIONS SMALL: THE SMALL STATE IN INTERNATIONAL LAW

## I. INTRODUCTION

Although the United Nations from the outset has accepted the proposition that small states exist,<sup>1</sup> what defines a small state is an elusive concept. Population<sup>2</sup> and territory<sup>3</sup> provide a starting point, but limiting a model of 'small statehood' to these factors alone may generate an overly rigid and under-inclusive definition. Accordingly, this comment will examine the entities known as small states by discussing autonomy and sovereignty, the various categories of small states, and by considering the common role of small states as tax havens. This comment will focus particularly on the so-called mini or micro-states. These small states resulted from the post-World War II decolonization process that affirmed the right to self-determination.<sup>4</sup>

This comment will argue that because of the provision of tax haven services, small states are in effect selling sovereignty. They provide these services for the simplest of reasons: they need the money. This is particularly of interest as the use of tax havens is a vital part of the international drug trade money-laundering process. While the noble principle of self-determination has been a rallying cry for decolonization, decolonization without a means for supporting the new state is problematic. Self-determination should be balanced against the interests of international comity.

---

1. Adapted from the United Nations Charter:

We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal right of men and women and of nations large and small

.....

U.N. CHARTER pmb. (emphasis added).

2. Lung-Chu Chen, *Self-Determination and World Public Order*, 66 NOTRE DAME L. REV. 1287, 1287 (1992) (microstates have populations of less than one million).

3. JACQUES RAPOPORT, ET AL., *SMALL STATES & TERRITORIES, STATUS AND PROBLEMS*, U.N. Inst. for Training & Res. Series No. 3, (1969) (U.N. commissioned study of small and micro-states) [hereinafter UNITAR].

4. Thomas M. Franck & Paul Hoffman, *The Right Of Self-Determination In Very Small Places*, N.Y.U. J. INT'L L. & POL. 331, 331-35 (1976). For discussions of U.S. policies on self-determination, see Roger S. Clark, *Self-Determination and Free Association - Should the United Nations Terminate the Pacific Islands Trust?*, 21 HARV. INT'L L. J. 1 (1980) (U.S. policy on micro-states and self determination); A. John Armstrong, *The Negotiations for the Future Political Status of Micronesia*, 74 AM. J. INT'L L. 689 (1980) (detailing U.S. decision to terminate Pacific Islands trust for reasons of self-determination); Michla Pomerance, *The United States and Self-Determination: Perspectives on the Wilsonian Conception*, 70 AM. J. INT'L L. 1 (1976) (discussing historical relationship of U.S. to the principle of self-determination).

## II. AUTONOMY AND SOVEREIGNTY DEFINED

### A. *Autonomy and the Modern State*

The idea of autonomy<sup>5</sup> is associated with the concept of self-determination. The actual term autonomy was created to describe the status granted Greek cities under Persian rule.<sup>6</sup> Autonomy as a concept has been adapted to the changing nature of city states. During the Roman empire, autonomy was used to describe the relationship between federated cities and the imperial center.<sup>7</sup> The modern concept of the autonomous city, the city state, was limited to medieval Italy.<sup>8</sup> There, the city state was transformed from an autonomous entity to a sovereign entity, replete with military and economic power.<sup>9</sup> However, with the rise of the commercialism and nation states, the functions of autonomy and sovereignty were rendered functionally equivalent through the centralizing tendencies of bureaucratic government.<sup>10</sup> Sovereignty was legitimated with autonomy when it was vested within the general population.<sup>11</sup> However, despite the congruencies, the two are distinct.

Autonomy is not thought of as an element of international law because it is primarily a descriptive theory.<sup>12</sup> A state's autonomy is demonstrated by the presence of self-government and the "degree of [its] independence and control over its own internal affairs."<sup>13</sup> The extent to which a polity may be considered to possess full autonomy is demonstrated by its control over foreign affairs and defense including police and security powers, control over resources, social services, and financial and economic influence and arrangements.<sup>14</sup>

Sovereignty is a legal construct of legitimation, and the basis of international legal order.<sup>15</sup> Essentially, sovereignty is the legal premise of the invio-

5. Autonomy here refers to general political and governmental autonomy, and not cultural or religious autonomy. Hurst Hannum & Richard B. Lillich, *The Concept of Autonomy in International Law*, 74 AM. J. INT'L L. 858, 860 n.16. (1980).

6. GIANFRANCO POGGI, *THE DEVELOPMENT OF THE MODERN STATE* 87-88 (1978); see also Michael Libonati, *Home Rule: An Essay on Political Pluralism*, 64 WASH. UNIV. L. REV. 51, 56-57 (1991) (discussing the concept of sovereignty as applied to local polities).

7. POGGI, *supra* note 6, at 87-88.

8. *Id.* at 40-42.

9. *Id.*

10. *Id.* at 74-77, 142-43. The rise of the nation-state has its roots in the "conviction that there must be in every state, if it were to be a state, an indissoluble supreme power from which there could be no appeal . . . [as] a necessary concomitant of the growth of the nation-state with its emphasis on centralization of authority and its obsession with order." GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC 1776-1787* (1969).

11. JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 215-28 (1979).

12. Hannum & Lillich, *supra* note 5, at 885.

13. *Id.*

14. *Id.* at 861.

15. IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 80 (3d ed. 1979); see also POGGI, *supra* note 6, at 88 ("[w]ithin the states system . . . each [sovereign] state is a self-originating, self-empowered unit operating exclusively in pursuit of its own interests").

liability of a state's right to existence as a statement of the "state's attribute of more-or-less plenary competence."<sup>16</sup> It is predicated historically on the divine right of kings.<sup>17</sup> Sovereignty devolved through the Enlightenment and the advent of constitutionally based government to presently encompass claims of legitimacy premised upon popular, democratic support.<sup>18</sup> Nonetheless, sovereignty remains a fundamental element of international status as the term that denotes the state's "totality of international rights and duties recognized by international law."<sup>19</sup> Whatever the source of legitimacy, discussions of sovereignty remain arguments as to the legitimacy of the authority to act.<sup>20</sup>

Sovereignty and autonomy are complementary elements of the same question: What defines and constitutes a nation-state's international legal persona? One answer is that "[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."<sup>21</sup> This definition, however, does not account for all the potential elements of sovereignty and autonomy. For instance, a state could be established with what is purported to be full autonomy yet lack a sovereign capacity because it is only a dependent client state to a larger sovereign state.<sup>22</sup> Such states are not widely recognized as possessing an international legal persona.<sup>23</sup>

### *B. Sovereignty and Autonomy as a Basis of Legitimacy*

The implicit question in examining statehood,<sup>24</sup> autonomy, and sovereignty is how to establish an analytical and functional rule for determining the extent to which a polity actually has legitimate control over its internal and external political processes.<sup>25</sup> Both functionally and analytically, the issue is one of whether a government is legitimate.<sup>26</sup> Legitimate government is largely premised on the presence of self-determination.<sup>27</sup> Definitions of

16. CRAWFORD, *supra* note 11, at 27.

17. HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION* 15 (1990).

18. CRAWFORD, *supra* note 11, at 102-06; BROWNLIE, *supra* note 15, at 593-96.

19. CRAWFORD, *supra* note 11, at 26 (citing *Reparations Case*, I.C.J. Rep. 1949 at 174, 180); *see also* U.N. CHARTER art. 2, para. 7 (U.N. members retain plenary competence to control matters relating to domestic jurisdiction).

20. HANNUM, *supra* note 17, at 15; CRAWFORD, *supra* note 11, at 26-27.

21. 1933 Montevideo Convention on Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, art. 1, 1655 L.N.T.S. 19.

22. South Africa's creation of homelands for native populations illustrates that statehood does not necessarily imply actual sovereignty. CRAWFORD, *supra* note 11, at 222-27.

23. The term sovereign is often used to describe the superior entity which is recognized by other states, while autonomy describes the inferior or internal, i.e., domestic polity. Hannum & Lillich, *supra* note 5, at 860 n.16.

24. *See supra* note 21, and accompanying text.

25. THOMAS M. FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* 19 (1990).

26. CRAWFORD, *supra* note 11, at 26.

27. HANNUM, *supra* note 17, at 3.

statehood may also help to formalize a state's existence and legitimize its role in the international political community.<sup>28</sup>

Accordingly, a polity's claims to legitimacy depend on the extent to which the international community agrees with or accepts that state's actions and policies. Economic issues are increasingly the locus of political discussions over sovereignty.<sup>29</sup> Although this is an aphorism, it may be suggested that in the international order "it is all economic."<sup>30</sup>

The current nation-state might be thought of as a country that meets the general criteria of having a standing military force, a revenue mechanism, and an array of localities or even states arrayed in a federation.<sup>31</sup> There are, however, no necessary conditions for the establishment of state status.<sup>32</sup> Small states, while atypical, are states nonetheless.<sup>33</sup> While small states are noticeable for their lack of territorial control,<sup>34</sup> with the advent of the modern commercial economy and colonialism, states exerted control beyond their contiguous territory.<sup>35</sup> Moreover, many small states are only semi-sovereign, because they lack military capacity or foreign policy.<sup>36</sup> They possess defined territory, permanent populations, governments, and an ability to enter into relations with other states.<sup>37</sup> Nonetheless, it has been suggested that such entities are in fact not properly called states, as they lack either fundamental elements of autonomy,<sup>38</sup> or have delegated important state functions to other countries.<sup>39</sup>

States with diminished sovereign status may be categorized in a number of ways.<sup>40</sup> The general rule is that the delegation of powers is not inconsistent with statehood "if the derogations from independence are based on local consent, do not involve extensive powers of internal control, and do not leave

28. FRANCK, *supra* note 25, at 18.

29. HANNUM, *supra* note 17, at 26 n.77.

30. JACQUES ATTALI, *MILLENNIUM* 117-30 (1991).

31. CRAWFORD, *supra* note 11, at 287.

32. *Id.*

33. *See supra* note 21 and accompanying text.

34. PATRICIA WOHLGEMUTH BLAIR, *THE MINISTATE DILEMMA* 1-3 (1967). The Law of the Seas allows coastal or island states to assert claims "to broad economic zones of up to 200 miles width." Franck & Hoffman, *supra* note 4, at 335.

35. POGGI, *supra* note 6, at 89, 114.

36. CRAWFORD, *supra* note 11, at 186-87.

37. *Id.*

38. Hannum & Lillich, *supra* note 5, at 858 n.8.

39. *Id.* at 859 n.13.

40. These classifications include guaranteed or neutralized state, protected independent states, protectorates, associated states, international territories, vassal states, condominiums, protected independent states, international trusteeships, and colonial protectorates. HANNUM, *supra* note 17, pp.16-18. Protected independent states generally have delegated certain functions to another state. CRAWFORD, *supra* note 16, at 189. Protectorates differ from protected states in the degree to which the state is under the protection of another, so as to generate questions as to the state's control over internal functions. *Id.* at 17 n.36 (citing L.F.E. OPPENHEIM, 1 *INTERNATIONAL LAW* 137-39 (1906)); *see also* Hannum & Lillich, *supra* note 5, at 885-89 (discussing the specific aspects of sovereignty and autonomy within each type of state or territory).

the local entity without some degree of influence over its foreign affairs."<sup>41</sup> The variety of classifications<sup>42</sup> suggests that while the process of decolonization has taken hold, colonial relationships continue to affect the international legal system. More importantly, the number of small state types shows that the concept of sovereignty is not absolute, but instead represents a range of powers describing the extent of control which a country exercises over itself.

### III. TYPES OF SMALL STATES

Much of the divining and scholarly literature on small states has been devoted to methods for the precise difference between a small state and a mini or micro-state. The lack of quantitative and qualitative certainty is compounded by the variety of small states. For instance, micro-states have been described as "exceptionally small nations whose 'independence' is generally acknowledged, although it is in fact seriously limited by the political and economic facts of international life."<sup>43</sup> States like Iceland, Mauritania, Costa Rica, and Luxembourg, however, would not be included in that (or any other) definition.<sup>44</sup> Although they have *small* populations, and could be considered to be *small* states, they are not micro-states.<sup>45</sup>

#### A. European Small States

The small states of Malta, Monaco, Liechtenstein, San Marino, Andorra, and Vatican City are also excludable from the micro-state class. Vatican City and Malta are remnants of the power of the Roman Catholic Church's secular influence.<sup>46</sup> The remaining four have their origins in European feudalism, and continue under the aegis of a larger country or countries' protection.<sup>47</sup> Andorra, until recently, was subject to the protection of both Spain and France.<sup>48</sup> San Marino is protected by Italy, although it is a party to the Inter-

41. CRAWFORD, *supra* note 11, at 189.

42. See *supra* note 40 (detailing variety of small state classifications).

43. BLAIR, *supra* note 34, at 2.

44. BROWNLIE, *supra* note 15, at 88.

45. *Id.*

46. The distinction between the Holy See and Vatican City is a curious legal issue. The Holy See does not have a territory (assuming that Catholic churches across the world do not constitute territory), but has entered into international agreements and is a recognized legal persona. *Id.* at 1158-59. It has been suggested that the relationship between the Holy See and Vatican City is that of state and government. CRAWFORD, *supra* note 11, at 160. The relationship between the Sovereign Order of St. John of Malta (the Knights of Malta) and Malta itself was similarly based. *Id.* at n.101.

47. D.W. GREIG, *INTERNATIONAL LAW* 95 (1976).

48. Since the 13th century, Andorra had been ruled by the French Count of Foix, and the Bishop of the See of Urgell. Peter Bruce, *The Mouse That Roared: Peter Bruce Visits Andorra, Europe's Newest Sovereign State*, *FIN. TIMES* (London), March 20, 1993, at 7. In the 15th century, the Foix title passed to the French crown, and then to subsequent French heads of state down to the president of France. *Id.* The yearly tribute to Spain's Bishop of Urgell from each of Andorra's seven parishes was two capons, four cheeses, and a ham. John Hooper, *Andorra Vote May Take Mountain Enclave 'Offshore'*, *THE GUARDIAN*, Mar. 20, 1993, at 39.

national Court of Justice.<sup>49</sup> France is responsible for Monaco's defense.<sup>50</sup> However, Monaco will lose its sovereign status under operation of Treaty should the Crown Prince of Monaco not have an heir.<sup>51</sup>

A formal foreign policy mechanism is not dispositive of a state's international status. Liechtenstein, which has assigned its foreign policy responsibilities to Switzerland, is equally curious.<sup>52</sup> Given Switzerland's long-standing policy of neutrality, such a deputation of power is no more than an acclusion of Liechtenstein to all of Switzerland's international treaty obligations. Moreover, Liechtenstein, like San Marino, is a party to the International Court of Justice.<sup>53</sup> Accordingly, Liechtenstein possesses full statehood in the international arena.<sup>54</sup> So while the above principalities and protected states lack certain aspects of full sovereignty,<sup>55</sup> they are states nonetheless.

### B. Former Colonial Enclaves

Former colonial possessions represent a category of states falling outside the European type. Often the surrounding nation seeks to claim the territory without regard to self-determination.<sup>56</sup> Decolonization, while generally following the principle of self-determination, has often been for these areas at odds with United Nations Charter Article 6 of the Colonial Declaration which states that "[a]ny attempt aimed as 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 . . . ."<sup>57</sup>

A number of countries fall into this category. The Panama Canal Zone and Hong Kong are examples of areas that have had, or will have sovereignty returned to the contiguous country. However, the Falkland Islands (Islas Malvinas), and Gibraltar are examples of colonial enclaves which continue

49. GREIG, *supra* note 47, at 96; U.N. SCOR, 8th Sess., 645th mtg., U.N. Doc. S/3137 (1953); U.N.S.C. Res. 103 (1953), G.A. Res. 806 (VIII), 9 Dec. 1953.

50. GREIG, *supra* note 47, at 95.

51. *Id.*

52. *Id.* See also Michael M. Gunter, *Liechtenstein and the League of Nations: A Precedent for the United Nations' Ministate Problem?*, 68 AM. J. INT'L L. 496-501 (1974) (discussing Liechtenstein's international status).

53. *Id.* The I.C.J. in the Nottebohm case said that Liechtenstein had standing to bring its claim of whether a state's rules of nationality were operative on other states on issues of the rule of nationality of claims. Nottebohm Case (Second Phase) I.C.J. REP. 1955, at 4, 20.

54. U.N. SCOR, 4th Sess., 423rd mtg. at 16-17, U.N. Doc. S/1298 (1949); U.N. SCOR, 4th Sess., 432nd mtg. at 3, U.N. Doc. S/1342 (1949); S.C. Res. 71 (1949); G.A. Res. 363 (IV), 1 Dec. 1949.

55. CRAWFORD, *supra* note 11, at 188-94; GREIG, *supra* note 47, at 95.

56. See Franck & Hoffman, *supra* note 4, at 331-86 (discussing Spanish Sahara, Gibraltar, Belize, and East Timor as instances former colonial territories whose populations sought autonomy despite the contiguous countries claiming a right to absorb).

57. For example, in the Western Sahara case, where the Spanish Sahara was claimed by both Morocco and Mauritania based upon distinct positions on the relation and priority of Articles 2 and 6. I.C.J. REP. 1975, at 12, 29-30. While the court found that legal ties existed, the right of self-determination required "a free and genuine expression of the will of the peoples concerned." *Id.* at 21, 36.

under British supervision, despite Argentina and Spain's respective desires to retake them.<sup>58</sup> Gibraltar represents an example of the right to self-determination meeting with U.N. objection, in which a U.N. Resolution repudiated Gibraltar's plebiscite declaring its desire to retain United Kingdom sovereignty.<sup>59</sup>

### C. *International City States*

International city states are an additional small state category with long-standing historical roots.<sup>60</sup> For instance, Singapore became an international city state when it seceded from Malaysia in 1965.<sup>61</sup> Similarly, internationalized territories or cities may be thought of as having a type of small state status.<sup>62</sup> Examples of this are the free ports of Tangier, Shanghai, Trieste, Cracow, and Danzig. Several of these could be considered as not truly autonomous areas. Tangier and Shanghai's status as freeports was not the result of self-determination as is the case with Singapore, but the result of capitulations in the face of superior military power.<sup>63</sup> It should also be noted that Shanghai was never an international territory, or even a free city, as China never renounced its sovereignty.<sup>64</sup> Rather, it was simply a concession—a gateway for foreign trade—resembling China's concession of Hong Kong to the British as a lease.<sup>65</sup>

Cracow was created by Article Six of the final Congress of Vienna as a free city under the protection and control of Russia, Austria, and Prussia.<sup>66</sup> The Free City of Cracow lasted until 1846 when it was annexed by Austria by agreement with Prussia and Russia.<sup>67</sup> Although not as dependent as Shanghai, Cracow's semi-autonomous status and dependency on other powers sug-

---

58. CRAWFORD, *supra* note 11, at 377.

59. G.A. Res. 2352 U.N. GAOR, 22d Sess., Supp. No. 16 (1967).

60. MEIR YDIT, INTERNATIONALIZED TERRITORIES FROM THE "FREE CITY OF CRACOW" TO THE "FREE CITY OF BERLIN", 154-84, 127-53 (1961) (discussing international cities and territories and considering the viability of Jerusalem as an international city).

61. G.A. Res. 2019 U.N. GAOR, 19th Sess., Supp. No. 15 (1965), date of withdrawal 9 Aug. 1965. Singapore is not a micro-state as it was not, prior to its separation, a colony.

62. Territories disputed between states on ethnic, strategic, or other grounds are established by international agreement as autonomous entities under a form of international protection, supervision, or guarantee. CRAWFORD, *supra* note 11, at 160. An important element in evaluating the viability and genuineness of an international territory or city is whether there has been a grant of powers in the international agreement of internal self-government. *Id.* at 161. An international territory may thought of as analogous to a guaranteed or protected state, and may or may not be a state under international law. Hannum & Lillich, *supra* note 5, at 859 n.12.

63. YDIT, *supra* note 60, at 154-84, 127-53 (discussing international cities and territories and considering the viability of Jerusalem as an international city).

64. *Id.* at 149.

65. *Id.*

66. CRAWFORD, *supra* note 11, at 161.

67. *Id.*

gests that it was never truly an independent state. As seen by its annexation, Cracow was "never a viable State entity."<sup>68</sup>

Danzig presents an alternative picture of an international city state. Danzig had at various times been controlled by Poland and Germany.<sup>69</sup> For a short period (1807-1814), it was an "Independent Free State."<sup>70</sup> It returned to Prussian control in 1814, and remained so until 1920.<sup>71</sup> Following Germany's defeat in World War I, President Wilson's Fourteen Points stating the war aims of the United States and Allied powers were realized at the Paris Peace Conference of 1919.<sup>72</sup> Point Thirteen stated that "[a]n independent Polish State should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea . . . ."<sup>73</sup> Danzig, although a heavily German city,<sup>74</sup> was annexed by Poland.<sup>75</sup> Accordingly, Poland controlled Danzig's foreign policy mechanism.<sup>76</sup> Nonetheless, Danzig retained complete domestic jurisdiction, even in areas which affected foreign commerce.<sup>77</sup> Moreover, if Danzig disagreed with a Polish decision that compromised its quasi-sovereign status, it could appeal to the League of Nations and the Permanent Court of International Justice.<sup>78</sup> Danzig's relationship to Poland was analogous to the current one between Liechtenstein and Switzerland. Danzig, while lacking full autonomy, was functionally sovereign.<sup>79</sup>

A more modern example of semi-autonomous international status is Trieste. Following World War II, Yugoslavia and Italy both contested Trieste's control. As a compromise, Trieste was constituted as a Free City, whose "integrity and independence"<sup>80</sup> were guaranteed by the U.N. Security Council.<sup>81</sup> However, Trieste as a Free City was an unworkable political compromise. While the territory was to retain power over foreign affairs, the governor was to be appointed by the Security Council — but this never oc-

68. YDIT, *supra* note 60, at 107; see generally *id.* at 95-108 (discussing politics and history of Cracow).

69. *Id.* at 186.

70. *Id.*

71. *Id.* at 187.

72. *Id.*

73. Eric M. Amberg, *Self-Determination in Hong-Kong: A New Challenge to an Old Doctrine*, 22 SAN DIEGO L. REV. 839, 842 (1985).

74. *Id.* at 187.

75. 6 L.N.T.S. 190.

76. Treaty of Versailles, June 28, 1919, Section XI, arts. 100-108, art. 104, § 6, 225 Consol. T.S. 188 ("the Polish Government shall undertake the conduct of the foreign relations of the Free City of Danzig as well as the diplomatic protection of citizens of that City when abroad").

77. CRAWFORD, *supra* note 11, at 164-65.

78. YDIT, *supra* note 60, at 200-01; BROWNIE, *supra* note 15, at 81 n.5. As only states had standing in these fora, this represents a tacit recognition of state status.

79. Whatever its status, Danzig reverted to German control with its invasion of Poland on September 1, 1939, but has remained under Polish control since 1945. CRAWFORD, *supra* note 11, at 166 n.13 (citation omitted).

80. Italian Peace Treaty of 1947, XXXX 24, 1947, art. 21; 49 U.N.T.S. 3, at 137-39.

81. *Id.*



curred.<sup>82</sup> Because of political instability, the city was divided between Yugoslavia and Italy.<sup>83</sup>

#### D. *Micro-States:*

##### 1. Micro-states and Decolonization

The last category of small states is by far the largest. It encompasses the category of mini or micro-states.<sup>84</sup> The creation of these very small states is the result of the process of decolonization begun at the end of World War II.<sup>85</sup> Their creation realized the concept of self-determination and autonomy.<sup>86</sup> The U.N. declared its intentions with its Resolution that:

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;
2. All peoples have the right to self-determination; by virtue of that right they freely determine their economic, social and cultural development;
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence. . . .<sup>87</sup>

Micro-states are the culmination and result of Wilson's Fourteen Points,<sup>88</sup> and represent an extension of the principle of self-determination as the basis of legitimate governance for former colonial possessions seeking autonomy from imperial centers.<sup>89</sup> Although Wilson made the principle of self-determination a centerpiece of international human rights,<sup>90</sup> it was not until the creation of the U.N. that self-determination was fully accepted as a legal principle in the international order.<sup>91</sup>

82. See YDIT, *supra* note 60, at 231-72 (discussing Trieste's history as an international city).

83. CRAWFORD, *supra* note 11, at 162.

84. See generally ELMER PLISCHKE, *MICROSTATES IN WORLD AFFAIRS: POLICY PROBLEMS AND OPTIONS* (1977) (examining the proliferation of small states and their problems in the international community).

85. UNITAR, *supra* note 3, at 16.

86. See HANNUM, *supra* note 17 and accompanying text.

87. *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66-67, U.N. Doc. A/4684 (1960) [hereinafter G.A. Res. 1514].

88. UNITAR, *supra* note 3, at 16.

89. Deborah Z. Cass, *Re-Thinking Self-Determination: A Critical Analysis of Current International Law Theories*, 18 SYRACUSE J. INT'L L. & COM. 21, 21 (1992).

90. Self-determination is "the right of every people to choose the sovereign under which they live, to be free of all alien masters, and not to be handed from sovereign to sovereign as if they were property." *Quoted in* Amberg, *supra* note 73, at 842.

91. U.N. CHARTER art. 1, para. 2 "The Purposes of the United Nations are . . . [t]o develop friendly relations among nations based on on respect for the principle of equal rights and self-determination". *Id.*

Following the San Francisco conference and the adoption of the U.N. Charter, the process of decolonization began as an affirmative duty for former colonial powers.<sup>92</sup> Article 73 of the Charter obliged members:

[w]hich have or assume responsibilities for the administration of territories whose peoples are not yet attained a full measure of self-government . . . to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions . . . .<sup>93</sup>

Decolonization as a United Nations policy was enacted by General Assembly Resolutions 1541 (XV)<sup>94</sup> and 1514 (VX)<sup>95</sup> which declare "the right of all states to full and complete independence."<sup>96</sup> This right was expanded by the subsequent declaration that a colony had an independent status from the administering country until that colony exercised its right of self-determination by declaring the political form that colony wished to assume.<sup>97</sup> The range of historical foreign affiliations of these states is extensive.<sup>98</sup>

92. Chapter XI of the U.N. Charter is titled the "Declaration Regarding Non-Self-Governing Territories." U.N. CHARTER, art 73, 74. See G.A. Res. 9 U.N. GAOR, 1st Sess., 27th mtg. at 13 (1946).

93. U.N. CHARTER, art. 73(b).

94. G.A. Res. 1541 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (1960).

Principle IV: *Prima Facie* there is an obligation to transmit information in respect of territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it . . . Principle V: Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration . . . If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under the Article 73 e of the Charter. . . Principle VII(b): The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people.

*Id.*

95. G.A. Res. 1541 (VX), U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (1960).

96. G.A. Res. 1514, *supra* note 87.

97. G.A. Res. 2625 (XXV), U.N. GAOR, 25th Supp. No. 28, at 42, 28 U.N. Doc. A/8028 (1970). "[T]he establishment of a sovereign and independent State, the free association or integration with another 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" *Id.* Moreover, that status "shall exist until the people of the colony . . . have exercised their right to self-determination." *Id.*

98. Brunei (United Kingdom), Sikkim (India annexed in 1975), Tonga (United Kingdom), Solomon Islands (U.K.), The United Arab Emirates, Bahrain, Qatar, Oman (U.K.), Cook Islands (New Zealand), Comoro Islands (Fr.), French Somaliland (Djibouti) (Fr.), Cape Verde Islands, Sao Tomé, Principe (Portugal) Fernando Po (Bioko), Rio Muni (Mbini), Ifni, Spanish Sahara (Spain), the Seychelles (U.K.) St. Helena (U.K.), The Channel Islands of Guernsey, Alderney, Sark and Jersey, and the Isle of Man (U.K.), British Virgin Islands, Cayman Islands, Turks and Caicos (U.K.), Guiana and Guadeloupe (France), Netherlands Antilles (Aruba and Curacao), Faroe Islands (Denmark), Christmas, Cocos, and Norfolk Islands (Australia), Niue, Tokelau (New Zealand), Polynesia, New Caledonia, Wallis and Futuna Islands (France), American Samoa, Guam, Puerto Rico (United States), Vanuatu (New Hebrides) (U.K., France), Mi-

If proliferation is a gauge of success, then decolonization has been an extremely successful process. The U.N. was concerned that the proliferation of newly decolonized states would undermine the value of U.N. membership. As a result, debate began on the issue of intermediate, i.e., not full, membership.<sup>99</sup> Following Security Council debate,<sup>100</sup> a committee of experts convened to examine the issue.<sup>101</sup> Apart from one public meeting,<sup>102</sup> and an uninformative interim report,<sup>103</sup> no additional action has been taken.<sup>104</sup> Nonetheless, the issue of micro-states and U.N. membership provoked scholarly comment and critical study.<sup>105</sup> The net result of the decolonization process has been that while there were fifty-one original members in 1945, U.N. membership has expanded to include a current membership of over 150.<sup>106</sup>

Of considerable importance is the fact that micro-states are sovereign entities, entitled to the same international legal considerations as the United States or China. However, while these states represent the culmination of the right to self-determination, the practical application of that right is largely premised upon an economic or political ability to meet international obligations. The concern originally evinced in the examination of mini-states was expressed by Ambassador Arthur J. Goldberg, the chief U.S. representative to the U.N. in 1966, that "It was not anticipated, nor I believe, would it have been accepted in 1945 that the United Nations be extended to include tiny states whose only justification for existence is that their territory is no longer wanted by the colonial governments that for years supported them."<sup>107</sup> Nonetheless, mini-states were not the main objects of decolonization, but, as noted, "merely a logical and unavoidable result of a long evolution."<sup>108</sup>

---

cronesia (United Nations Trust and United States), Nauru (U.N. and Australia). BLAIR, *supra* note 34, at 4-5; PLISCHKE, *supra* note 84, at 12-13.

99. U.N. SCOR, 20th sess., 1243rd mtg., at 14-15, U.N. Doc. No. S/8374, (1965).

100. *Secretary-General's Introduction to the Annual Report*, U.N. GAOR, 21st Sess., Supp. No. 1A, at 14; U.N. Doc. S/8296 (1967); U.N. SCOR, 23th Sess., 1414th mtg. at 8-9 (1968); U.N. SCOR, 24th Sess., 1496 mtg., U.N. Doc. S/9327 (1969).

101. U.N. SCOR, 24th Sess., 1505th mtg., U.N. Doc. S/9397 (1969); U.N. SCOR, 24th Sess., 1506th mtg. at 6, U.N. Doc. S/9397 (1969).

102. UNMC Vol. 6, No. 9, at 33-4.

103. U.N. SCOR, 25th Sess., 1506 mtg., U.N. Doc. S/9836 (1970).

104. CRAWFORD, *supra* note 11, at 140.

105. BLAIR, *supra* note 34, at 3.

106. CRAWFORD, *supra* note 11, at 135.

107. Drew Middleton, *Goldberg Warns on Future of U.N.*, N.Y. TIMES, Oct. 24, 1966, at 12. See also PLISCHKE, *supra* note 84, at i (quoting U Thant, Secretary General of the U.N. "[i]t appears desirable that a distinction be made between the right to independence and the question of full membership in the United Nations"; and Eleanor Roosevelt, U.S. Representative to the U.N. General Assembly "[j]ust as the concept of human liberty carried to its logical extreme would mean anarchy, so the principle of self-determination of peoples given unrestricted application could result in chaos").

108. UNITAR, *supra* note 3, at 16.

## 2. Towards a Definition of Micro-states

What exactly constitutes a micro-state is indeterminate. Territory is a good place to begin, but territory merely describes a country's resources and physical jurisdiction. Thus, Brunei with its oil wealth possesses resources and influence that extend beyond its territorial jurisdiction. Moreover, to state that a micro-state has micro-territory does not define the legal elements of micro-state status. Nor does population help define this category of small states. The population of Nauru, approximately 12,000, cannot be placed within the same category as Singapore whose population exceeds 1.5 million.<sup>109</sup> Nor does the existence of a government provide an adequate starting point, as that only indicates that the micro-state has an international persona, and a capacity to enter into relations with other states. Autonomy and sovereignty continue despite a deputation of treaty or foreign policy powers to another country. For example, Niue and the Cook Islands have associated themselves with New Zealand, but have retained the right of unilateral denunciation of that agreement.<sup>110</sup> Because diplomatic services cost money, a resource which many mini-states do not possess, if another state is named as agent, then the country is not without a foreign diplomatic representation.<sup>111</sup> The capacity to delegate the power is proof of state status, but not state size. Thus it would seem that a state can maintain its independence despite its diminutive size. Moreover, if the agent state is influential, then the protection and benefits afforded the associated state are greater than if it were to maintain its own foreign policy and diplomatic corps.

Alternatively, scholarly literature does not provide a firm definition of microstates. A UNITAR study defined a microstate as having a land territory of less than 142,822 km,<sup>112</sup> a population of less than 2,928,000 and a GNP less than 1,583 million \$US (1969 dollars).<sup>113</sup> This definition, however, does not present a legal formulation of the concept of mini-state. Moreover, the figures are subject to constant increases. The U.N. definition is no less helpful, as it states that small-state status applies to "entities which are exceptionally small in area, population and human and economic resources."<sup>114</sup> In

109. It seems unrealistic to suggest that the Cayman Islands (pop. 17,000) should be accorded the same international legal influence in the General Assembly as the United States (pop. 250 million). See *supra* note 107 and accompanying text.

110. EDWARD DONMEN AND PHILIPPE HEIN, *STATES, MICROSTATES, AND ISLANDS* 7 (1985).

111. *Id.* at 9.

112. See UNITAR, *supra* note 3. These definitions of the elements of micro-states are descriptive, and were arrived at through statistical methods. *Id.* Although technically adept, these definitions are not legal, but mathematical. *Id.* Legally, however, states are neither logical nor mathematical constructs, but political entities. *Id.*

113. *Introduction to the Annual Report of the Secretary General*, 22nd Sess., para. 163, U.N. Doc. A/6701/Add.1, (1967). What is at issue is the definition of "exceptionally small". *Id.* The U.N. definition is a tautology. *Id.*

114. *Id.* The following have been identified as international tax havens: Andorra, Anguilla, Antigua, Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Channel Islands (Jersey, Guernsey, Alderney, Sark), Cook Islands, Costa Rica, Djibouti (French

short, there is no readily available definition of a small, mini or micro-state that accounts for all the variations, or encompasses all those states that would ordinarily appear to fit within such a category.

#### IV. THE SMALL STATE AS TAX-HAVEN

##### A. *Defining a Tax Haven*

While the effort to define small states yields conflicting results, it is of interest to note that one common characteristic of almost all small states share is their status as international tax havens.<sup>115</sup> What constitutes an international tax haven is material enough for an article of its own.<sup>116</sup> A country is considered a tax haven when foreign persons, corporate or individual, receive respite from their own domestic tax system.<sup>117</sup> Tax relief may operate due to the country's offering: (1) low or zero tax rates; (2) minimal currency exchange regulations and restrictions; (3) commercial and banking confidentiality laws; (4) a record of political stability and government policy favoring foreign investment; and (5) efficient travel and telephone systems in conjunction with strong business facilities.<sup>118</sup> Whatever the basis of their tax-haven

Somaliland), Dominica (Lesser Antilles), Falkland Islands, Liberia, Liechtenstein, Luxembourg, Switzerland, Cyprus, Gibraltar, Greece, Grenada, Guam, Hong Kong, Ireland, Isle of Man, Macao, Maldives, Marina Islands, Monaco, Montserrat, Nauru, Netherlands and Netherlands Antilles, New Caledonia, Oman, Panama, St. Christopher-Nevis, St. Vincent, St. Kitts, St. Lucia, San Marino, Seychelles, Singapore, Turks & Caicos, United Arab Emirates, Vanuatu (New Hebrides), Vatican City. *ENCYCLOPEDIA OF INTERNATIONAL TAX HAVENS* (1983); STAFF OF SENATE COMM. ON GOVERNMENTAL AFFAIRS, CRIME AND SECRECY, 98TH CONG., 1ST SESS., *THE USE OF OFFSHORE BANKS AND COMPANIES* 10-11 (Comm. Print 1983). Although this list is incomplete, it is almost exclusively dominated by small countries. Moreover, the list is incomplete because the practical use of individual countries is constantly evolving, with only a few having long term success. RICHARD A. JOHNS, *TAX HAVENS AND OFFSHORE FINANCE: A STUDY OF TRANSNATIONAL DEVELOPMENT* 191 (1983).

115. See, e.g., Charles R. Irish, *Tax Havens*, 15 VAND. J. TRANSNAT'L L. 449 (1982) (discussing aspects of international tax havens and their legal basis); Ernest R. Larkins, *Multinationals and Their Quest for the Good Tax Haven: Taxes Are But One, Albeit an Important, Consideration*, 25 INT'L TAX 471 (1991) (discussing OFC's and their uses in the international financial markets).

116. Tax havens typically have three common characteristics. *Investment Freedom at a Price*, INVESTORS CHRONICLE, May 28, 1993. Business is transacted by non-residents of the country. *Id.* Regulation is flexible, although necessarily lax. *Id.* Tax regimes are low if non-existent. *Id.* The number of these centers has "mushroomed" in recent years. *Id.*

117. Irish, *supra* note 115, at 452-54. A tax haven may, however, have property taxes and customs duties. *Id.* at 454-56. Examples of pure tax havens are Nauru and Vanuatu, as they have no direct taxes on income, profits, capital gains, or inheritances. *Id.* Other concerns are geographical convenience to major financial centers either in proximity or by time zone, foreign exchange regulations and capital controls, government fees, and infrastructure. JOHNS, *supra* note 114, at 2-3, 22-23, 42-72, 193.

118. The Netherlands Antilles, for instance, spent over \$US 100 million to improve its telephone and telex facilities. Irish, *supra* note 115, at 454. Technical advances aside, the offering of protection from governmental taxation has existed almost as long as taxes themselves. "Tax havens have their origins buried deep in the past. They vie in age with the world's oldest profession; and the pendulum of their respectability has swung through almost as wide an arc." CAROLINE DOGGART, *TAX HAVENS AND THEIR USES* 1 (1979).

status, these areas offer favorable financial environments with low transaction costs. The specifics of each individual country's tax rules are of lesser importance than the country's presentation of itself as a marginally preferable business environment in the international market.<sup>119</sup>

### B. Reasons for Small States Serving as Tax Havens

The reasons for small states serving in this capacity is a matter of economic need. Many small nations lack hard currency or an industrial base<sup>120</sup> and thus cater to international financial needs as a business entity.<sup>121</sup> Small states, as a rule, have transformed themselves into international tax havens, or the preferred designation as offshore financial centers (OFC's).<sup>122</sup> Formerly, OFC's were the refuge of international businesses seeking to exploit currency exchange advantages and the extremely wealthy.<sup>123</sup> However, with the globalization of industrial economies, there grew a concomitant need for international financial services.<sup>124</sup> U.S. banks expanded international services in the 1960's as a response to banking regulatory growth,<sup>125</sup> and to compete with European banking interests.<sup>126</sup> Simultaneous need grew for financial services, matching the geographical growth of companies.<sup>127</sup> Accordingly, with the internationalization of industrial economies, OFC's provided financial services that minimized tax exposure, and transaction and currency exchange costs.<sup>128</sup>

---

119. See C. Todd Jones, *Compulsion Over Comity: The United States' Assault on Foreign Bank Secrecy*, 12 NW. J. INT'L L. & BUS. 454, 456 (1992) ("[h]ard currency needs are not limited to economic backwater islands and communist nations. Many of the Pacific Rim's newly industrialized countries attract capital with bank secrecy practices"). *Id.*

120. *Id.*

121. See JOHNS, *supra* note 114, at 186 ("the arrangement of syndicated international loans became a diversification possibility . . . for island states, many of which were newly independent and looking for development possibilities to exploit and/or were permitted to participate therein by a benevolent colonial master"). *Id.*

122. Offshore centers in the 1950's were "cosily run affairs", set up by "creative accountants" for the "very wealthy". Beverly Chandler, *International Fund Management 10: Havens Become Legitimate*, FIN. TIMES, Oct. 26, 1989, at X.

123. "[O]ffshore centres are popping up on every spare bit of rock around the world." *Id.* "Over the last 20 years, for both companies and individuals, banking, trusts, insurance-based business and fund management have become more sophisticated and more international; and the advantages of efficient tax planning, available through offshore centres, have brought a wider range of investors into touch with offshore investment." *Id.*

124. PAUL B. STEPHAN, III, ET AL., *INTERNATIONAL BUSINESS & ECONOMICS* 255-56 (1993).

125. JOHNS, *supra* note 114, at 186. European banks had smaller portfolios, and tended to operate in consortia to minimize risk exposure on international loans. *Id.*

126. *Id.*

127. *Id.* at 186-87.

128. It should be mentioned that an aspect of the growth of OFC's is the need for such services to be proximate to industrial and financial growth centers such as New York, London, and Tokyo. *Id.* at 189. OFC's tend to be in the same geographical time zone and geographical proximity so that offshore services can be provided during 'onshore' business hours, or can be

The growth potential this offered to small states was considerable.<sup>129</sup> The Eurocurrency market and the need for loan diversification increased the utilization of traditional OFC's such as Luxembourg, Switzerland, and Panama.<sup>130</sup> However, smaller countries, particularly micro-states, also saw the opportunity for economic development through expansion of OFC services.<sup>131</sup> These countries, particularly former British colonies, had advantageous reciprocal tax treaties allowing for designation of the OFC as the site for calculation of tax basis.<sup>132</sup> This process of internationalization received an added boost when the oil shocks of the 1970's created a need for financial services to recycle petro-dollars.<sup>133</sup>

Accordingly, while many countries continued to maintain currency exchange controls,<sup>134</sup> the potential for "frictioneering," i.e., taking advantage of the marketplace by offering decreased (if not minimal) controls developed.<sup>135</sup> OFC's developed a market for services to exploit the anomalies and asymmetries in the international financial markets created by the lack of uniformity of financial controls between national jurisdictions.<sup>136</sup> Former colonies exploited these opportunities,<sup>137</sup> oftentimes through the encouragement of the former colonial center.<sup>138</sup>

There is enormous potential in OFC services.<sup>139</sup> The business is a lucrative one, as it is estimated that half the world's money is handled through OFC's.<sup>140</sup> This has been particularly true for European small states seeking

easily reached by air transport. *Id.* There are four primary areas: the Caribbean Basin, Europe, the Middle East, and the Far East and Oceania. *Id.*

129. *Id.* at 190-91.

130. *Id.* at 188.

131. *Id.* at 190.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. Colonies aspiring to tax-haven status could develop their based on a tax regime with:

- a) zero tax with or without double taxation treaties with other countries;
- b) low taxes with or without double taxation treaties with other countries;
- c) a combination of (a) or (b) with special tax and/or other privileges with regard to specific business of an international character (banking, insurance, shipping, offshore funds) or domestic industry undertaken by international business within local free trade zones.

*Id.*

138. See *supra* notes 119-21 and accompanying text.

139. S.N. Vasuki, *OFCs Suffering From Serious Image Problem*, BUSINESS TIMES, July 15, 1992, at 13.

140. Peter Gartland, *International Tax Havens Become Less Hospitable For the Pirates*, THE TIMES, June 12, 1992. Although OFC's are not reliable sources of information, an example will suggest the extent of OFC roles in the international financial markets. *Id.* As of 1992, the Channel Islands of Jersey and Guernsey had assets totaling £UK 63 billion. *Id.* National Westminster Bank in the U.K. had a little less than £UK 53 billion. *Id.* Grand Cayman's banks for the same time period held \$US 438 billion, placing it amongst Tokyo, New York, and London as one of the world's 10 largest financial centers. *Id.*

to take advantage of the unification of Europe and the increase in European Community tax uniformity.<sup>141</sup> Madeira, Malta, Cyprus, and even Trieste have all declared themselves competitors in the OFC service market.<sup>142</sup> The European OFC's seek to be, like the Isle of Man and the Channel Islands, "all things to all tax avoiders."<sup>143</sup> Moreover, they do not want to be considered as "pet havens" of individual countries.<sup>144</sup> Rather, they seek to market themselves as complete OFCs operating on the international scale,<sup>145</sup> and within an increasingly aggressive marketplace.<sup>146</sup>

There is also a concern that the expansion of OFC services will lead to detrimental repercussions. The EC has helped foster the internationalization of business thereby contributing to the growth of OFC's. However, there is a concern that there will be little benefit if the main result is the draining of tax-revenues into OFC accounts.<sup>147</sup>

Equally important for actual and aspiring OFC's is the value of their reputations (the recent Bank of Credit and Commerce International (BCCI) scandal did little for the public's opinion of OFC's).<sup>148</sup> There has been little distinction in the public mind between respectable OFC's such as Bermuda or the Bahamas,<sup>149</sup> and less reputable OFC's. For instance, centers such as Montserrat, and the Pacific micro-states of Nauru, Vanuatu, Tonga, and the Marshall and Northern Mariana Islands are referred to as "the friendly islands of fraud."<sup>150</sup>

141. *Emerging Centres: How To Stay Afloat*, BUS. & INT'L MONEY REP., Aug. 23, 1993 [hereinafter *Emerging Centres*]. However, the U.K. is somewhat reticent to give up its reciprocal tax treaties to promote European fiscal harmonization. Sonia Purnell, *Britain to Veto EC Tax Plans*, THE DAILY TELEGRAPH, Apr. 9, 1993, at 21.

142. Paul Ham, *European Finance and Investment, Offshore Centres 3: In Search of Fiscal Nomads*, FIN. TIMES (LONDON), Feb. 28, 1992, at 11.

143. *Id.*

144. *Id.*

145. *Id.*

146. Vasuki, *supra* note 139 at 13. "[A]s the competition between OFCs for the offshore dollar intensifies, there are divergent views within the international financial community as to whether OFCs can continue to serve as efficient hubs for offshore insurance, trust, specialised fund management and allied activities." *Id.*

147. Philip Coggan, *European Finance and Investment Offshore Centres; Prospering at the Fringe*, FIN. TIMES (London), Apr. 18, 1991, at 1. For instance, the Channel Islands have urged financial companies not to promote themselves too heavily in U.K. markets, "[f]or fear of killing the goose that lays the golden eggs." *Id.*

148. Vasuki, *supra* note 139 at 13. A Luxembourg holding company, BCCI Holdings, owned two other banks, one incorporated in Luxembourg, the other in the Cayman Islands. Daniel M. Laifer, *Putting the Super Back in Supervision of International Banking, Post-BCCI*, 60 FORDHAM L. REV. S467, S480 (1992). These banks in turn owned others throughout the world, including the U.S. *Id.* BCCI was able to take advantage of the secrecy and privacy regulations, in addition to a lax supervisory structure, to engage in fraud, money-laundering, and financing illegal arms sales. *Id.*

149. Vasuki, *supra* note 139 at 13.

150. Gartland, *supra* note 140. In 1990-91, more than 300 banks on Montserrat were forcibly closed by Scotland Yard's Fraud Squad for money laundering and fraud. *Id.* Grenada had over 200 banks shut down for similar reasons. *Id.*



### C. Illustrations of OFC Activity

The potential for growth and revenue for small states makes transformation into an OFC an attractive option.<sup>151</sup> This has been particularly true for European small states seeking to take advantage of the unification of Europe and the increase in EC tax uniformity.<sup>152</sup> Malta, for instance, after rejecting its socialist government decided to transform itself into "the world's newest offshore financial centre."<sup>153</sup> In deciding to develop its OFC infrastructure, the government studied other tax-havens and spent a "small fortune."<sup>154</sup> In selling Malta's services, the minister of finance stated "We want to grow into a financial center of repute . . . Malta is a small economy. Financial services is one of the main growth areas."<sup>155</sup>

The Cayman Islands are equally illustrative of the possibilities of OFC's. The islands have a population of 29,700, but have over 530 banks,<sup>156</sup> and over \$415 billion of assets on deposit.<sup>157</sup> The government funds public expenditures through the licensing fees charged to banks, insurance companies, and other offshore companies.<sup>158</sup> The attraction of the Cayman Islands as an OFC is that "there is no income tax, capital gains tax, property tax - or any other kind of direct taxation. Strict confidentiality laws give customers extreme privacy."<sup>159</sup>

The catalogue of countries that are trying to leverage themselves into the OFC market is extensive. Andorra, which recently adopted a constitution,<sup>160</sup> has decided to become an OFC.<sup>161</sup> Citing political and economic factors, such as an economic overdependence on commerce and a need for revenue to improve infrastructure, the Andorran government indicated that

---

151. *Emerging Centres*, *supra* note 141. "Many smaller European countries that are suffering from economic hardship—often a direct result of the passing of colonialism—are forming offshore financial centres. High unemployment and lack of industry have prompted these nations to turn to finance to help ease their problems, at least in the short term." *Id.*

152. *Id.* However, there is also some reticence on the part of the United Kingdom to give up its reciprocal tax treaties to promote European fiscal harmonization. Purnell, *supra* note 140. "Britain has previously made clear its very deep concerns about any plans for fiscal harmonisation in the community, particularly any likely to affect its offshore financial centres". *Id.* Moreover, "[t]he advent of cross-border trading throughout the EC has further highlighted the convenience of offshore centres, while the member states debate the rationalisation of the various tax codes around Europe, and investment can be made through an off-shore centre tax-free and then declared to the tax-authorities at home." Chandler, *supra* note 122 at X.

153. Jon Ashworth, *Tax Shelter In a Sunny Spot*, THE TIMES (London), Jan. 24, 1994.

154. *Id.*

155. *Id.* To that end, Malta installed a full telecommunications network, including a "[a] full satellite direct-dialling system that connects Malta with most regions of the world through a 2,000-port international exchange." *Emerging Centres*, *supra* note 141.

156. Kate Rankine, *Cayman Islands: Sun Sea and the Magic of Money*, DAILY TELEGRAPH, Nov. 6, 1993, at 11.

157. *Caymans Regulating Mutual Funds*, REUTERS BC CYCLE.

158. Rankine, *supra* note 156, at 11.

159. *Id.* The Cayman Islands, which were deeply involved in the BCCI scandal, have recently enacted laws regulating "the sale and administration of offshore mutual funds by Cayman's banks and securities companies." *Id.*

160. *See supra* note 48 (discussing Andorran history).

it would seek to compete against financial centers such as Luxembourg.<sup>162</sup> Andorra, which lacks an airport and reciprocal tax agreements with other countries, intends to accomplish this goal by offering a parliamentary guarantee through the creation of a fundamental law of "fiscal and judicial security."<sup>163</sup> There is a pressing need for the Andorran government to raise revenue because in 1992 public expenditures rose 50 percent to fund local schools.<sup>164</sup>

Gibraltar is also seeking to establish itself as an OFC. While Andorra does not seek EC membership, Gibraltar considers itself an EC member.<sup>165</sup> The legal position that Gibraltar has assumed is that when Great Britain joined the EC in 1972, Gibraltar also was admitted, but with the provision that Gibraltar was exempted from the EC Customs Tariff and Common Agricultural Policy.<sup>166</sup> Gibraltar's defense related gross domestic product has fallen from 75% to 15% from its 1980's high with Great Britain's withdrawal of its garrison following Gibraltar's declaration of sovereignty.<sup>167</sup> Gibraltar has for this and other reasons responded by trying to transform itself into an onshore OFC.<sup>168</sup> In 1991, it had NYNEX install fiber-optic systems, and connected its banks to the Society for Worldwide Interbank Financial Telecommunications (SWIFT) network, which ensures the easy electronic transmission of funds.<sup>169</sup> However, Gibraltar's sole reciprocal tax-treaty is with the U.K.<sup>170</sup>

Madeira offers similar financial opportunities for European investors seeking entrance into Europe.<sup>171</sup> It was anticipated that over 1,000 firms would have registered on the island by the end of 1993.<sup>172</sup> Like other OFC's,

161. John Hooper, *Andorra Vote May Take Mountain Enclave 'Offshore'*, THE GUARDIAN, Mar. 20, 1993 at 39; see also John Hooper, *Pyreneans Hope to Swim Offshore*, THE GUARDIAN, at 37, Sept. 11, 1993 (discussing Andorran OFC development plans).

162. Hooper, *Pyreneans Hope to Swim Offshore*, *supra* note 161, at 37.

163. *Id.* (quoting finance minister Josep Casal). Andorra hopes to benefit from being an OFC by adopting a strategy that will create an attractive environment for foreign investors and then taxing that wealth at competitive rates. Bruce, *supra* note 48 at 7.

164. *Id.*

165. Jane Sasseen, et al., *Europe's Pocket Fortresses: Andorra, Monaco, Gibraltar, Liechtenstein, San Marino, Vatican City, Channel Islands and Isle of Man*, 48 INT'L MANAGEMENT 2, Mar. 1993, at 28.

166. *Id.*

167. *Id.*

168. This has not been without some protest from Spain. Spanish authorities claim that Gibraltar's status as an OFC allows it to serve as a haven for tax-dodgers and money-launderers. *Time To Move On The Rock*, FIN. TIMES (London), May 10, 1991, at 14. Moreover, Gibraltar has become the single largest source of funds and investment in Spanish real estate, while those self-same Gibraltarians do not live, own property, or pay taxes in Spain. *Id.*

169. *Emerging Centres*, *supra* note 141.

170. *Id.*

171. Natasha Brown, *Firms Flock to Madeira Tax Free Zone to Tap EC Markets*, REUTER EUR. BUS. CYCLE, Dec. 19, 1992. The director of the Madeira Development Office, Jorge Veiga Franca, stated that "[w]hen Madeira was discovered in the early 15th century it served as a stepping stone to the New World. Now we are their stepping stone into Europe." *Id.*

172. *Id.*

Madeira seeks to develop a reputation as an international business center, rather than a tax haven.<sup>173</sup> Madeira's reciprocal tax treaty with Portugal makes it of interest to companies.<sup>174</sup> Some companies seek to use Madeira as an entree into a unified Europe, and others see it as a source of flags of convenience through its shipping registry service.<sup>175</sup>

Bermuda is considered to be the paradigm example of the old style of OFC. Bermuda, with over 7,200 registered companies,<sup>176</sup> is considered the world's premier OFC.<sup>177</sup> Bermuda has over half the world's captive insurers,<sup>178</sup> the registered offices of over a quarter of all the firms listed on the Hong Kong Stock Exchange, more than 2,600 investment holding business, approximately 530 commercial trading companies, more than 500 shipping companies, and approximately 400 mutual funds.<sup>179</sup>

However, even Bermuda is feeling the competition from other OFC's.<sup>180</sup> Guam, the Cook Islands, the Cayman Islands, and the British Virgin Islands are trying to upgrade their images to compete with Bermuda.<sup>181</sup> The Isle of Man, Guernsey, Cyprus, Gibraltar, the Cayman Islands, Dublin, and even Vermont are trying to develop a base in the captive insurance market by creating beneficial domicile laws.<sup>182</sup> Bermuda has responded by diversifying its OFC products.<sup>183</sup> Its government has tried to develop the trust company business, and has pushed to develop Bermuda as an international arbitration center for multinational companies seeking to settle differences in a neutral and cost efficient environment.<sup>184</sup> Additionally, local banks are hoping to develop the "sleepy" local stock exchange into a participant in the international equities market.<sup>185</sup>

The value of these services is indisputable. In 1992, exempted companies generated forty percent of Bermuda's \$1.15 billion in foreign exchange earnings.<sup>186</sup> These companies also add millions of dollars to the local econ-

---

173. *Id.*

174. *Id.* For instance, a foreign investor buying Portuguese bonds can avoid the payment of the 20 per cent withholding tax normally levied on coupon interest payments. *Id.*

175. *Id.*

176. David Fairlamb, *The New Bermuda Angle*, INST. INVESTOR, Aug. 1993, at 27. For OFC reputation, it is quality, not quantity that counts. For instance, the British Virgin islands and the Cayman Islands have more than 100,000 companies each. *Id.*

177. *Id.*

178. Captive insurers are underwriters set up by corporations to insure their own risks. DAVID L. BICKELHAUPT, GENERAL INSURANCE 40 (1983). The Bermudian insurance market is the third largest in the world after the United States and London with assets of over \$US 60 billion, \$US 20 billion in capital, and \$US 16 billion in premiums. Fairlamb, *supra* note 175, at 27.

179. Fairlamb, *supra* note 176, at 27.

180. *Id.*

181. *Id.*

182. *Id.*; BICKELHAUPT, *supra* note 178, at 41-42. Tennessee and Colorado have also passed legislation encouraging captive insurance to establish domicile. *Id.*

183. Fairlamb, *supra* note 176, at 41-42.

184. *Id.*

185. *Id.*

186. *Id.*

omy through salaries, annual registration fees, local law firms, banks, real estate companies, and accountants.<sup>187</sup> Bermuda's OFC position has also helped add revenues to the thriving tourism industry.<sup>188</sup>

The Bailiwick of Guernsey, which consists of the islands Guernsey (including Herm and Jethou), Alderney, and Sark, along with their neighboring island the Bailiwick of Jersey, are examples of semi-sovereign small states that have developed into OFC's.<sup>189</sup> Although the British government is responsible for managing the islands' defense and foreign relations,<sup>190</sup> the islands have their own legislature, judiciary, and economies.<sup>191</sup> This status has allowed them to maintain a personal and corporate tax rate of only twenty percent since 1960.<sup>192</sup> Guernsey began to develop as an OFC in the early 1970's.<sup>193</sup> Because of labor and land shortages, it was anticipated in Guernsey's 1992 economic and financial report that the island was "bound to remain heavily reliant on a healthy financial services sector."<sup>194</sup>

#### D. Risks of OFC Banking Services

Offshore banking is not without some risk. Depositors enjoy less protection than is mandated in larger economies with more vocal consumer interests.<sup>195</sup> However, depositors trade that protection for avoidance of inspection of their personal affairs.<sup>196</sup> A further risk is that banks' parent companies have no obligation to support offshore subsidiaries whose financial troubles jeopardize depositors' money.<sup>197</sup>

One example of the risk of offshore banking was the failure of the Isle of Man based Savings and Investment Bank, which collapsed in 1982 at a loss of £42 million.<sup>198</sup> The Isle of Man bank collapse has adversely affected the Manx reputation.<sup>199</sup> A quarter of the Manx economy is dependent on financial services.<sup>200</sup> The damage caused by the bank failure, over ten years ago, still leaves investors wary of utilizing the island as an OFC.<sup>201</sup> The Manx

187. *Id.*

188. *Id.*

189. Richard Evans, *Survey of Guernsey*, FIN. TIMES LTD. (London), Mar. 31, 1993, at II; see also JOHN PAXTON, WORLD LEGISLATURES 34-37 (1974) (describing history as well as legislative, executive, and judicial mechanisms of the Channel Islands).

190. Evans, *supra* note 189, at II.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* In Jersey, financial services have overtaken agriculture and tourism as the largest economic sector. Chandler, *supra* note 122, at X.

195. Antonia Feuchtwanger, *Offshore Banking: Fewer Prying Eyes Off the Coast, but Fewer Safety Nets*, DAILY TELEGRAPH, Oct. 25, 1991, at 30.

196. *Id.*

197. *Id.*

198. *Id.*

199. David North, *Bank Failure Prepares Isle Of Man For Europe*, TIMES (London), June 20, 1991.

200. *Id.*

201. *Id.*

response has been to develop sophisticated security devices, including legal controls over companies registered on the island, a companies supervision commission, and regulation of who may serve as a company's trustee.<sup>202</sup> Moreover, a compensation fund has been created to protect future investors.<sup>203</sup>

### E. New OFC Areas

The OFC market is not limited to the Caribbean or Europe.<sup>204</sup> Mauritius<sup>205</sup> is seeking to market itself as an OFC offering investors the opportunity of investing in African equities.<sup>206</sup> Mauritius, whose island population barely exceeds one million, established a stock exchange in 1989 and is attempting to transform itself into an OFC for the region.<sup>207</sup> It is thought that the Mauritius initiative might pave the way for similar opportunities in larger African countries such as Botswana, Zimbabwe, Kenya, and the Ivory Coast.<sup>208</sup>

Central American countries are also seeking to enter the OFC market. Belize, located south of Mexico's Yucatan peninsula on the Caribbean coast, is also trying to transform itself into an OFC.<sup>209</sup> Belize, formerly British Honduras,<sup>210</sup> has an area of 8,867 square miles, but a population of only 190,000.<sup>211</sup> In 1991, the Belizean parliament enacted the International Business Companies Act (IBCA), aimed at diversifying its agriculturally based economy by offering opportunities to businesses seeking an offshore tax-haven.<sup>212</sup> In conjunction with the IBCA, merchant shipping<sup>213</sup> and trust legislation was passed, further diversifying OFC opportunities.<sup>214</sup> Since the legislation was enacted, over 450 companies and over 177 ships have been registered in Belize.<sup>215</sup>

---

202. *Id.*

203. *Id.*

204. See *supra* note 114 (OFC services are dependent on proximity to large industrial and financial centers such as London, New York, and Tokyo).

205. Mauritius is located in the Indian Ocean, about 1,500 km from the southeastern coast of Africa.

206. William Acworth, *Mauritius Investment Fund Lures U.S. 144A Investors*, 3 AM. BOND BUYER, PRIVATE PLACEMENT REP. 9, at 2, Mar. 8, 1993.

207. *Id.*

208. *Id.*

209. Christine MacDonald, *Belize Economy; New Policies For Diversification*, INST. INVESTOR, Mar. 1993, at S2.

210. *Id.* Belize gained independence from Great Britain in 1981. *Id.*

211. *Id.*

212. *Id.* Included in these opportunities are a new free trade zone and tax holidays. *Id.*

213. The Merchant Ships Act was passed in 1989. *Id.*

214. *Id.*

215. *Id.*

## V. U.S.-OFC POLICY

The U.S. response to international tax avoidance has been one of concern. The role of OFC's in international criminal activity by U.S. entities has grown in recent years.<sup>216</sup> OFC's have been an issue in the United States, primarily because many of their institutions are deeply involved in drug-trafficking.<sup>217</sup> OFC's are central to the laundering of drug profits.<sup>218</sup> One way in which the U.S. government has attempted to respond is by seeking extra-territorial discovery laws so as to force other countries into fiscal disclosure.<sup>219</sup> The U.S. effort has generally not met with success.<sup>220</sup> One response the United States utilized was to cancel treaties affording individual countries beneficial or reciprocal tax status.<sup>221</sup>

However, the cancellation of treaties has generated criticism.<sup>222</sup> An additional U.S. response to the problem of OFC activities was the Caribbean Basin Economic Recovery Act, which attempted to develop Caribbean coun-

216. William C. Caccamise, Jr., *U.S. Countermeasures Against Tax Haven Countries*, 26 COLUM. J. TRANSNAT'L L. 553 (1988). See also STAFF STUDY, PERMANENT SUBCOMM. ON INVESTIGATIONS, SENATE COMM. ON GOVERNMENTAL AFFAIRS, 98TH CONG., 1ST SESS., OF THE CRIME OF SECRECY: THE USE OF OFFSHORE BANKS AND COMPANIES 15-16 (Comm. Print 1983) (estimating that the amount of money siphoned from the U.S. annually due to the criminal use of tax havens ranges from \$US 9 billion to \$US 43 billion).

217. Charles Fenyevisi, *Washington Whispers*, U.S. NEWS & WORLD REP., Feb. 19, 1990, at 16. Vanuatu, Antigua, and Nauru are the three largest centers for drug-money laundering. *Id.*

218. After arms and munitions, illicit drugs - particularly cocaine - may have passed oil as the second largest commodity in international trade. Geoffrey W. Smith, *Competition in the European Financial Services Industry: the Free Movement of Capital Versus the Regulation of Money Laundering*, 13 U. PA. J. INT'L BUS. L. 101, 123 (1992). The Organization for Economic Cooperation and Development in Paris estimates that financial markets launder at least \$85 billion in drug profits every year. *Global Mafia; A Newsweek Investigation*, NEWSWEEK, Dec. 13, 1993, at 22.

219. Jones, *supra* note 119, at 473-77 (discussing the establishment of multilateral assistance treaties to address drug-money laundering).

220. "Tax haven states thrive on their bank secrecy laws and seem resolute in maintaining them." Caccamise, *supra* note 216, at 571. After the United States declared its intention to cancel tax treaties, Antigua and Barbuda cancelled their income tax treaty with the United States to better market their Caribbean OFC services. *Tax Havens: Antigua Cancels U.S. Treaty, Hopes New Laws Will Lure Offshore Funds*, 1982 DAILY TAX REP. (BNA) No. 218, at G-3 (Nov. 10, 1982). Antigua's motivation for this was its plan to establish an "off-shore tax-haven for foreign investors." *Id.* at G-4.

221. Since 1983, the U.S. Department of the Treasury has terminated tax treaties with Anguilla, Barbados, Belize, the British Virgin Islands, Dominica, the Falkland Islands, Grenada, Montserrat, St. Christopher-Nevis (formerly St. Kitts-Nevis), St. Lucia, St. Vincent, the Grenadines, Burundi, Gambia, Malawi, Rwanda, Seychelles, Sierra Leone, Zaire, and Zambia. Caccamise, *supra* note 216, at 559 n.35.

222. Mark B. Schoeller, Note, *The Termination of The United States-Netherlands Antilles Income Tax Convention: A Failure of U.S. Tax Policy*, 10 U. PA. J. INT'L BUS. L. 493, 493-94 (1988) (discussing how the cancellation of tax treaty had negative influence on Eurobond market and international financial community's perception of U.S. tax policy).

tries' economic resources through economic assistance.<sup>223</sup> The act attempted to encourage Caribbean countries to increase their disclosure of information and to loosen their traditional bank secrecy laws.<sup>224</sup> It is worthwhile to note that few of the twenty-seven countries eligible for this program participated.<sup>225</sup> However, while the United States has not been successful in the area of tax policy, it has met with greater success in challenging bank secrecy in the area of crime and drug-money laundering.<sup>226</sup>

## VI. AUTONOMY, SOVEREIGNTY, AND OFC'S

Small states, particularly micro-states, are able to guarantee the secrecy and privacy of OFC transactions by characterizing them as an exercise of plenary power over domestic matters. Moreover, it is a principal claim of these countries that their creation and existence are legitimate because of their right to self-determination.<sup>227</sup> What precisely constitutes self-determination<sup>228</sup> is subject to multiple interpretations. Wilson defined self-determination as "the right of every people to choose the sovereign under which they live, to be free of alien masters, and not to be handed about from sovereign to sovereign as if they were property."<sup>229</sup>

Self-determination as a legal principle continues to change.<sup>230</sup> Nonetheless, it encapsulates three basic concepts: 1) there is a group; 2) the group is concerned about its political status; and 3) the group is able, and must be able, to exercise choice regarding its own political future.<sup>231</sup> It has been used to describe the rights of individuals within existing boundaries, specifically those resulting from colonial regimes.<sup>232</sup> Another perspective is that the right of self-determination extends beyond colonial borders and the colonial context.<sup>233</sup> Whatever its scope, though, self-determination is considered to be an absolute right, particularly as applied to former colonies.<sup>234</sup>

223. Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, tit. 2, 1983 U.S. Code Cong. & Admin. News (97 Stat.) 369, 384 (codified at 19 U.S.C. §§ 1318, 2251, 2701-06, I.R.C. §§ 274, 7652, 33 U.S.C. § 1311 (Supp. III 1985)).

224. Caccamise, *supra* note 216, at 561-62.

225. *Id.*

226. *Id.* See also Berta E. Hernandez, *RIP To IRP—Money Laundering and Drug Trafficking Controls Score a Knockout Victory Over Bank Secrecy*, 18 N.C. J. INT'L L. & COM. REG. 235 (1993).

227. See *supra* notes 86-94 and accompanying text (discussing right to self-determination).

228. See MICHLA POMERANCE, *SELF DETERMINATION IN LAW AND PRACTICE* (1982) (discussing practical applications of the principal of self-determination).

229. Quoted in Amberg, *supra* note 73, at 842.

230. Cass, *supra* note 89, at 21.

231. *Id.* at 24.

232. *Id.* at 29-30.

233. Ved P. Nanda, *Self-Determination Under International Law: Validity of Claims to Secede*, 13 CASE W. RES. J. INT'L L. 257, 266 (1981). John A. Collins, *Self-Determination in International Law: The Palestinians*, 12 CASE W. RES. J. INT'L L. 137, 138 (1980) ("the principle of self-determination should not be considered strictly as a colonial right").

234. Franck & Hoffman, *supra* note 4, at 383 ("infinitesimal smallness has never been seen as a reason to deny self-determination to a population").

Self-determination is bound to the principle of autonomy and self-government. Self-government is the essential element of self-determination.<sup>235</sup> Autonomy, while a relative term,<sup>236</sup> is itself predicated on the achievement of self-government by a population's freely and democratically selected form of governance.<sup>237</sup> However, sovereignty is not necessarily implied from autonomy and self-government.<sup>238</sup> The realization of autonomy and self-government is dependent only on the domestic—not the international—form of governance.<sup>239</sup>

Reconciling the rights of native populations to self-determination, sovereign capacity, and functional autonomy of the state remains an issue.<sup>240</sup> Despite the ending of colonialism,<sup>241</sup> the question remains as to what small states have to offer a global market when granted their freedom.<sup>242</sup> With few resources and little hard currency, small states can and do sell the secrecy and privacy guaranteed by their sovereign status. Sovereignty, for small states, is commercialized.<sup>243</sup> Autonomy and sovereignty, in the instance of small

235. Lillich & Hannum, *supra* note 5, at 885.

236. "[A]utonomy is a relative term that describes the extent or degree of independence of a particular entity rather than defining a particular level of independence that can be designated as the status of 'autonomy.'" *Id.*

237. *Id.*

238. *Id.* at 886.

239. *Id.*

240. See generally, Franck & Hoffman, *supra* note 4, at 335 (discussing whether transplanted populations have equally legitimate claims to self-determination as do native populations, and arguing for greater U.N. role in resolving disputes originating from small state claims of self-determination).

241. Cass, *supra* note 89, at 21 ("1991 marked the thirtieth anniversary of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, and the beginning of the Decade for the Eradication of Colonialism").

242. The Turks and Caicos Islands are an example of how the right to autonomy is of little value absent an economic base. Of the 42 islands and cays that make up the Turks and Caicos, only six are inhabited. Robert Graham, *Financial Times Survey, The Turks and Caicos Islands*, FIN. TIMES (London), June 25, 1984, at 21. The permanent population is less than 8,000, and the islands' natural resources are virtually non-existent. *Id.* The islands are flat and exposed to the elements, with scarce water, poor soil, and virtually non-existent manufacturing. *Id.*

"[In the Turks and Caicos] there has never been an unnaughty way to make a living . . . as the traditional livelihood was raking up evaporated sea salt—an industry in gradual decline since 1780. In 1964 it petered out completely, leaving smelly pools of half evaporated brine all over the islands. Other than that the only profession was salvaging the thousands of neighboring shipwrecks—most caused, probably, by distracted harbor pilots using placemats to navigate."

P.J. O'Rourke, *In Search of the Cocaine Pirates*, in REPUBLICAN PARTY REPTILE 169, 181 (1987). Due to the lack of opportunity and subsequent emigration to the U.S. and the Bahamas, more islanders now live outside than on the Turks and Caicos. Graham, *supra*, at 21. Given these circumstances, the Turks and Caicos are trying to leverage themselves against the Bahamas and the Cayman Islands in the provision of OFC services. *Id.* The reasons for this are simple: OFC services (and tourism) are the sole means of achieving financial and economic independence. See generally, O'Rourke, *supra*, at 173, 176 (with a half mile of beach for every hotel room, "the Ts and Cs are the last frontier for commercial development in the Caribbean").

243. This is ironic because, for hundreds of years, colonial powers appropriated resources from these former colonies for the benefit of the colonial powers. Now, through OFC's, the flow



states, have become separated and even inapposite. The right to self-determination is claimed as a basis for the existence and autonomous functioning of the small state. However, it is also the basis for the legitimate exercise of a small state's sovereign powers to provide shelter from other jurisdictions. The small state, while it claims legitimacy for its continued existence on the basis of self-determination and the right to autonomy in the conduct of its internal affairs, is also utilizing its international sovereign status as a means for funding those affairs.<sup>244</sup>

At a functional level, an OFC is selling sovereignty. Small states, particularly micro-states, rest their claim to legitimacy on the right to self-determination, not their rights as sovereign states. It is disingenuous to claim the right to sovereignty as an inherent state right. For small states, rights arise not from the distinct and separate legal claim of plenary power,<sup>245</sup> but from self-governance.<sup>246</sup>

## VII. CONCLUSION

Small states will continue to exist in the international arena. The growth in their numbers is the direct result of the application of the principle of self-determination to colonies. These states defy easy categorization, sharing only their function as tax havens, or OFC's.

The role of OFC's expands with the growth and internationalization of financial markets. However, it is clear that they are not always responsible members of the international community. Autonomy depends in part on a financially solvent domestic economy, yet the use of drug and other monies acquired through international criminal activity suggests a failure by certain OFC's to fulfill their responsibilities and duties as sovereign nations.

This is not entirely surprising, because many OFC's are not entirely sovereign. They remain semi-sovereign entities in the international arena, dependent on larger sovereign entities for protection and resources. This is particularly true for micro-states. While small states may be characterized as being states which are smaller because of their lack of resources, micro-states in particular are uniformly *without* resources. Within the web of treaty, financial, and commercial arrangements, micro-states, while no longer colonies, are not truly independent. Rather they are associated, semi-sovereign states. Both analytically and functionally, micro-state reliance on the principle of sovereignty as a defense to domestically conducted activity is neither

---

of resources has been reversed. Financial resources are being withdrawn from countries where they can be used to generate tax revenues, and are being placed within those former colonies. It is the reverse of mercantilism.

244. This suggests that a small state is defined by the lack of resources contributing to economic and political power. A small state is defined by context: it is the *smaller* state, the state that can be dominated by other international legal, financial, or political entities.

245. See *supra* note 16 and accompanying text.

246. This suggests that although micro-states assert sovereignty, "they are independent in name only." Hannum & Lillich, *supra* note 5, at 889. The political reality for micro-states is that they are associated states, and not sovereign according to normative nation-state concepts. *Id.*

complete nor without incipient risk as a basis for the legitimacy of OFC activity.

*Daniel Orlow*