

munity and because plaintiffs had obtained attachments in the United States to secure the same claims. The Frankfurt Court of Appeals rejected defendant's contentions and upheld the levy.

The court prefaced its opinion with the observation that a foreign state's immunity from German jurisdiction had to be determined separately for jurisdiction to adjudicate (process of cognition) and enforcement jurisdiction (process of execution). As to the latter, assets of a foreign state are immune if they serve activities that pertain to governmental functions. The court held that this was not the case with respect to the claims by NIOC against the banks since the defendant was a government-owned corporation with separate legal personality and special capitalization. The order of garnishment authorized a levy on property only of defendant, not of the state of Iran itself, even if Iran were the real owner of the accounts and the proceeds would be transferred ultimately to the Iranian treasury to be used for governmental functions. In view of the decision of the Federal Constitutional Court in the case of the *Philippine Republic*,¹ no preliminary question had to be submitted to that Court. The fact that attachment plaintiffs had also obtained attachments in the United States did not invalidate the orders of garnishment issued in Germany and could be considered only in separate proceedings.

In a subsequent case² involving a suit against the same defendant, based on an alleged breach of contract for the construction of pipelines, and a prejudgment attachment of claims arising out of letters of credit for the payment of oil sales, another panel of the same Court of Appeals stayed all further proceedings because defendant had brought the issue of immunity of its assets from attachment before the Federal Constitutional Court by independent proceedings.³

Creation of a new state—requirements under international law—effect of acquisition of nationality of new state purportedly established on man-made island

IN RE CITIZENSHIP OF X. 1978 *Deutsches Verwaltungsblatt* 510.
Administrative Court of Cologne, May 3, 1978.

Plaintiff, a German citizen by birth, obtained a document, issued on August 26, 1975, conferring upon him citizenship of the "Duchy of Sealand." The so-called Duchy consists of a former anti-aircraft platform, erected by the United Kingdom approximately 8 nautical miles off its southern coast, outside its territorial waters. The platform rests on strong pillars connecting it with the seabed, and it has an area of approximately 1,300 square meters. The British forces abandoned the installation after the end of World War II, and

¹ Reported in 73 AJIL 305 (1979). The holding of that case as there printed should have included the words "are not subject to execution" following the words "forum state" in line 4.

² Court of Appeals Frankfurt a. M., Order of May 4, 1982, 28 RECHT DER INTERNATIONALEN WIRTSCHAFT 439 (1982).

³ For a discussion of that procedure, see Riesenfeld, Book Review, 74 AJIL 473, 475 and 476, text to nn.15 and 16 (1980) (reviewing FONTES JURIS GENTIUM. SERIES A, SECTIO II. Tomus 5 and Tomus 6 (1978 and 1979)).

in 1967 a British army officer, Major R.B., took possession and proclaimed it the Duchy of Sealand. Major R.B. issued a constitution for his territory, assuming the title of Roy of Sealand. At present, 106 persons are citizens of the Duchy of Sealand, and 40 persons reside on it. Plaintiff occupies the office of Minister of Foreign Affairs and President of the State Council.

Plaintiff instituted proceedings for a declaratory judgment establishing loss of his German nationality by virtue of his having acquired the citizenship of a foreign nation. The court dismissed the action for the reason that the Duchy of Sealand did not qualify as a foreign state under international law and therefore could not confer foreign nationality so as to warrant loss of German citizenship in accordance with the German Law on Nationality of 1913.

The court held that to constitute a state under international law three essential attributes had to be present: territory, population, and government. The Duchy of Sealand lacked at least two of these. First, territory must consist of a naturally created portion of the earth's surface and not of a man-made island. Second, population denotes a group of persons leading a common life and forming a living-community, a bond that did not exist among the citizens of the Duchy of Sealand, not even among the 40 persons staying on the platform.

This case is another unsuccessful attempt to establish a new state on an artificial island in order to escape the laws of the coastal state. Similar efforts in Italy¹ and the United States² have also failed.

FRENCH REPUBLIC*

Supremacy of treaty over prior statute—effect of lack of reciprocity—exclusive jurisdiction of Minister of Foreign Affairs to determine presence or absence of reciprocity

IN RE REKHOU. 1982 Dalloz-Sirey, *Jurisprudence* 137.
Conseil d'Etat (en banc), May 29, 1981.

The case involves the jurisdiction of the Conseil d'Etat (Council of State), the supreme administrative court of France, to determine the presence or absence of reciprocity in the application of a treaty, and the effect of the lack thereof. The French Constitution provides in Article 55: "Treaties or agreements that are properly ratified or approved possess, upon their publication, authority superior to statutes, subject to the condition that each agreement or treaty is applied by the other party." This provision has precipitated many controversies and resulted in conflicting holdings of the two highest courts of France, the Cour de Cassation (Court of Cassation) and the Conseil d'Etat.

¹ For the "Isola delle Rose" off the coast of Rimini and its ultimate abatement, see the judgment of the Italian Council of State in the case of Chierici e Rosa c. Ministero Marina mercantile e Capitaneria di porto di Rimini, Nov. 14, 1969, 55 RIVISTA DIRITTO INTERNAZIONALE 728 (1972).

² The attempts to create "Atlantis" on Triumph Reef, United States v. Ray, 423 F.2d 16 (5th Cir. 1970), and "Abalonia" and "Taluga" on Cortes Bank, are discussed in Stang, *Wet Land: The Unavailable Resource of the Outer Continental Shelf*, 2 J.L. & ECON. 153 (1968).

* Prepared by Stefan A. Riesenfeld, of the Board of Editors.