DOES THE HUTT RIVER PROVINCE PRINCIPALITY MEET THE STATEHOOD CRITERIA ?

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Since 21st April 1970, The Hutt River Province Principality has claimed to be "an independent and sovereign State". If Hutt River is a State, it would have to be a Micro-State, but as such, it does not have specific rights or duties which international law would confer solely upon similar tiny entities. Consequently, the Hutt River Province Principality can only be accepted as a State if it complies with the general interpretation of the international rules determining statehood. This first paper is devoted to the minimal requirements relating to population, territory, government and legality. A next paper shall deal with other requirements often proposed as criteria of statehood : independence, sovereignty, permanence, "capacity to enter into relations with other States" (1) and - last but not least - recognition.

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The population of a State comprises all individuals who are permanent residents of the said State forming a communal life. The State need not be homogeneous in culture, language or race, and can consist of nationals and foreigners (2), of fixed populations and nomadic ones (3). In the case of the Hutt River Province Principality it cannot be disputed that the inhabitants live together as a community and the local aboriginal tribe - the Nunda people - is certainly to be considered, even if partly nomadic, as part of the Principality's population. One of the direct consequences of this observation has been the proposal related to the 1st Amendment Act to the Hutt River Nationality Act prepared by the Legislation Committee of the Hutt River Province Principality (4).

It is no secret that the permanent population of the Hutt River Province Principality is extremely small : around 150 inhabitants (5). Yet such a low figure does not inevitably preclude statehood according to international practice. Three cases - among others - show that no minimum size of a State's population has been stipulated by international law. The first case is related to the situation of the Pitcairn Island.

On 27 November 1961 (6) the United Nations set up the "Special Committee of Twenty-Four". This Committee was to interpret the right of self-determination of colonial peoples and in particular the rights of extremely small colonial populations. The smallest entity to come to the attention of the Committee was Pitcairn Island (7), with an area of 5 square kilometers (1/15 of the area of the Hutt River Province Principality) and a population of around 90 inhabitants (1/2 of the population of the Hutt River Province Principality). Since its establishment, the "Special Committee of Twenty-Four" has reaffirmed year after year the right of the peoples in the category "Non-Self-Governing peoples" - including Pitcairn - to self-determination and independence. As for Pitcairn Island, the Committee simply stressed that in deciding their future political status, the people of Pitcairn should take into account "the Territory's tiny size, its small and decreasing population, mineral resources and dependence on postage stamps for the bulk of its revenue" (8) The General Assembly of the United Nations has expressed the same views with the similar constancy.

The second case is related to the situation of the Vatican City and the Holy See. There are around 500 persons residing in the Vatican City, of which less than 170 are Vatican citizens. Several elements distinguish the inhabitants of the Vatican City from those of

other Micro-States among which the fact that one principle of the Vatican legal order is that every inhabitant, whether or not possessing Vatican citizenship, can be expelled at any time from the Vatican territory (9). This is due to the particular status of the residents of the Vatican City : residence permit is always directly or indirectly linked to the official position which the person holds. We can undoubtedly agree with Jorri Duursma when he observes that "this factor prejudices the development of a permanent population and demonstrates that the Vatican Government does not consider the inhabitants of the Vatican City a fixed population on whose presence it attaches distinctive value for the governmental structure. (...) The Vatican City lacks a human society stably united in its territory. It can therefore be inferred that the Vatican City does not have a population within the meaning of the criteria for statehood" (10). Nevertheless, in contrast to the Hutt River Province Principality, the Vatican City is recognized as a State by the international community (11).

The third case is related to the situation of the Principality of Sealand. On 2 September 1967, a former officer of the British Navy, Paddy Roy Bates, auto-proclaimed himself as Prince and sovereign of a new entity - the Principality of Sealand (12) - which he constituted on the platform of an abandoned military base located in the southern part of the North Sea, some six miles off the coast of Britain (latitude 51.53 N, longitude 01.28 E), known as Roughs Tower. This new entity not only had to fight the elements and the sea : the "Sealanders" faced and drove off armed attackers, and on one occasion, a member of Prince Roy's family was actually kidnapped by armed men and taken to a foreign country against his will. Furthermore, Sealand came under threat from hostile naval units and, in the early days of independence, there were determined attempts made to isolate and starve out the inhabitants of this artificial island. In view of these incidents, European Courts became involved and several rulings related to Sealand illustrate the Principality's special situation. The most famous of these rulings dates back to 25 October 1968, when the British High Court at Chelmsford (Essex), declared that it was unable to rule on the matter, not having jurisdiction over the territory signaled by the co-ordinates formerly indicated. This judicial decision, coupled with the authoritative value of a definitive sentence, established that the "territory" on which the Principality is seated does not belong to the British Crown (13).

But special circumstances do not necessarily imply statehood (14). In 1975, a German citizen acquired Sealand nationality and then informed the German Ministry of Interior of his new status. As the German Ministry refused to recognize that the said citizen had lost his German nationality, the latter filed a complaint based on a legal opinion issued by University professor Dr Walter Reisner. Reisner pointed out that "The Principality of Sealand has people constituting a nation although their number is very marginal; jus gentium does not provide for a minimum number of citizens. The Principality of Sealand's quality as a State is not in conflict with the fact that the founding people constituting a nation or the current citizens are completely or at least in part made up of foreign citizens"(15). The German Administrative Court dismissed the complaint for several reasons but not because of the size of Sealand's population : "Although we agree with Reisner that the size of a population is irrelevant for its character as a nation (...), it is not possible to affirm the existence of a State population within the meaning of international law, since the requisite communal life is lacking". At that time the number of Sealand citizens did not exceed 106 persons, of which around 35 could be qualified as permanent or semi-permanent residents.

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A State must exercise its functions in a given territory. The territory of a State comprises land territory, internal waters, territorial waters, and air space above the territory. Exclusive Economic Zones are not taken into account as a State does not exercise full sovereignty over this sea area (16). The territory of a State need not to be exactly fixed by

definite frontiers but must be "reasonably well defined" and coherent. No minimal size is required for a territory : the Vatican City (0,44 square kilometers), the Principality of Monaco (1,95 square kilometers), the Republic of San Marino (61 square kilometers) are recognized as States by the international community. The actual (17) territory of the Hutt River Province Principality represents an area of 75 square kilometers and State maps show that the national lands are coherent and precisely fixed by definite frontiers. The Hutt River Province Principality certainly meets the minimal requirements related to territory (18), just as it meets the minimal requirements related to government.

The criterion of government is the central requirement of statehood. The government must be effective and therefore maintain some degree of order and stability. The government of a State does not need recognition in order to fulfill the criteria of statehood (19) neither does it need to assume a specific form or follow a particular policy : even regimes which do not observe human rights or international law do not lose *ipso facto their statehood* (20). No minimum size of a State's government has been stipulated by international law and this must be borne in mind when analysing the case of the Hutt River Province Principality. The executive power of the Hutt River Province Principality is exercised by the Prince and the Cabinet under the former's authority (21). As per April 1999, the Cabinet is composed of the Minister of State (22) , the Minister of Foreign Affairs (23), the Minister of Treasury and the Minister of the Church. The government of the Hutt River Province Principality is indeed very small but is appropriate to the size of the Principality. Furthermore, similar governments may be found among recognized States. In Monaco, for instance, the executive power is exercised by the Prince, the Minister of State and three Government Counselors. The executive power of Liechtenstein is exercised by the Prince, the Head of the Government and four Government Counselors. Again, any State structure may meet the minimal requirements related to government as long as the latter maintains some control over its territory and population. Such effectiveness can be observed in the Hutt River Province Principality.

Some authors regard the legality of origin as a constitutive criterion for statehood (24). In accordance with this view, a putative State will be illegal if it is founded on a breach of international law and made possible by such violation. Three norms of international law have been invoked with respect to the illegality of the creation of States : the prohibition of aggression and of acquisition of a territory by means of force, the right of self-determination, the prohibition of racial discrimination and apartheid.

The prohibition of aggression and of acquisition of a territory by means of force has been clearly outlawed by the United Nations (25) and the European Communities underlined that "its member States will not recognize entities which are the result of aggression" (26). It is well known that the creation of the Hutt River Province Principality followed a peaceful secession and that the "situation of war" which prevailed for a few days between the Principality and the Commonwealth of Australia on December 1977 was purely symbolic (27). Incidentally, the history of the British Empire can be regarded as nothing less than a history of secessions (28) and it can be recalled that in the 1930's the State of Western Australia itself contemplated the possibility to secede from the Commonwealth of Australia.

As for the right of self-determination, the practice of States requires that the wishes are observed not only for those peoples living in self- determination "units" (29) but also for those peoples which have the right of self-determination by virtue of a general rule of international law : peoples within an existing State and wishing to secede. In other words, secessions without popular support are illegal and cannot lead to the creation of a State. The creation of the South African Homeland States, i.e. Bantustans, was considered contrary to the principle of self-determination and not recognized on that ground. The third norm - the prohibition of racial discrimination and apartheid - is closely linked to the right of self-determination and is more an effect than a cause. Jorri Duursma writes rightly that "the principle that the creation of a State should not lead to a minority government and racist regime cannot be accepted as a criterion for statehood. (...) The

criterion of effective government leaves the choice of the form of government to the population of the State, but does not punish it with the disappearance of the statehood if the government violates a norm of *jus cogens*."(30). The fact remains that the creation of Hutt River Province Principality was achieved in accordance with the wishes of the entire population of the territory and that racial discrimination is totally unknown within the boundaries of the young Micro-State and among its Overseas Citizens.

(to be continued)

NOTES

(1) Montivideo Convention on the Rights and Duties of States of 26 december 1933, Art 1(d), League of Nations Treaty Series, vol 165, p. 19.
(2) Nationality is a consequence of statehood, not a precondition.
(3) "If a nomadic people wonders within the State boundaries, it will nevertheless be considered a permanent inhabitant of that State" Jorri Duursma, "Self-determination, statehood and international relations of Micro-States", Universty of Leyden (1994), p. 113.
(4) The Head of the State of the Hutt River Province Principality is "the protector of the Heritage and the Legends of the Nunda people".
(5) The specific situation of the Hutt River "Overseas Citizens", who represent around 10.000 individuals, shall be evoked in our next article.
(6) General Assembly Resolution n° 1654 (XV).
(7) Information on Pitcairn can be found on the internet at :
http://www.visi.com/~pjlareau/pitnotes.html
(8) UN Doc. A/9623/Add.5 (PartIII)(1974) pp.6-7.
(9) "Law on the right of citizenship and sojours", Art. 19. Possible statelessness is solved by the second paragraph of Art. 9 of the Lateran Treaty signed between Italy and the Holy See on 11 february 1929: anyone who is no longer a resident of the Vatican City is considered outright italian citizen in Italy when not in possession of other citizenship.
(10) Jorri Duursma, op. cit, p. 458.
(11) It cannot be argued through the Vatican City case that international law does not require a permanent population in order to be a State and it is not disputed he Vatican City was recognized by the international community for purposes relating to the Holy See. Yet it is interesting to observe that the population requirement has here been deliberately ignored or considered as symbollicaly fulfilled.
(12) Sealand has its own Constitution and legal system based on British Common Law and British Law of Contract. Updated information on Sealand can be found on the official internet site of the Principality at: http://www.fruitsofthesea.demon.co.uk/sealand/index.html
(13) This position has constantly been reaffirmed by the British and the European authorities. Significant is the fact that on the 3rd of July of 1973, the Embassy of Great Britain in Bonn officially confirmed to a merchant /collectionist that Sealand has its own post stamps and its own currency. On the 14th of June 1977, the German Treasury stated in writing IV C5-S 1300-118/77 that the Principality of Sealand is not falling under the jurisdiction of the Convention between the Federal Republic of Germany and the United Kingdom with regard to the prevention of the double imposition. On the 22nd of May of 1980, the Treasury of the Kingdom of Belgium confirmed in writing Ci R9 DIV/313.941 that the Treaty between Belgium and the United Kingdom for the prevention of the double imposition is not applicable to the Principality of Sealand since this territory is not part of Great Britain. Etc.
(14) Special situations within the international community are not uncommon. A good example is given by the Sovereign Military Order of Malta (SMOM) which is not a State but has international legal personality.
(15) Dr Walter Reisner, "Legal expert opinion on the jus gentium situation of the Principality of Sealand", Erlangen, 5 February 1975.
(16) Jorri Duursma, op. cit, p. 111.
(17) Are not taken into account here eventual territorial claims raised or to be raised by the Government of the Hutt River Province Principality as "compensation claims".
(18) No legal consequences can be drawn from the fact that the territory of the Hutt River Province Principality is mainly owned by the same family since the said family has explicitly and repeatedly declared that their private lands were part of the territory of the Hutt River Province Principality

and has acted as a pre-eminent or leading member of the Principality's national community.
(19) It is true that non-recognition of a government may constitute proof that it lacks effective control over the territory and population but some States - France and the United Kingdom among others - adhere to the policy of only recognizing States, not governments.
(20) Iraq's invasion of Kuwait was condemned by the United Nations (Security Council Resolution 660/1990) as an "illegal act of aggression" but Iraq's statehood was never questioned.
(21) "Hutt River Province Principality's proposed Constitution", 12 May 1997, Art. 10, 19 and 20.
(22) The Minister of State is presently also Minister of Postal Services.
(23) The Minister of Foreign Affairs is assisted by a Vice-Minister but only Ministers are members of the Cabinet according to Art. 19 of the above-mentioned proposed Constitution.
(24) In our opinion, preference could be given to the argument that an entity which fulfils the discussed conditions of statehood can be considered a State even if its creation violates international law: non-recognition would be the political sanction without prejudicing the statehood. It cannot be disputed that existing recognized States have been created in the past under circumstances which at present are regarded as illegal. Moreover, accepting the legality of origin as a criterion for statehood implies that new States are asked to respect peremptory norms of international law wile existing States do not have to fulfil such criteria.
(25) General Assembly Resolution n° 3314 (XXIX) 14 December 1974.
(26) Declaration of 16-17 December 1991 on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union.
(27) See "La Principauté de Hutt River ou la sécession réussie" in "Les Cahiers de l'Institut Français de Micropatrologie", April 1998, p. 8.
(28) It is out of the scope of this short article to discuss the status of the Hutt River Province Principality in relation with the British Crown.
(29) States, Non Self-Governing Territories, etc.
(30) Jorri Duursma, op.

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