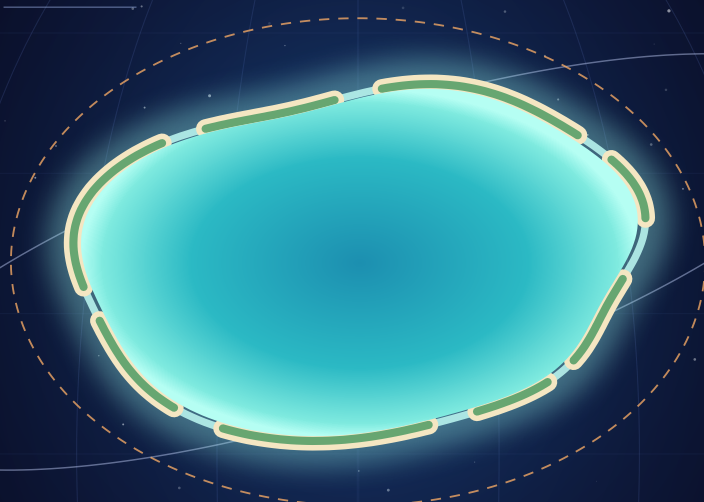


A MONOGRAPH · SECOND EDITION

HOW TO BUILD NEW COUNTRIES

*The Lawful De Novo Establishment of States on Dry Land Through
Long-Term Leasehold and Condominium Arrangements in Public
International Law*

24°40' S · 124°47' W



LEASEHOLD · 999 YEARS

JULIEN ANDREW STARR

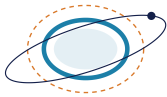
STARTUP STATES SOCIETY · GENEVA

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The Lawful De Novo Establishment of States on Dry Land Through Long-Term
Leasehold and Condominium Arrangements in Public International Law



Julien Andrew Starr

Founding Director, Startup States Society

STARTUP STATES SOCIETY · GENEVA

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Note to the Second Edition

The first edition, published in 2026, asked whether a new state could be constituted on dry land by a long-term lease of governmental authority from a consenting state, coupled with a condominium arrangement for the formative period. This edition keeps that argument and its structure. It adds Section 14.4, on what happens if the bargain fails: a Grantor State's change of heart before the Founding Treaty enters into force, a purported withdrawal of recognition afterwards, default on the rent, breach and the forum for resolving it, the succession or transformation of either state, and the end of the 999-year term. Annex A now carries the clauses that analysis supports, on rent security, the irrevocability of recognition, succession to the landlord's interest, negotiations on renewal before the term expires, and arbitration under the Permanent Court of Arbitration Arbitration Rules 2012.

The text has also been checked against its sources and corrected where it was wrong or out of date, among other places on Bir Tawil and Gornja Siga, the Saint Brandon and Cocos (Keeling) arrangements, the theories of recognition, the Free Territory of Trieste, the land area of Ducie Island, and the number of states recognising Palestine; the endnotes have been realigned with the passages they support; and loose uses of "sovereign" have been replaced with more precise terms, while defined terms such as the Sovereign Lease are kept. The monograph has been newly typeset. A companion monograph by the author, *No Treaty, No Country: The Creation of States by Agreement and the Case for Private Initiative*, examines the historical record of states created by treaty, asks whether a private actor may lawfully set such a process in motion, and develops a staged model in which a population forms under the Grantor State's own law before any grant of

independence. Section 14.4 draws on its analysis of breach, revocation, and succession.

Disclaimer

This white paper has been prepared by Julien Andrew Starr, Founding Director of the Startup States Society (Geneva), for scholarly, educational, and public interest purposes. It does not constitute legal advice and shall not be construed as such. Nothing contained herein shall be interpreted as encouraging, facilitating, or endorsing any specific political project or programme of action. Readers seeking legal advice in relation to questions of public international law are advised to consult suitably qualified legal counsel with specialist expertise in that field.

For the purposes of this white paper, the entity that holds territorial title and enters into the Founding Treaty as the constituting party is designated the Grantor State. The newly established state created pursuant to the Founding Treaty is designated the Startup State. These terms are employed consistently throughout.

Foreword

The question arises whether a brand-new state may be lawfully constituted on dry land, from first principles, by means of a negotiated treaty, upon territory lacking any pre-existing permanent population. The intuitive response may be in the negative. The more considered response, which this white paper undertakes to examine, is a qualified yet rigorous affirmative.

The state remains, at the time of writing, the principal unit of legal organisation within the international order. Attributes such as citizenship, passport issuance, treaty-making capacity, diplomatic protection, and jurisdiction over persons and activities within a defined territory are, in the first instance, vested in states. This white paper does not speculate as to the future evolution of political organisation, but instead addresses the present structure of the international legal system.

That system presents a specific structural constraint: there is no remaining terra nullius on dry land, and it is, in any event, doubtful that significant quantities of genuinely unclaimed land existed by the time of the so-called Age of Discovery. All land territory is either subject to the recognised sovereignty of an existing state, to competing claims between states, or to a distinct international legal regime. The frontier, in this sense, is closed. Conventional pathways to the emergence of new states, including conquest, secession, decolonisation, and the dissolution of existing states, remain theoretically available but are, in practice, associated with significant human cost and instability, and do not provide a generally acceptable or replicable model.

This white paper examines, with full regard to the doctrines and practice of public international law, an alternative pathway: the long-term sovereign lease of an uninhabited and undisputed parcel of territory from a consenting Grantor State, coupled with the simultaneous constitution of a

new state through a Founding Treaty. Under such an arrangement, plenary jurisdictional authority would be vested in the Startup State, while underlying territorial title would remain with the Grantor State. This pathway is conceived as consensual, transparent, lawful, and oriented towards durability. It may be characterised as a *tabula rasa* approach to state formation, in which a new polity is constituted upon a legal blank slate through the medium of treaty.

The Startup States Society (Geneva), together with its Founding Director, who is the author of this white paper, seeks to maintain a position of analytical neutrality and ideological and political agnosticism throughout. Where the analysis may appear to incline in a particular direction, such inclination is intended solely for educational, illustrative, or explanatory purposes, and not as an expression of advocacy or preference.

The Startup States Society (Geneva) is a scholarly and educational institution and does not adopt or advance any position concerning the desirability of any particular political outcome, system of government, or evaluation of the state as an institution. This white paper does not assert that the state constitutes an ideal or permanent form of human organisation. The history of the international legal order reflects continuous institutional development, and no assumption is made that its present configuration will remain unchanged.

The analysis proceeds on the basis of the contemporary legal order as it exists, in which international rights, capacities, and standing are attached to statehood. Those seeking to develop novel institutional arrangements capable of recognition and protection within that order must operate within its existing legal framework.

In this context, discussion of matters such as recognition sequencing and engagement with established institutional practices is descriptive and analytical in nature, identifying legal and procedural considerations that may arise within the current international system. Any application of such analysis will depend upon the objectives, values, and judgments of relevant actors.

Accordingly, this white paper does not constitute a political programme or operational manual, nor is it intended to serve as an exhaustive anthology of all relevant legal materials or perspectives. It is a structured legal inquiry into whether the international legal order contains the conceptual and institutional capacity to accommodate a form of consensual state formation of the kind described. The analysis proceeds through selected doctrines, precedents, and practices in order to assess whether such a

pathway is legally conceivable and to identify the conditions under which it might attain international acceptance.

While this white paper does not advocate the establishment of any particular jurisdiction, it is acknowledged that the examination of legal possibility may have implications for institutional design and governance. Its purpose, however, is confined to determining whether existing international law admits of such possibilities. The question of whether any such pathway ought to be pursued remains one for states, societies, and individuals, and does not fall within the remit of legal analysis alone.

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Anglo-Egyptian Condominium Agreement, 19 January 1899, 186 CTS 4: Part V

Antarctic Treaty, 1 December 1959, 402 UNTS 71: Parts II, III

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General Act of the Berlin Conference, 26 February 1885: Part VII

Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (Hague II), 18 October 1907, Art 1: Part XIV

General Treaty of Friendship and Cooperation (United States and Panama), 2 March 1936, Art VII: Part XIV

Hay-Bunau-Varilla Treaty (United States and Panama), 18 November 1903, Art XIV: Parts IV, XIV

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Glossary of Defined Terms, Key Cases, and Maxims

Familiarity with the following definitions is recommended before reading the substantive analysis. Terms derived from the Latin legal tradition appearing in the body of the text are italicised at every occurrence. Defined terms are capitalised throughout.

Part A: Principal Defined Terms

Condominium

An arrangement under international law whereby two or more states exercise concurrent jurisdiction over the same defined territory. Unlike a straightforward lease of imperium, a condominium involves each party retaining defined governmental competences over the shared territory simultaneously. Historical instances include the Anglo-Egyptian Sudan (1899 to 1956), the New Hebrides/Vanuatu (1906 to 1980), Neutral Moresnet (1816 to 1920), and the Principality of Andorra (a continuing condominium and a full United Nations Member State since 1993). As employed in this study, the condominium dimension describes the Grantor State's retained participation in defined governance functions over the leased territory, including in the Model Treaty the contracted provision of defence, policing, and judicial administration.

Founding Treaty

The principal bilateral instrument by which the Startup State is constituted, the 999-year sovereign lease is granted, the condominium arrangement is established, the rights and obligations of both parties are defined, and the Grantor State formally recognises the new entity as an independent

state with full international legal personality. The Model Treaty in Annex A of this study constitutes a hypothetical and illustrative Founding Treaty. The Founding Treaty is the *lapis angularis* of the entire construction: the cornerstone upon which every subsequent element of the Startup State's legal existence is built.

Grantor State

The existing, recognised, United Nations Member State that holds clear and undisputed territorial title (*dominium*) over the relevant territory and enters into the Founding Treaty as the constitution-enabling party. The Grantor State retains *dominium* throughout the 999-year term; it grants only plenary governing authority (*plenam jurisdictionem*) to the Startup State. The identity, constitutional stability, and international standing of the Grantor State are the single most consequential design variables in the entire construction.

Startup State

The entirely new state constituted *de novo* by the Founding Treaty upon uninhabited, undisputed dry land owned by the Grantor State. The Startup State has no pre-existing community, government, or constitutional order at the moment of its creation. From the moment of the Founding Treaty's entry into force, the Startup State acquires full international legal personality and the capacity to enter into relations with other states.

Tabula Rasa State

A state constituted entirely *de novo* upon territory that had no prior permanent population, organised government, or constitutional order. The expression *tabula rasa*, from the Latin for a blank or scraped slate, captures the most distinctive and legally significant feature of the proposed construction: it brings into existence a state that is entirely unencumbered by the historical grievances, ethnic conflicts, territorial disputes, and institutional dysfunctions that beset every state that has emerged from the political upheavals and decolonisation processes of the twentieth century.

999-Year Sovereign Lease

The core instrument by which the Grantor State grants plenary jurisdictional authority (*imperium*) over the defined territory to the Startup State for a term of 999 years, whilst retaining underlying title (*dominium*). The lease duration is designed to provide the Startup State with the institutional permanence necessary for statehood whilst preserving the Grantor State's reversionary interest. The legal character of the sovereign lease is

analysed in Part IV; the dominium/imperium distinction is explained in Section 2.3.

Part B: Doctrinal Terms and Legal Maxims

Bona fides

“Good faith.” The foundational requirement of honest and fair dealing in all legal relations. Codified in Article 26 of the Vienna Convention on the Law of Treaties (1969) as the governing standard of treaty performance under the principle *pacta sunt servanda*. A party acting in breach of *bona fides* forfeits its right to rely upon the benefit of its obligations.

De facto / De jure

“In fact” / “In law.” A state exercises authority *de facto* in practice; it possesses legal recognition *de jure*. The construction proposed in this study is designed to achieve both simultaneously from the moment of the Founding Treaty’s entry into force: *de jure* recognition by the Grantor State is immediate and treaty-documented; *de facto* authority is established progressively as the Startup State builds its governmental institutions.

De novo

“Anew” or “from the beginning.” The Startup State is constituted *de novo*: it is not the transformation of any pre-existing entity, the elevation of any existing community, the recognition of any existing polity, or the continuation of any prior constitutional order. It is, from its very first moment, something entirely new.

Dominium / Imperium

Two foundational concepts inherited from Roman private law and preserved in the vocabulary of modern international legal doctrine. *Dominium* is the right of ownership and underlying title in a territory: the proprietary foundation upon which governmental authority rests. *Imperium* is the right to exercise governmental authority and jurisdiction over a territory and its inhabitants: the governmental expression of sovereignty. The analytical key to the entire construction is the recognition that international law has long permitted the disaggregation of *dominium* from *imperium*: the Grantor State retains *dominium* throughout the 999-year term whilst granting *plenam jurisdictionem*, plenary *imperium*, to the Startup State.

Ex injuria jus non oritur

“Law does not arise from an unlawful act.” A fundamental principle of international law, affirmed by the International Court of Justice in numerous deci-

sions, which holds that rights and legal relationships cannot be founded on acts that are themselves unlawful. The proposed construction is designed to satisfy this principle in every material respect: the formation of the Startup State involves no use of force, no violation of self-determination, no breach of any peremptory norm of international law (*jus cogens*), and no act of illegality of any description.

Fraus omnia corrumpit

“Fraud vitiates everything.” A foundational principle of legal integrity, operative across all legal systems including international law, holding that rights and entitlements obtained through fraud or deception have no legal validity. Its relevance to the present construction is as a safeguard against abuse: any attempt to deploy the Startup States framework for purposes of sanctions evasion, criminal concealment, or deliberate deception would be extinguished by this principle, and the construction’s own transparency imperatives are designed precisely to ensure that no such deployment can succeed.

Jus cogens

“Peremptory norms.” The highest category of international legal norms, from which no derogation is permitted by any treaty or contrary state practice. Codified in Article 53 of the Vienna Convention on the Law of Treaties (1969), *jus cogens* norms include the prohibition on genocide, the prohibition on slavery, the prohibition on the use of force against the territorial integrity of states, and the right of self-determination of peoples. Any treaty or arrangement that conflicts with a *jus cogens* norm is void *ab initio*. The Startup States construction is designed to be *jus cogens* compliant in every respect.

Lapis angularis

“The cornerstone” or “foundation stone.” Employed in this study to describe the recognition extended by the Grantor State to the Startup State in the Founding Treaty, which is the foundational and constitutive act upon which all subsequent recognition by third states depends and from which the Startup State’s entire legal edifice is constructed. A construction built upon an uncertain or defective *lapis angularis* will, in the Latin phrase applied to buildings, collapse at its foundation.

Nemo dat quod non habet

“No one can give what they do not have.” A foundational principle of property and territorial law holding that a grantor can convey no greater title than they themselves possess. The proposed construction is acutely sensitive

to this principle: the quality of the Startup State's possessory interest in the leased territory is entirely derivative of the Grantor State's underlying *dominium*. Exhaustive legal due diligence on the chain of title to the leased territory is therefore not merely advisable but indispensable.

Nomen iuris non mutat rem

"The name in law does not change the thing." A principle of legal substance over form, employed in this study to underline that the characterisation of the arrangement as a "lease" does not determine its legal effect. What matters in international law is the substantive content of the rights and obligations created, not the label applied to the instrument. The 999-year sovereign lease grants plenam jurisdictionem of such comprehensiveness that its practical effect is indistinguishable from full sovereignty, regardless of the label.

Numerus clausus

"A closed number." In international law, the *numerus clausus* character of the territorial order refers to the fact that, for all practical purposes, every square metre of dry land on Earth is already subject to a territorial claim. There is no *terra nullius* remaining from which a new state could be constituted by original occupation. This structural closure is the foundational premise of the entire white paper: it is the reason why the 999-year sovereign lease from a willing Grantor State is not merely one approach amongst several, but one of the most legally robust, politically viable, and ethically defensible approaches to *de novo* state formation on dry land available within the existing international legal order.

Opinio juris sive necessitatis

"Opinion of law or necessity." The subjective element of customary international law: the belief of states that their practice is legally obligatory rather than merely habitual. Together with consistent state practice, *opinio juris* is one of the two constituent elements of customary international law, as confirmed by the International Court of Justice in the North Sea Continental Shelf Cases (1969).

Pacta sunt servanda

"Agreements must be kept." Article 26 of the Vienna Convention on the Law of Treaties (1969): "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." This is the bedrock of treaty law and the foundation of the Founding Treaty's long-term durability. Its corollary, *rebus sic stantibus*, permits treaty modification only in the most

exceptional circumstances of fundamental change, as confirmed by the ICJ in the Gabčíkovo-Nagymaros Project (1997).

Terra nullius

“Land belonging to no one.” In classical international law, territory not subject to any territorial claim and therefore available for acquisition by occupation. As this analysis suggests in Part II, no terra nullius remains on dry land on Earth. This structural closure is the foundational premise of the entire construction: it is the reason why the sovereign lease is one of the most practically viable pathways to de novo state formation on dry land.

Uti possidetis juris

“As you possess under law, so shall you possess.” The principle, applied by the International Court of Justice in the Frontier Dispute (Burkina Faso v Mali, 1986), that newly independent states succeed to the boundaries inherited from the colonial order. The principle, which reflects the international community’s deep and settled preference for territorial stability over the revisability of established arrangements, is relevant to the Startup States construction in the following precise sense: it illustrates the systemic bias of international law in favour of clearly defined, publicly documented, and internationally registered territorial arrangements. The Startup State’s territorial definition, comprehensively set out in Schedule 1 of the Founding Treaty and registered with the United Nations Secretariat pursuant to Article 102, engages this systemic preference directly. The enhanced stability that the International Court of Justice has consistently attributed to territorial treaties: confirmed in the Temple of Preah Vihear (1962), the Aegean Sea Continental Shelf Case (1978), and the Territorial Dispute (Libya v Chad) (1994): provides the operative legal authority for the Startup State’s territorial durability, whilst *uti possidetis juris* illustrates the broader normative commitment to territorial certainty that those decisions reflect

Volenti non fit injuria

“To a willing person, no injury is done.” The Grantor State’s free, informed, and constitutionally regular consent to the Founding Treaty is a complete answer in international law to arguments that the arrangement is harmful, exploitative, or violative of the Grantor State’s rights. Consent, freely given, is the most fundamental principle of both private and public law.

Recognition Sequence

The ordered series of recognition acts by which a new state builds its international legal standing progressively, beginning with the Grantor State’s

recognition in the Founding Treaty (the *lapis angularis*), followed by an initial cluster of sympathetic states, and thereafter expanding through bilateral diplomatic relations, specialised-agency membership, and ultimately United Nations membership. Recognition sequencing is a strategic question as well as a legal one: each recognition act in the sequence strengthens the new state's legal position and makes subsequent recognitions easier to obtain.

Declaratory Theory of Recognition

The theory, associated with writers such as Brierly and Chen and reflected in Article 3 of the Montevideo Convention, that recognition by other states is merely declaratory of a legal status (statehood) that pre-exists the act of recognition. On this view, a state that satisfies the Montevideo criteria has legal existence regardless of whether other states choose to extend recognition. The declaratory theory favours the Startup States construction because it grounds the new entity's legal existence in the objective satisfaction of statehood criteria rather than in the political discretion of third states.

Constitutive Theory of Recognition

The competing theory, associated with Anzilotti, Kelsen, and Lauterpacht, that recognition by other states is a constitutive act without which a new entity cannot possess international legal personality. On the strict constitutive view, statehood is conferred, rather than merely confirmed, by recognition. The Startup States construction is designed to withstand scrutiny under both theories: it satisfies the Montevideo criteria in their own right (satisfying the declaratory test), whilst the Grantor State's recognition in the Founding Treaty provides an immediate and irrefutable constitutive act from which the new entity's international personality flows.

Effective Control

The practical exercise of governmental authority over a defined territory and population, sufficient to satisfy the Montevideo criterion of "government" and to generate legal consequences under international law including state responsibility. Effective control is the operative test applied by international courts and tribunals: as confirmed in the *Island of Palmas* Case, it is demonstrated by the continuous and peaceful display of state authority rather than by mere formal proclamation.

International Legal Personality

The capacity to be a bearer of rights and obligations under international law. States possess full international legal personality as a matter of their constitutive character; other entities (international organisations, individuals, corporations) possess more limited forms of personality depending upon the relevant legal instruments. The Startup State acquires full international legal personality from the moment of the Founding Treaty's entry into force, by virtue simultaneously of the Grantor State's recognition, the satisfaction of the Montevideo criteria, and the registration of the Founding Treaty under Article 102 of the United Nations Charter.

Territorial Treaty

A treaty whose subject matter concerns the territorial boundaries, titles, or governing arrangements of defined territory, as distinct from a contractual treaty governing merely the mutual rights and obligations of the parties inter se. The International Court of Justice has consistently held that territorial treaties possess enhanced durability and are more resistant to unilateral variation under the doctrine of *rebus sic stantibus*: see *Temple of Preah Vihear* (1962), *Territorial Dispute (Libya v Chad)* (1994). The Founding Treaty is a territorial treaty, and this characterisation is central to the analysis of its durability in Part XIV.

Reversionary Interest

The Grantor State's retained right to resume full governmental authority over the leased territory upon the natural expiry of the 999-year term, or upon any lawful earlier termination pursuant to the Founding Treaty's provisions. The reversionary interest is the legal expression of the Grantor State's retained *dominium*; its preservation throughout the lease term is the mechanism by which the construction avoids amounting to a cession of territory and demonstrates that the arrangement is a lease rather than a transfer.

Protectorate

A territorial arrangement in which one state (the protecting state) exercises a degree of control over the foreign affairs, defence, or internal governance of another entity (the protected entity), typically on a permanent or indefinite basis and as a matter of the protecting state's legal right rather than of contractual service. A protectorate differs from the Startup States construction in a critical respect: the Grantor State's provision of defence, policing, and judicial services under the Founding Treaty is a contractual service arrangement, terminable by the Startup State on reasonable notice,

and progressively internalised as the Startup State builds its own institutional capacity. Legal authority over all governmental functions is vested in the Startup State from the moment of the Founding Treaty's entry into force; the Grantor State provides operational services under contract, not supervisory authority as of right.

Client State

A state that is formally independent but whose external policies, security arrangements, or economic conduct are substantially directed by a dominant external power as a matter of political dependence rather than contractual service. The Startup States construction is designed not to produce a client-state relationship: the Startup State's foreign policy, constitutional arrangements, and governance decisions are its own from the outset; the Grantor State's contracted services are reviewable, renegotiable, and progressively terminable by the Startup State itself.

Outsourced Sovereign Function (Sovereign Service Agreement)

An arrangement under which a state, which retains full legal authority over a governmental function, contracts with another state or entity for the operational delivery of that function. Sovereign service agreements are distinct from protectorates and client-state relationships because legal authority remains vested in the contracting state whilst operational capacity is provided under a reviewable and terminable commercial or treaty arrangement. Examples in existing practice include New Zealand's responsibility for the defence of the Cook Islands under the free association relationship established in 1965, Monaco's defence arrangement with France under the 2002 Treaty, and Liechtenstein's customs union with Switzerland. The Founding Treaty's defence, policing, and judicial administration agreements are sovereign service agreements in this sense.

Article 102 Registration

The obligation, imposed by Article 102 of the United Nations Charter, upon every Member State that is a party to a treaty or international agreement entered into after the Charter's entry into force, to register that treaty or agreement with the United Nations Secretariat as soon as possible. A treaty not so registered may not be invoked before any organ of the United Nations. The Founding Treaty must be registered under Article 102 as a matter of legal obligation and strategic transparency; registration places the new state's foundational instrument on the permanent public record of

the international community and provides formal documentary evidence of the arrangement's legal character.

De Facto State

An entity that exercises effective governmental control over a defined territory and population but lacks widespread formal recognition by the international community. Examples include Somaliland, the Turkish Republic of Northern Cyprus, and Kosovo in its early period. The Startup States construction is designed precisely to avoid the *de facto* state condition by ensuring that the new entity's legal foundations are impeccable and that its recognition strategy is coordinated so as to generate *de jure* status alongside *de facto* control from the moment of the Founding Treaty's entry into force.

Transitional Sovereign Capacity

The condition of a new state that possesses full international legal personality and legal authority from the moment of its constitution, but which relies during an initial formative period upon contracted external provision of certain governmental services (defence, policing, judicial administration) whilst building its own institutional infrastructure. Transitional sovereign capacity is legally distinct from both a protectorate and a client-state relationship: it is a temporary and voluntary contractual arrangement that the Startup State can review, renegotiate, and terminate as its own institutional capacity develops. The concept is analogous to a company that relies upon outsourced legal, financial, or administrative services during its early development whilst retaining full legal authority over its own affairs throughout.

Constitutional Regularity

The requirement that the Grantor State conclude and ratify the Founding Treaty through procedures that are valid under its own constitutional order, and that any internal defect capable of engaging Article 46 of the Vienna Convention on the Law of Treaties be excluded. Constitutional regularity is not a decorative virtue. It is the first line of defence against later claims that the treaty was *ultra vires*, voidable, or politically illegitimate.¹

Founding Covenants

1 On constitutional regularity and the restrictive operation of Vienna Convention Article 46, see Anthony Aust, *Modern Treaty Law and Practice* (3rd edn, CUP 2013) 257-262; Mark E Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff 2009) 583-596.

The core substantive commitments embedded in the Founding Treaty and the Startup State's initial constitutional settlement, especially neutrality, demilitarisation, beneficial-ownership transparency, anti-corruption safeguards, environmental protection, and the staged internalisation of outsourced sovereign functions. These covenants convert an otherwise abstract claim to statehood into a verifiable framework of institutional responsibility.

Recognition Gap

The period, potentially brief but legally significant, between the Startup State's constitution by treaty and the accumulation of wider third-state recognition or formal admission to international organisations. A central aim of the construction is to narrow this interval as far as possible through simultaneous legality of origin, immediate Grantor State recognition, Article 102 registration, and carefully sequenced diplomacy.²

Constitutional Asset Leveraging

The deployment by the Grantor State of a constitutionally controlled territorial competence in order to generate economic, diplomatic, or institutional value without alienating underlying title. The expression captures the political economy of the sovereign lease: the state uses sovereignty productively rather than merely holding territory in a static form.

Beneficial Ownership Transparency

The requirement that the Startup State's constitutional and treaty architecture disclose the real persons who own, control, or materially benefit from entities operating within the jurisdiction. Beneficial-ownership transparency is an essential safeguard against sanctions evasion, corruption, organised crime, and the accusation that the new jurisdiction is merely a veil for concealed interests.³

Transition Benchmarks

Publicly specified legal and administrative milestones that govern the orderly replacement of outsourced defence, policing, judicial, or regulatory

2 On the narrowing of recognition gaps through early diplomatic sequencing and legality of origin, see Thomas D Grant, *Recognition of States: Law and Practice in Debate and Evolution* (Praeger 1999) 81-106; Jure Vidmar, *Democratic Statehood in International Law* (Hart 2013) 45-54.

3 On beneficial ownership transparency as a safeguard against sanctions evasion and illicit finance, see Jason Sharman, *Despot's Guide to Wealth Management* (Cornell University Press 2017) 97-122; Daniel W Drezner, *The Sanctions Paradox* (CUP 1999) 139-166.

services with the Startup State's own institutions. Transition benchmarks help distinguish temporary scaffolding from permanent dependency and make the path from formal to fully operational sovereignty auditable.⁴

Part C: Key Cases and Tribunals

Island of Palmas Case (Netherlands v USA, 1928)

Decided by the Permanent Court of Arbitration under Arbitrator Max Huber. The leading authority on territorial sovereignty and the requirements of effective occupation, confirming that territorial sovereignty requires the "continuous and peaceful display of state authority." The case is the foundational authority for the proposition that effectiveness, not mere discovery or formal proclamation, is the operative test of territorial title.⁵

Clipperton Island Case (France v Mexico, 1931)

An arbitral decision by King Victor Emmanuel III of Italy, confirming that uninhabited and remote territory could be effectively occupied through a sufficiently clear act of sovereignty. The case is significant for the proposition that symbolic acts of sovereignty, coupled with the absence of competing claims, may be sufficient for the acquisition of territorial title over uninhabited territory.⁶

Legal Status of Eastern Greenland (Denmark v Norway, PCIJ, 1933)

The Permanent Court of International Justice confirmed that a state need only demonstrate a modest and intermittent display of authority over remote, sparsely inhabited territory to establish effective occupation. The standard is contextually adjusted to the nature of the territory.⁷

4 On benchmark-based transitions in public administration and post-conflict state-building, see Ashraf Ghani and Clare Lockhart, *Fixing Failed States* (OUP 2008) 95-126; Francis Fukuyama, *State-Building* (Profile Books 2004) 17-41.

5 *Island of Palmas Case (Netherlands v USA)* (1928) 2 RIAA 829 (PCA). Arbitrator: Max Huber. The leading authority on territorial sovereignty and the continuous and peaceful display of state functions as the operative test of effective occupation.

6 *Clipperton Island Case (France v Mexico)* (1931) 26 AJIL 390. Arbitrator: King Victor Emmanuel III of Italy. The award confirmed that symbolic acts of sovereignty, coupled with the absence of competing claims, are sufficient for the acquisition of territorial title over uninhabited and remote territory.

7 *Legal Status of Eastern Greenland (Denmark v Norway)* (1933) PCIJ Ser A/B No 53. The Court held that Norway's proclamation of sovereignty over Eirik Raudes Land was invalid and that Denmark had acquired sovereignty over all of Greenland on the basis of a relatively modest and intermittent display of state authority.

Western Sahara Advisory Opinion (ICJ, 1975)

The International Court of Justice confirmed that territory inhabited by politically organised communities, even if those communities did not conform to European models of statehood, was not *terra nullius* at the time of Spanish colonisation. The case is significant as a limit on the classical doctrine of occupation.⁸

East Timor Case (Portugal v Australia, ICJ, 1995)

The Court confirmed the *erga omnes* character of the right to self-determination: it is a right operative against all states. The Court declined jurisdiction over Australia because Indonesia had not accepted the Court's compulsory jurisdiction.⁹

Kosovo Advisory Opinion (ICJ, 2010)

The Court held that Kosovo's unilateral declaration of independence did not violate general international law, the prohibition on the use of force, or Security Council Resolution 1244. Critically, the Court declined to rule that a general prohibition on declarations of independence existed in international law. The Opinion is frequently over-read: it does not provide authority for the proposition that unilateral declarations of independence are lawful as a general rule.¹⁰

Frontier Dispute (Burkina Faso v Mali, ICJ, 1986)

The Chamber of the ICJ articulated and applied the principle of *uti possidetis juris* in the African context, holding that newly independent states succeed to the boundaries inherited from the colonial order. The leading authority on territorial stability in the context of decolonisation.¹¹

Tinoco Arbitration (Great Britain v Costa Rica, 1923)

⁸ Western Sahara Advisory Opinion [1975] ICJ Rep 12. The Court concluded that the Western Sahara was not *terra nullius* notwithstanding the absence of formal state structures, because the territory was inhabited by politically organised communities.

⁹ East Timor Case (Portugal v Australia) [1995] ICJ Rep 90. The Court confirmed the *erga omnes* character of the right to self-determination. The Court declined jurisdiction over Australia because Indonesia had not accepted the Court's compulsory jurisdiction.

¹⁰ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion [2010] ICJ Rep 403. The Court held by ten votes to four that Kosovo's unilateral declaration of independence did not violate general international law. The Court declined to rule on any consequences in terms of recognition.

¹¹ Case Concerning the Frontier Dispute (Burkina Faso v Mali) [1986] ICJ Rep 554. The Chamber of the ICJ articulated the principle of *uti possidetis juris* as applicable in the African context as a matter of customary international law.

Arbitrator William Howard Taft (later Chief Justice of the United States Supreme Court) held that non-recognition by Great Britain did not preclude Costa Rica's international responsibility for obligations assumed during the Tinoco government's period of effective control. The case establishes that factual effectiveness, not foreign recognition, is the operative criterion for governmental authority.¹²

North Sea Continental Shelf Cases (ICJ, 1969)

The Court confirmed that estoppel in international law requires a clear and consistent course of conduct upon which other states have relied to their detriment. The case is the leading authority on the requirements of estoppel in international law and is directly relevant to the irrevocability of the Grantor State's recognition.¹³

Gabčíkovo-Nagymaros Project (Hungary v Slovakia, ICJ, 1997)

The Court confirmed that a change of government does not in itself terminate or suspend a state's treaty obligations, that states are bound by the treaty commitments of their predecessors, and that the principle of *pacta sunt servanda* requires good faith performance of treaty obligations throughout their duration, regardless of political change. The case is the primary authority for the long-term durability of the Founding Treaty.¹⁴

Conditions of Admission Advisory Opinion (ICJ, 1948)

The Court held that the conditions for United Nations membership set out in Article 4(1) of the UN Charter are exhaustive. No additional political conditions may lawfully be imposed by the Security Council or the General Assembly.¹⁵

¹² Tinoco Arbitration (Great Britain v Costa Rica) (1923) 1 RIAA 369. Arbitrator: Chief Justice William Howard Taft. The award held that factual effectiveness, not foreign recognition, is the operative criterion for governmental authority.

¹³ North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands) [1969] ICJ Rep 3. The Court held that estoppel in international law requires a clear and consistent course of conduct upon which other states have relied to their detriment.

¹⁴ Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia) [1997] ICJ Rep 7. The Court confirmed that the principle of *pacta sunt servanda* applies with full force to long-duration treaties and that a change of government does not terminate a state's treaty obligations.

¹⁵ Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion [1948] ICJ Rep 57. The Court held by nine votes to six that the conditions for UN membership listed in Article 4(1) are exhaustive.

Lateran Treaty (1929)

The Treaty between the Holy See and the Kingdom of Italy that constituted the Vatican City State as an independent state *de novo* upon a precisely defined parcel of territory within Rome. The Lateran Treaty is the *locus classicus* for the proposition that statehood can be created by treaty upon a blank slate, and is the single most directly apposite historical precedent for the Startup States construction.¹⁶

Åland Islands Case (League of Nations, 1920)

The Committee of Jurists appointed by the League of Nations Council in 1920 to examine the Åland Islands dispute between Finland and Sweden produced what is widely regarded as the foundational authority on the distinction between self-determination as political aspiration and as legal entitlement. The Committee concluded that the principle of self-determination of peoples, whilst politically significant, had not yet attained the status of a positive rule of international law generating a right of unilateral secession by a minority population from the state of which it forms part. The Special Rapporteur's report observed that the absolute recognition of such a right would inaugurate a process that must inevitably lead to anarchy and the dissolution of society. The case is foundational for the Startup States construction: it confirms, from the earliest stratum of modern international law, that the parent state's consent is the pivotal legal condition for the lawful creation of a new state within the territory of an existing one, and that this consent, when given through a constitutional treaty process, transforms what would otherwise be legally unavailable into what is legally unimpeachable.

Badinter Arbitration Commission (European Community, 1991 to 1993)

The Arbitration Commission of the Conference on Yugoslavia (Badinter Commission), established in 1991, delivered fifteen opinions on questions of statehood, recognition, and succession arising from Yugoslavia's dissolution. The Commission's criteria for recognition (including democratic governance, human rights, and minority protections) have become an influential supplement to the Montevideo criteria in contemporary recognition practice.

Reference re Secession of Quebec (Supreme Court of Canada, 1998)

¹⁶ Treaty between the Holy See and Italy (Lateran Treaty), 11 February 1929, 130 LNTS 243. See James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) 221–226.

In August 1998, the Supreme Court of Canada delivered an advisory opinion holding that international law does not grant a unilateral right of secession to constituent parts of states, except possibly in cases of fundamental denial of internal self-determination. The opinion established that consensual, constitutionally authorised separation remains the lawful pathway to new state formation, and it is precisely that approach which the Startup States construction adopts.

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (ICJ, 2004)

In its Advisory Opinion of 9 July 2004, the International Court of Justice confirmed and extended the analysis of the East Timor case (1995) on the erga omnes character of the right of peoples to self-determination. The Court held that the right of the Palestinian people to self-determination is an erga omnes right: a right owed by all states to the international community as a whole, the violation of which entitles all states, not merely directly injured states, to invoke the responsibility of the violating state. The Court also confirmed that the principle of self-determination, as enshrined in the United Nations Charter and elaborated in General Assembly Resolutions 1514(XV) and 2625(XXV), is applicable beyond the strict colonial context. The Advisory Opinion is relevant to the Startup States construction as confirmation that the erga omnes character of self-determination means that the international community as a whole has a legitimate interest in the manner in which new states are created: constructions that comply with the principle of self-determination, as the Startup States construction does by premise (there being no demos to whose self-determination the construction could be adverse), engage this universal interest in a positive rather than a confrontational direction.

The European Court of Human Rights and Unrecognised Entities: Cyprus, the TRNC, and Related Cases

The European Court of Human Rights, while not a tribunal of statehood determination, has generated relevant jurisprudence concerning unrecognised entities. In *Cyprus v Turkey* (2001), the Court held that Turkey exercised effective overall control over the TRNC, generating human rights obligations. This jurisprudence confirms that effective control, rather than formal recognition, generates legal consequences; a principle directly relevant to the Startup State's position in the period between constitution and widespread recognition.

Part D: Key Treaties and Instruments

Montevideo Convention on the Rights and Duties of States (1933)

Regional (inter-American) convention concluded at Montevideo on 26 December 1933, widely regarded as reflecting customary international law on the criteria of statehood. Article 1 provides the canonical four criteria: a permanent population; a defined territory; a government; and the capacity to enter into relations with other states. The criteria are widely understood as necessary but not exhaustive, and must be applied contextually.

Vienna Convention on the Law of Treaties (1969)

The foundational instrument of treaty law, concluded at Vienna on 23 May 1969 (1155 UNTS 331). Key provisions include Article 26 (*pacta sunt servanda*), Article 27 (internal law and observance of treaties), Article 31 (general rule of interpretation), Article 46 (provisions of internal law regarding competence), Article 53 (*jus cogens*), and Article 64 (emergence of a new peremptory norm).

Vienna Convention on Succession of States in Respect of Treaties (1978)

Governs the succession of treaty obligations upon territorial changes, including the creation of new states. Article 16 provides that a newly independent state is not bound to maintain in force any treaty by reason only of the fact that the treaty was in force in respect of the predecessor territory.

United Nations Convention on the Law of the Sea (UNCLOS, 1982)

The comprehensive treaty governing all aspects of ocean space, concluded at Montego Bay on 10 December 1982 (1833 UNTS 3). Examined in Part III in connection with the limitations of maritime alternatives to dry-land state formation. Article 60(8) expressly provides that artificial islands do not possess the status of islands and have no territorial sea of their own.

Lateran Treaty (1929)

The Treaty between the Holy See and the Kingdom of Italy, concluded on 11 February 1929, which constituted the Vatican City State as a territorial state. The Lateran Treaty is the most important single precedent for the Startup States construction because it demonstrates that international law permits the *de novo* creation of a state by bilateral treaty. The Vatican precedent is examined in detail in Section 6.2.

Antarctic Treaty (1959)

Concluded at Washington on 1 December 1959 (402 UNTS 71). Article IV preserves all existing territorial claims and rights in Antarctica whilst

prohibiting the assertion of new claims or the enlargement of existing claims during the Treaty's operation. The Treaty definitively forecloses state formation on the Antarctic continent for the foreseeable future.

Outer Space Treaty (1967)

Article II prohibits the national appropriation of outer space, including the Moon and other celestial bodies, by claim of sovereignty, by use or occupation, or by any other means. This provision forecloses state formation in outer space under the current legal regime, as examined in Part III.

United Nations Charter (1945)

Article 2(4) prohibits the threat or use of force against the territorial integrity or political independence of any state. Article 4(1) sets out the exhaustive criteria for United Nations membership: peace-loving, acceptance of the Charter obligations, ability and willingness to carry them out. Article 102 requires registration of all treaties with the UN Secretariat.

Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (1983)

The Vienna Convention on Succession of States in Respect of State Property, Archives and Debts was adopted on 8 April 1983 (UN Doc A/CONF.117/14) but has attracted limited ratifications. It represents, nonetheless, an important codification of the customary international law principles governing the distribution of property, archives, and debt obligations upon the dissolution of a state, the separation of part of a state's territory, or the emergence of a new independent state. In the context of the Startup States construction, the 1983 Convention is relevant to the question of how the state property located within the leased territory should be treated upon the Founding Treaty's entry into force: the Convention's general approach of allocating to the new state the property situated in its territory, and the debt attributable to its territory, provides a useful default framework for the property and financial provisions of the Founding Treaty, even where the Convention itself is not formally binding upon the parties.

UNGA Resolution 1514(XV): Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)

General Assembly Resolution 1514(XV), adopted on 14 December 1960, is the foundational instrument of the decolonisation era. It proclaims the right of all peoples to self-determination and declares the subjection of peoples to alien subjugation, domination, and exploitation to consti-

tute a denial of fundamental human rights, contrary to the Charter of the United Nations, and an impediment to the promotion of world peace and co-operation. It further declares that immediate steps shall be taken to transfer all powers to the peoples of territories that have not yet attained independence, without any conditions or reservations. The Declaration is widely regarded as declaratory of customary international law and is cited as primary authority in virtually all subsequent cases and instruments concerning the right of self-determination. It is relevant to the Startup States construction as a contextual backdrop: the construction does not engage the decolonisation framework (there is no colonial population and no alien subjugation), and its consensual architecture is precisely what the Declaration's condemnation of unilateral and non-consensual forms of subjugation was designed to address.

UNGA Resolution 1541(XV) (1960)

General Assembly Resolution 1541(XV), adopted on 15 December 1960, supplemented Resolution 1514(XV) by articulating the three legitimate outcomes of the decolonisation process: the emergence of an independent state; free association with an independent state; and integration with an independent state. Resolution 1541 also introduced the 'salt water thesis', according to which the self-determination principle was understood, in its application to non-self-governing territories, to concern primarily peoples geographically separated from the administering power by an expanse of ocean. The resolution is relevant to the Startup States construction in the negative sense: the construction does not involve a non-self-governing territory, does not require the invocation of any of the three decolonisation outcomes, and is entirely outside the framework that Resolution 1541 was designed to govern. Its significance for the construction is confirmatory: it confirms that the right of self-determination, as elaborated in the decolonisation context, does not generate any entitlement or restriction with respect to the consensual creation of a new state on uninhabited territory by two existing states.

UNGA Resolution 2625(XXV): Declaration on Principles of International Law Concerning Friendly Relations (1970)

General Assembly Resolution 2625(XXV) (1970), the Declaration on Principles of International Law concerning Friendly Relations, elaborates the foundational principles of the UN Charter including sovereign equality, territorial integrity, self-determination, and the prohibition of force. The

Declaration is the principal codification of the relationship between territorial integrity and self-determination.

UNGA Resolution 3314(XXIX): Definition of Aggression (1974)

General Assembly Resolution 3314(XXIX), the Definition of Aggression, adopted on 14 December 1974, provides the authoritative General Assembly statement of the acts that constitute aggression for the purposes of the Charter framework. Article 3 enumerates categories of acts of aggression; Article 5 provides that no territorial acquisition or special advantage resulting from aggression is, or shall be, recognised as lawful. The definition is relevant to the Startup States construction as a further confirmation of the legal architecture within which the construction operates: the construction involves no act of aggression (by definition, since it proceeds by treaty and with the full consent of both parties), no use or threat of force, no violation of territorial integrity, and no acquisition of territory resulting from aggression. The Resolution's provisions are entirely consistent with, and in no respect adverse to, the Startup States framework.

The Helsinki Final Act (1975) (Conference on Security and Co-operation in Europe)

The Helsinki Final Act (1975), adopted by the Conference on Security and Co-operation in Europe, affirms both territorial integrity and the right to self-determination, creating a tension that has shaped subsequent state formation disputes. The Startup States construction resolves this tension by operating with the Grantor State's consent, thereby preserving territorial integrity (through retained dominium) whilst enabling a new form of consensual state creation.

The African Union Constitutive Act (2000) and the OAU Charter (1963)

The Organisation of African Unity (OAU), established in 1963, and its successor the African Union (2000), institutionalised the principle of territorial integrity in the African context through the *uti possidetis juris* doctrine. The AU Constitutive Act provides that the borders of Member States as they existed upon independence shall be respected. The Startup States construction does not violate this principle because it is consensual and preserves the Grantor State's underlying title.

ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001)

The International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts, adopted by the ILC at its fifty-third

session in 2001 and commended to the attention of governments by the United Nations General Assembly in Resolution 56/83, represent the most authoritative codification of customary international law on state responsibility. Articles 40 and 41 are of particular relevance to the Startup States construction. Article 40 provides that the regime of serious breaches of obligations arising under peremptory norms of general international law (*jus cogens*) applies to a gross or systematic failure to fulfil such an obligation. Article 41 imposes upon all states a collective duty not to recognise as lawful any situation created by a serious breach of a *jus cogens* norm, and not to render aid or assistance in maintaining that situation. These provisions are the codification of the collective non-recognition obligation that this study engages throughout in the context of the Stimson Doctrine and the general illegality of recognition of states created through force, coercion, or racial oppression. The Startup States construction is specifically designed to satisfy the ILC Articles' requirements in their entirety: the construction involves no breach of any peremptory norm, and its transparency architecture is designed to make that compliance publicly verifiable. A state that recognises the Startup State is therefore not violating any obligation under Articles 40 or 41; it is, on the contrary, exercising a lawful discretion to extend recognition to a construction whose legality of origin is beyond reproach.¹⁷

ILC Draft Articles on Nationality of Natural Persons in Relation to the Succession of States (1999)

The International Law Commission's Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, adopted in 1999 and annexed to United Nations General Assembly Resolution 55/153 of 12 December 2000, address one of the most practically significant human consequences of new statehood: the citizenship rights of persons who find them-

¹⁷ International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), commended to governments by UNGA Res 56/83 (12 December 2001). Text in Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (CUP, 2002). Article 40: serious breach of an obligation arising under a peremptory norm. Article 41: particular consequences of a serious breach. The ILC Commentary on Article 41 confirms that the duty of non-recognition and non-assistance 'applies to situations of illegality established by the articles on State responsibility as a whole,' and does not depend upon a Security Council determination. See James Crawford, *State Responsibility: The General Part* (CUP, 2013) 374-401; J Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (CUP 2002) 242-252 (commentary on Articles 40 and 41).

selves on the territory of a new state at the moment of its creation. Draft Article 1 establishes the fundamental obligation of both the predecessor state and the new state to take all appropriate measures to ensure that persons concerned shall not become stateless as a result of the succession. Draft Article 5 provides a presumption of nationality: persons habitually resident in the territory concerned are presumed to acquire the nationality of the new state unless the state of succession decides otherwise. The relevance of these provisions to the Startup States construction is primarily negative: the territory is uninhabited at the moment of the Founding Treaty's entry into force, and therefore no pre-existing habitually resident population exists whose nationality rights are engaged. The ILC Draft Articles confirm, by necessary implication, that the absence of a pre-existing population eliminates the most contentious and practically difficult dimension of the nationality questions that attend conventional state succession.¹⁸

The Svalbard Treaty (1920) and the Tangier International Zone (1923 to 1956): Treaty-Created Multi-Lateral Access Regimes

Two further treaty-based arrangements merit attention as historical precedents. The Svalbard Treaty (1920) recognised Norwegian sovereignty over the archipelago whilst imposing multilateral access and demilitarisation obligations. The Tangier International Zone (1923–1956) was administered under a multilateral statute whilst preserving Moroccan sovereignty. Both demonstrate that international law accommodates layered governance arrangements over defined territory, as discussed in detail in Part IV.

¹⁸ International Law Commission, Draft Articles on Nationality of Natural Persons in Relation to the Succession of States (1999), annexed to UNGA Res 55/153 (12 December 2000). Draft Article 1 (obligation to prevent statelessness); Draft Article 5 (presumption of nationality for habitual residents). The ILC Commentary confirms that 'the concept of habitual residence is used as a factual connecting factor to avoid statelessness.' See Paul Weis, *Nationality and Statelessness in International Law* (2nd edn, Sijthoff and Noordhoff, 1979); and Sheila Weil, 'Nationality and Statelessness' (2004) 73 *Nordic Journal of International Law* 4.

The Question Presented

The question presented. Is there, within the existing framework of public international law, a lawful, ethically defensible, and practically achievable pathway to the creation of a new, fully independent, internationally recognised state on dry land, through the medium of a treaty-based sovereign lease of uninhabited and undisputed territory from a willing, fully constituted state? If so, what are the conditions, instruments, and institutional architecture required to traverse that pathway with the maximum available legal certainty, diplomatic durability, and governance accountability?

Preliminary Observations: The Thesis, the Context, and the Analytical Framework

There are questions in public international law that are technically demanding in a purely formal sense, and then there are questions that reach to the very foundations of the international legal order itself. The question addressed in this study belongs emphatically to the second category. It asks whether a new independent state may be brought into existence *de novo*, upon a defined parcel of dry land, without the cession or alienation of territorial title, through the medium of a long-term lease of jurisdictional authority coupled with a shared governance arrangement between the new state and the existing territorial owner. It asks, in other words, whether statehood can be designed.¹⁹

¹⁹ The thesis and framework of this study are original. See generally James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006); Malcolm N Shaw, *International Law* (9th edn, CUP 2021); Sir Ian Brownlie, *Principles of Public International Law* (8th edn, OUP 2012).

The thesis of this study is deliberately ambitious but carefully framed. It argues that public international law contains the doctrinal space within which a new state could, in principle, be constituted *de novo* through a treaty-based sovereign lease and condominium arrangement. The argument advanced here is not that this pathway has already been conclusively validated by precedent, but that the existing legal architecture of territorial treaties, state recognition practice, and the Montevideo criteria leaves open a serious and contestable route by which such a construction could be lawfully attempted. The analysis that follows therefore examines whether the relevant doctrines, precedents, and institutional practices plausibly support such a pathway, and what conditions would be required for it to succeed.

The nation state is, in the language of Oppenheim, “the normal subject of international law.”²⁰ States are the primary bearers of international rights and obligations; the principal parties to international treaties; the members of the United Nations and of the specialised agencies of the international system; the entities that recognise one another, that issue passports and levy taxes, and that are ultimately responsible for the governance of their populations and territories. Whatever the future of human political organisation may hold, this study does not speculate. What it addresses is the world as it is, governed by the legal order as it currently stands.

The analytical framework applied throughout this study is continuous with the mainstream understanding of how statehood is assessed, recognised, and stabilised under contemporary international law. It draws on nine foundational treatise authorities routinely cited by courts, arbitral tribunals, governments, and legal advisers: James Crawford’s definitive treatise on the creation of states; Sir Ian Brownlie’s principles of public international law; Malcolm Shaw’s comprehensive treatment of international law; Lassa Oppenheim’s classical formulations; Thomas Grant on recognition; Stefan Talmon on governmental legitimacy; Marcelo Kohen on secession; Nina Caspersen on unrecognised states; and the new generation of scholars including Jure Vidmar, Rowan Nicholson, Mikulas Fabry, Dritero Doli, and Milena Sterio. These authorities converge on a pragmatic synthesis: statehood is assessed through the criteria of effectiveness, legality, and international acceptance, and the treaty-based, consent-driven

²⁰ Lassa Oppenheim, *International Law: A Treatise* (8th edn, ed Hersch Lauterpacht, Longmans 1955) vol I, 118.

pathway is the most reliable and institutionally favoured route to durable and legitimate recognition.²¹

This study proceeds in the following order. Part II examines the closed territorial order and the exhaustion of classical modes of territorial acquisition. Part III examines why maritime, digital, and extraterrestrial alternatives to dry-land state formation fall short of the legal and practical requirements of recognised statehood. Part IV analyses the sovereign lease as a distinct legal instrument. Part V examines the condominium arrangement and its compatibility with full statehood. Part VI analyses the tabula rasa character of the proposed construction and its treaty-created predecessors. Part VII explains the structural superiority of accountable statehood from inception over all historical alternatives. Parts VIII through X address puppet states and the Montevideo criteria. Parts XI through XIV address constitutional integrity, recognition, United Nations membership, and treaty design. Part XV sets out a systematic response to all principal objections. Parts XVI and XVII address geopolitical navigation, residual vulnerabilities, recommended sequencing, and conclusions. Annex A contains the Model Treaty. Annex B synthesises the authoritative doctrinal foundations.

21 Crawford, *Creation of States* ch 2; Shaw, *International Law* ch 5; Brownlie, *Principles* ch 6; Thomas Grant, *Recognition of States: Law and Practice in Debate and Evolution* (Praeger 1999); Stefan Talmon, *Recognition of Governments in International Law* (OUP 1998); Marcelo Kohen (ed), *Secession: International Law Perspectives* (CUP 2006); Nina Caspersen, *Unrecognised States* (Polity 2012); Jure Vidmar, *Democratic Statehood in International Law* (Hart 2013); Rowan Nicholson, *Statehood and the State-Like in International Law* (OUP 2019); Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (OUP 2010); Dritero Doli, *Contested Statehood and International Law* (Brill 2020); Milena Sterio, *The Right to Self-Determination under International Law* (Routledge 2013).

The Closed Territorial Order: The Classical Modes of Acquisition and the Unavailability of Terra Nullius

2.1 The Classical Modes of Territorial Acquisition

To understand why the construction proposed in this study takes the form it does, one must begin with a clear account of what the law actually permits and what it forecloses. The classical modes of territorial acquisition are not merely historical curiosities. They represent the grammar of the international legal order as it pertains to the foundational question of how states come into lawful possession of the territory over which they exercise governmental authority.

Occupation (Original Title). Occupation is the acquisition of sovereignty over *terra nullius*, territory belonging to no state. The Clipperton Island arbitration (1931) established that even extremely remote and uninhabited territory could be effectively occupied through a sufficiently clear act of sovereignty, provided no other state had a prior claim.²² The Island of Palmas Case (1928) confirmed that occupation requires not merely an initial act of sovereignty but a continuous and peaceful display of state authority over time.²³ The decisive modern limitation is absolute: for all practical purposes, there is no *terra nullius* remaining on dry land on Earth. Every square metre of dry land territory is either the territory of a

²² Clipperton Island Case.

²³ Island of Palmas Case 839.

recognised state, claimed by one or more states in circumstances of legal or political dispute, or subject to a special international legal regime such as the Antarctic Treaty System. This structural closure of the terrestrial order is the foundational premise of the entire construction.

Prescription. Acquisitive prescription is the consolidation of title through long, continuous, peaceful, and open exercise of state functions. The Legal Status of Eastern Greenland case (PCIJ, 1933) confirmed that even modest displays of authority may suffice over remote territory.²⁴ However, prescription requires decades at minimum and the absence of protest from competing claimants. It cannot deliver immediate statehood on any practical timescale.

Cession. Cession is the transfer of territorial sovereignty from one state to another by treaty, and it is the cleanest and most legally reliable mode of acquisition available in the modern era. Historical examples include the Louisiana Purchase (1803), in which France ceded a vast territory to the United States for fifteen million dollars; the Adams-Onís Treaty (1819), in which Spain ceded Florida; the Alaska Purchase (1867), in which Russia ceded Alaska for seven million two hundred thousand dollars; and the Treaty of Shimonoseki (1895), in which China ceded Formosa to Japan.²⁵ Cession proper presents difficulties in the present context: it extinguishes the Grantor State's reversionary interest entirely and is likely to encounter domestic constitutional and political resistance as a permanent alienation of national territory. The sovereign lease, as explained in Part IV, resolves both the legal requirement and the political requirement simultaneously by retaining *dominium* in the Grantor State whilst granting *plenam jurisdictionem* to the Startup State.²⁶

²⁴ Legal Status of Eastern Greenland.

²⁵ Louisiana Purchase Treaty, 30 April 1803, 8 Stat 200; Treaty of Amity, Settlement and Limits between the United States of America and His Catholic Majesty (Adams-Onís Treaty), 22 February 1819, 8 Stat 252; Treaty concerning the Cession of the Russian Possessions in North America (Alaska Purchase), 30 March 1867, 15 Stat 539; Treaty of Shimonoseki, 17 April 1895, 181 CTS 217.

²⁶ On the dominium/imperium distinction in the context of cession and lease, see Hugo Grotius, *De Jure Belli ac Pacis* (1625) Bk II ch 3; Emer de Vattel, *The Law of Nations* (1758) Bk I ch 21; Lassa Oppenheim, *International Law: A Treatise* (1st ed, 1905) vol I, §§ 185-190. For the modern analytical application, see Crawford, *Creation of States* 46-50; Shaw, *International Law* ch 5. The Louisiana Purchase Treaty, 30 April 1803, 8 Stat 200; Adams-Onís Treaty, 22 February 1819, 8 Stat 252; Alaska Purchase Treaty, 30 March 1867, 15 Stat 539; Treaty of Shimonoseki, 17 April 1895, 181 CTS 217.

Adjudication. Territory may be allocated or confirmed by international judicial or arbitral decision, most commonly in the resolution of competing boundary claims between existing states. This is not a mode of original acquisition but a method of resolving pre-existing disputes over territory that is already claimed. The most prominent recent example is *Kasikili/Sedudu Island (Botswana v Namibia)* (ICJ, 1999), in which the Court interpreted a nineteenth-century treaty between Great Britain and Germany to determine sovereignty over a small island in the Chobe River: a paradigmatic example of adjudication confirming existing title, not creating new statehood.²⁷ Adjudication has no relevance to the creation of a new state on territory over which there is no existing dispute between third states: it is a mechanism of resolution, not of creation.

Accretion. Accretion is the gradual addition of territory through natural geological processes: volcanic island formation, river delta growth, the deposition of alluvial material, or deliberate land reclamation. It requires no act of sovereignty beyond the original title to the adjacent territory, and its scope is limited by the pace of natural or artificial processes. The limitations of scale render this mode wholly inadequate for the purposes of the present construction: the territory required for a viable Startup State cannot plausibly be accumulated through geological processes operating on any practical timescale, and artificial land reclamation, as demonstrated by the disputes arising from China's South China Sea island-building programme, attracts precisely the kind of international legal controversy that the Startup States construction is designed to avoid.²⁸

Conquest. Conquest has been unlawful since at minimum the Kellogg-Briand Pact (1928) and has been definitively prohibited by Article 2(4) of

²⁷ *Kasikili/Sedudu Island (Botswana v Namibia)* [1999] ICJ Rep 1045. The Court interpreted the Anglo-German Agreement of 1 July 1890 and, applying the Vienna Convention on the Law of Treaties (1969) rules of treaty interpretation, confirmed Botswana's sovereignty over the island. The decision is authoritative on the role of *effectivités* in territorial adjudication and on the relationship between treaty language and subsequent state practice. See also Malcolm Shaw, 'Territory in International Law' (2003) 45 *Netherlands Yearbook of International Law* 61, 78-82.

²⁸ On accretion and artificial island construction, see Brownlie, *Principles* 146-148; Robert Jennings and Arthur Watts (eds), *Oppenheim's International Law* (9th ed, 1992) vol I, 706-707. On the South China Sea artificial island disputes, see *South China Sea Arbitration (Philippines v China)* PCA Case No 2013-19, Award of 12 July 2016 (UNCLOS Annex VII Tribunal), paras 305-316 (artificial island construction does not generate entitlements under UNCLOS and may violate obligations in respect of the marine environment).

the United Nations Charter (1945).²⁹ It is categorically unavailable as a lawful mode of acquisition, and its invocation in the context of this study would be antithetical to the entire ethos of the Startup States project.

The closure of the terrestrial territorial order is reinforced by a further structural observation. International law now recognises only six classical modes of territorial acquisition: occupation, prescription, cession, adjudication, accretion, and conquest. Of these, occupation of *terra nullius* is foreclosed by the absence of unclaimed land; conquest is unlawful under the UN Charter; and prescription, accretion, and adjudication redistribute existing territorial title rather than creating new sovereignty. Only cession, and its functional variant the sovereign lease, offers a pathway to new sovereign arrangements on dry land.

2.2 The Myth of Remaining Terra Nullius: Bir Tawil, Gornja Siga, and Antarctica

A persistent misconception in popular discourse holds that there remain parcels of unclaimed land on Earth that could serve as the foundation for a new state through original occupation. This misconception must be addressed directly and dispelled, because it leads well-intentioned state-formation projects towards a legal dead end.

Bir Tawil. Bir Tawil is a roughly 2,060 square kilometre territory on the border of Egypt and Sudan. It is frequently described in popular media as unclaimed land, and a number of individuals have made theatrical attempts to proclaim sovereignty over it. The reality is legally quite different. Bir Tawil is not *terra nullius*. It lies between two lines drawn during the Anglo-Egyptian Condominium, the political boundary of 1899 and the administrative boundary of 1902, and each of Egypt and Sudan prefers the line that gives it the larger and more valuable Halaib Triangle, with the consequence that neither claims Bir Tawil itself. The better view is that the territory is the residue of an unresolved boundary dispute between two states rather than land open to occupation: a private proclamation of title

²⁹ Kellogg-Briand Pact (General Treaty for the Renunciation of War as an Instrument of National Policy), 27 August 1928, 94 LNTS 57; United Nations Charter, 26 June 1945, 1 UNTS XVI, Art 2(4).

over it would be opposed by both, and neither the absence of a claim nor the absence of administration makes it available to a non-state actor.³⁰

Gornja Siga. Gornja Siga is a small parcel of land on the western bank of the Danube, on the border between Croatia and Serbia, left by the river's changes of course. Croatia claims a boundary drawn from historical cadastral records and Serbia the line of the river; on each state's preferred line Gornja Siga falls to the other, so neither claims it, and Croatian police control access to it. Like Bir Tawil, it is the residue of an unresolved boundary dispute between two states. It is not *terra nullius* in any sense that would allow a private actor to acquire it.³¹

Antarctica. The Antarctic Treaty System expressly preserves all existing territorial claims in Antarctica whilst prohibiting the assertion of new claims or the enlargement of existing claims during the Treaty's operation. No new state can be formed on the Antarctic continent under the current legal regime. The Arctic Ocean, similarly, is subject to the overlapping claims of five coastal states under UNCLOS.

A further dimension of the Antarctic analysis warrants note: Marie Byrd Land, comprising approximately 1.6 million square kilometres in West Antarctica, has never been formally claimed by any state. It is sometimes cited as the last remaining *terra nullius* on Earth. However, the Antarctic Treaty System's Article IV freezes all territorial claims and prohibits new ones, rendering Marie Byrd Land legally unavailable for occupation or sovereign appropriation. The closure of the terrestrial territorial order, discussed in Section 2.1, is therefore complete.

2.3 The Dominion/Imperium Distinction: The Analytical Key

The foundational analytical key to the entire construction is the distinction between *dominium*, the right of ownership and title in a territory, and *imperium*, the right to exercise governmental authority and jurisdiction over

³⁰ For the Halayeb Triangle and the Bir Tawil dispute, see generally Mohammed Goher, "The Bir Tawil Issue between Egypt and Sudan" (2018) 7 International Journal of Humanities and Social Science Research 11.

³¹ For Gornja Siga, see the Croatian-Serbian boundary dispute concerning the course of the Danube and the application of the *thalweg* principle versus the 1848 cadastral maps.

a territory and its inhabitants. This distinction, inherited from Roman private law, remains operative in modern international doctrine.³²

Crawford confirms that the defined territory criterion under Article 1(b) of the Montevideo Convention operates at the level of *imperium* and effective control rather than property ownership.³³ The ICJ confirmed in the North Sea Continental Shelf Cases (1969) that disputed or imprecise borders do not preclude statehood.³⁴ A Startup State exercising exclusive *imperium* over a precisely defined leased territory satisfies the territorial criterion as fully as a state holding both *dominium* and *imperium* over its territory.

In domestic legal systems, *dominium* and *imperium* are typically conjoined in the sovereign. International law has long recognised, however, that the two may be disaggregated. A sovereign may grant to another entity the right to exercise *imperium* over defined territory whilst retaining *dominium*. The proposed construction does not transfer *dominium* at all; it grants *imperium* for 999 years whilst the Grantor State retains ownership and the reversionary interest at term. This disaggregation is the foundational legal architecture of the Startup States model.

The objection most persistently advanced against this construction is that it must either fail to produce genuine sovereignty in the Startup State, or that it must in substance constitute a disguised cession of the Grantor State's territory. This objection dissolves upon precise doctrinal analysis. The construction is best understood as a treaty-based allocation of governing authority rather than a transfer of territorial title. International law has long tolerated, and in numerous historical instances positively required, the functional separation of territorial ownership from governing authority. The lease of the New Territories, the Mandate System, the Saar Territory, the internationalised zones: each instance confirms that the beneficial enjoyment of plenary jurisdiction does not depend upon proprietorial title. The Startup State's sovereignty is not diminished by the retention of *dominium* in the Grantor State any more than a lessee's exclusive possession of leased premises is diminished by the landlord's retained title. The Grantor State's sovereignty is not surrendered by the

32 Hersch Lauterpacht, "Sovereignty over Submarine Areas" (1950) 27 BYIL 376; D P O'Connell, *State Succession in Municipal Law and International Law* (CUP 1967) vol I, ch 4.

33 Crawford, *Creation of States* 48.

34 North Sea Continental Shelf Cases 32.

grant of *imperium* any more than a landlord's freehold title is extinguished by the grant of a long lease. Both states therefore possess, in the full sense available to them under international law, precisely the legal attributes that they claim: the Startup State possesses full international legal personality and plenary jurisdictional authority over its defined territory; the Grantor State retains underlying ownership and the reversionary interest that will restore full governmental authority at term. The arrangement is not a paradox. It is a principled and historically precedented disaggregation of two attributes of sovereignty that, whilst typically conjoined, are analytically and legally distinct.

2.4 The Political Architecture of the Construction: Why the Lease and Condominium Serve the Grantor State

The preceding analysis has established the legal anatomy of the *dominium/imperium* disaggregation. It is equally important to address, with candour, the political architecture that makes this disaggregation attractive, indeed, potentially indispensable, to the Grantor State. The 999-year sovereign lease and the condominium arrangement are not merely technically useful instruments; they are the very features of the construction that render it politically viable for a democratic legislature, a constitutional government, and an electorate to endorse. They deserve to be understood as such.

Consider the political position of a Grantor State government that must take the Founding Treaty to its parliament for ratification. The most predictable and powerful objection its opponents will raise is one of territorial dispossession: that the government has given away part of the nation's land, surrendered a portion of its sovereignty, and created a secession, however benign, from the national patrimony. The construction's response to this objection is not merely a legal technicality; it is a constitutional truth of the first importance.

There is a further observation of considerable legal and political significance. The very act of leasing out territory on the terms described in the Founding Treaty is itself an exercise of sovereignty, not a diminishment of it. Only a bona fide owner can lawfully lease his land. Only a sovereign with full and undivided title can grant to another the right to exercise governmental authority over defined territory. The Founding Treaty is, in this sense, not evidence that the Grantor State has given something away; it is evidence, treaty-grade, internationally registered evidence, of the Grantor

State's unimpeachable ownership of and authority over the territory in question. The landlord who enters into a lease does not thereby weaken his title; he exercises it. The sovereign who enters into the Founding Treaty does not thereby diminish his sovereignty; he deploys it. The Founding Treaty is, among its many other functions, an act of affirmative ownership.

The condominium arrangement reinforces this analysis from a different and complementary direction. A government that is tempted to characterise the Founding Treaty as a cession or a secession must also explain, on that account, why the Grantor State retains, under the treaty's express terms, an active governance role in the new entity. In a true cession, the ceding state walks away. In the Startup States construction, the Grantor State remains, under the condominium provisions, an active and contractually entitled participant in the Startup State's governance during the formative period, providing defence, policing, and judicial administration under bilateral service agreements, retaining the right to participate in the periodic review mechanism, and retaining the reversionary interest that makes the arrangement a lease rather than a transfer. This is not the profile of a state that has surrendered its authority. It is the profile of a state that has engaged that authority in an ambitious, creative, and commercially intelligent arrangement.

The most precise characterisation of what the Grantor State has done is not that it has ceded land or surrendered sovereignty; it is that it has leveraged sovereignty. It has taken a constitutional asset, its plenary authority over a defined parcel of territory, and deployed that asset in an arrangement designed to generate maximum value for all parties. Just as a property owner who develops a previously vacant parcel of land through a long-term lease to a developer has leveraged a dormant asset into a productive one, without in any sense surrendering ownership of it, the Grantor State has leveraged a dormant territorial asset into a dynamic new state, retaining throughout the ownership interest and the reversionary right that are the hallmarks of the landlord's position.

A useful auxiliary analogy is the long-ground-lease redevelopment model familiar to constitutional lawyers, urban planners, and sovereign wealth managers alike. A state that grants a ninety-nine-year concession over a port, financial district, or university quarter does not thereby cease to own the land beneath it; rather, it converts dormant territorial value into productive institutional capital whilst preserving ultimate title. The proposed sovereign lease operates at a higher juridical level, but the political intuition is the same: the Grantor State monetises

and strategically upgrades an under-utilised territorial asset without repudiating its own constitutional continuity.³⁵

This political framing is not sophistry; it is legally accurate. And it is essential that founding principals, Grantor State governments, and the legal counsel advising them understand it fully. The 999-year lease and the condominium are not compromises forced upon the construction by doctrinal difficulty. They are features designed, from the outset, to make the construction not merely legally viable but politically sustainable, sellable to a parliament, defensible before a constitutional court, and explainable to an electorate. The Grantor State is not giving anything away. It is investing its governmental authority in an arrangement that, if properly structured and executed, stands to benefit its treasury, its international standing, and its territorial legacy for centuries.

Interim Conclusion to Part II

The analysis of Part II establishes, with the rigour appropriate to the subject, that the classical territorial order is effectively closed. Every historical mode of territorial acquisition that might have provided a foundation for new statehood without the consent of an existing sovereign is either legally prohibited, factually unavailable, or incompatible with the applicable *jus cogens* norms of the contemporary international legal system. Bir Tawil is disputed, not unclaimed. Antarctica is frozen by treaty. Gornja Siga is contested riverine territory. The modes of conquest, prescription, and cession-without-consent all violate the prohibition on the use of force or the principle of sovereign equality. The most lawful, most consensual, and most institutionally robust mode that remains available is treaty-based cession with the full, free, and informed consent of the territorial sovereign. The remainder of this study is the systematic elaboration of that mode.

³⁵ For long-duration territorial leases and concessionary arrangements as politically intelligible exercises of sovereign control rather than abdications of title, see D P O'Connell, *International Law* (2nd edn, Stevens 1970) vol I, 470-475; A Aust, *Modern Treaty Law and Practice* (3rd edn, CUP 2013) 31-34.

The Limits of Alternative Frontiers: Why Maritime, Digital, and Extraterrestrial Models Fall Short

3.1 The Allure of Alternative Frontiers

The closure of the terrestrial order has generated a proliferation of theoretical frameworks proposing alternative foundations for new political communities: artificial islands on the high seas, network states constituted by digital membership, communities in orbit or on celestial bodies, governments-in-exile, and various species of functional non-state entity. These frameworks share a common and understandable impulse: the desire to escape the constraints of the existing territorial order and to establish new communities on foundations other than the consent of existing states. This study examines each category with care and concludes that none satisfies the legal and practical requirements of recognised statehood under the international legal order as it currently stands.

3.2 Seasteading and Maritime State Formation

The seasteading movement proposes the establishment of permanent, sovereign communities on artificial structures moored or floating on the high seas. The intellectual framework is elegant; the legal obstacles are substantial. UNCLOS Article 60(8) is unambiguous: artificial islands, installations, and structures “do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the conti-

mental shelf.”³⁶ An artificial structure on the high seas cannot generate the maritime zones from which a state derives the bulk of its economic and jurisdictional territory.

The Seasteading Institute’s Polynesia Project, which rested on a memorandum of understanding signed with the Government of French Polynesia on 13 January 2017 that the Government declared in March 2018 to be “not a legal document” and to have expired at the end of 2017, illustrates the fragility of arrangements that lack the comprehensive legal architecture of a Founding Treaty.³⁷ Even where a host government is initially willing, the absence of binding treaty commitments, parliamentary approval, and constitutional entrenchment means that a change of government or a shift in public opinion can extinguish the arrangement overnight. The Startup States approach addresses precisely this vulnerability through the Founding Treaty’s constitutional entrenchment, Article 102 registration, and the irrevocability of treaty-based recognition.

The further difficulty with maritime alternatives is the vulnerability of unmoored or anchored structures to the elements, to the absence of enforceable jurisdiction, and to the complete absence of the territorial permanence that the Montevideo criterion of “defined territory” presupposes. A platform that can be relocated, sunk, or abandoned cannot provide the stable territorial foundation that international law requires for statehood.

3.3 Digital and Network-Based State Formation

The Network State, a concept popularised by Balaji Srinivasan, is defined as “a highly aligned online community with a capacity for collective action that crowdfunds territory around the world and eventually gains diplomatic recognition from pre-existing states.”³⁸ The definition itself concedes, with admirable candour, that physical territory and diplomatic recognition from pre-existing states are necessary conditions for statehood. The Network State concept, as popularised, is therefore not an al-

³⁶ United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 3, Art 60(8).

³⁷ Memorandum of Understanding between the Government of French Polynesia and The Seasteading Institute, 13 January 2017; on the Government’s statement of 3 March 2018 that the memorandum was “not a legal document” and had expired at the end of 2017, see the account at https://en.wikipedia.org/wiki/The_Seasteading_Institute.

³⁸ Balaji Srinivasan, *The Network State* (1729 Press 2022).

ternative to the Startup States approach; it is, at its logical terminus, an imprecise description of a subset of the same construction.

The deeper difficulty with digital state formation is that the international legal order does not recognise digital presence as a substitute for territorial control. States are constituted upon territory; their jurisdiction is territorial; their legal personality is grounded in the effective governance of a defined physical space. A community constituted entirely in cyberspace, however numerous, however aligned, and however wealthy, is not a state under any recognised definition in international law. It is, at best, a very large club.

This does not mean that digital organisation is irrelevant. On the contrary, a digitally coordinated community may supply capital, administrative talent, legal engineering, and an initial population pipeline for a future Startup State. What it cannot supply, by itself, is the territorial jurisdiction on which the international legal order still conditions full international personality. Digital community may therefore be a useful preparatory layer, but it is not a substitute for land, jurisdiction, and constitutionally regular treaty consent.³⁹

3.4 Extraterrestrial State Formation

The Outer Space Treaty (1967) Article II prohibits the national appropriation of outer space, including the Moon and other celestial bodies, by claim of sovereignty, by use or occupation, or by any other means.⁴⁰ The Artemis Accords (2020) do not and cannot modify this prohibition.⁴¹ Under the current legal regime, no state, private actor, or international organisation can acquire territorial sovereignty over any celestial body. The prospect of extraterrestrial state formation, however technologically conceivable in the long run, is legally unavailable under the law as it currently stands.

³⁹ On the distinction between digitally organised communities and territorially constituted states, see James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) 46-52; Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (OUP 2010) 13-18.

⁴⁰ Outer Space Treaty, 27 January 1967, 610 UNTS 205, Art II.

⁴¹ The Artemis Accords (2020). As of March 2026, over forty states have signed. The Accords do not create a pathway to territorial sovereignty.

3.5 Governments in Exile, Functional Non-State Entities, and Sui Generis Arrangements

Governments in exile, whilst they may maintain diplomatic relations and treaty obligations, do not constitute states in the absence of effective territorial control. The Sovereign Military Order of Malta (SMOM) maintains formal diplomatic relations with more than 110 states and possesses a *sui generis* international legal personality grounded in historical recognition pre-dating the modern international legal order.⁴² Its status is genuinely unique and cannot be replicated by any new entity: the SMOM's recognition rests upon centuries of diplomatic practice and cannot be manufactured through institutional design.

3.6 The Conclusion: Dry Land Is the Gold Standard

Each alternative examined in this Part fails, for distinct but related reasons, to satisfy the requirements of recognised statehood under the international legal order as it currently stands. Maritime structures lack territorial permanence, maritime zone generation, and binding legal architecture. Digital communities lack territorial foundation. Outer space is legally foreclosed. Governments in exile lack effective control. Sui generis entities cannot be replicated.

The conclusion follows: dry land, held under plenary jurisdictional authority by means of a comprehensive and constitutionally regular treaty with a willing Grantor State, remains the gold standard of state formation. It is one of the very few pathways that satisfies all four Montevideo criteria simultaneously, provides a stable foundation for the full spectrum of attributes of statehood, and offers a realistic prospect of recognition by the international community of states.

Interim Conclusion to Part III

The analysis of Part III reinforces and extends the conclusion of Part II. The alternative frontiers, whose intellectual appeal to those who seek new forms of political community is readily understandable, each fail at the threshold of the international legal order's basic requirements for statehood. Maritime structures cannot generate territorial seas. Digital com-

⁴² Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes, and of Malta (SMOM). Italian Court of Cassation, Nanni Case (1953). The Order maintains its headquarters at the Palazzo Malta in Rome.

munities lack territory altogether. The Outer Space Treaty forecloses extraterrestrial state formation. Governments in exile lack effective control. *Sui generis* entities cannot be replicated by design. The conclusion that dry land, held under treaty authority from a willing sovereign, is the gold standard of state formation is thus supported not only by the positive case made in the following Parts but by the elimination of every plausible alternative. The most lawful, durable, and ethically defensible pathway to new statehood runs through treaty. The construction proposed in this study is not presented as the sole conceivable mechanism; permanent cession by treaty, international trusteeship, and other consensual arrangements remain available in law; but as among the most practically viable and legally comprehensive options available within the existing international order.

The Sovereign Lease: Legal Character, Historical Precedents, and Critical Distinctions

4.1 The Sovereign Lease as a Distinct Legal Instrument

The dominium/imperium distinction, explained in detail in Section 2.3, is the analytical foundation of this construction. The Grantor State retains underlying title (dominium) whilst the Startup State exercises plenary jurisdictional authority (imperium) within the leased area.

A point of doctrinal precision must be emphasised. The sovereign lease does not attempt to disguise a permanent cession under another name. The arrangement instead creates a layered allocation of legal interests that international law has long recognised in other contexts. The Grantor State retains dominium, the underlying title to the territory, while the Startup State exercises plenary imperium within the leased area for the duration of the treaty. The arrangement therefore produces a jurisdictional configuration that is functionally analogous to sovereignty for the purposes of governance, while remaining formally distinct from a transfer of title. The two characterisations describe different legal dimensions of the same arrangement rather than mutually exclusive propositions.

4.2 Historical Precedents and Partial Analogues

The historical examples discussed in this Part should not be understood as direct precedents for the Startup States construction. Each arose in a distinct political and legal context. They are instead partial analogues

illustrating that treaty law has historically been capable of producing innovative territorial and institutional arrangements. The present construction therefore draws insight from these examples without claiming that any single precedent resolves the question definitively.

A critical distinction must be confronted directly. Every significant historical instance of a territorial lease between states was a grant of rights by one existing sovereign to another existing sovereign. The 99-year lease of the New Territories of Hong Kong to the United Kingdom by China (1898), the 1903 lease of Guantanamo Bay to the United States by Cuba, and the grant of the Panama Canal Zone to the United States in 1903 all conferred additional operational capacity upon a pre-existing legal person; they did not create a new legal person. The proposed construction is therefore doctrinally novel in proposing the lease as the territorial foundation for an entirely new juridical entity.

That novelty is not fatal. Crawford confirms that state formation is governed by criteria of effectiveness, not by formal precedent.⁴³ There are, however, a number of partial analogues that illuminate the legal terrain.

The Saint Brandon Islands (Cargados Carajos Shoals). The Cargados Carajos Shoals, forming part of the territory of Mauritius, are uninhabited save for seasonal fishing operations, and most of their islands are held by a private company, now the Raphael Fishing Company, under a deed of 1901 that described the grant as a “permanent lease”. In 2008 the Judicial Committee of the Privy Council declared that the company is “the holder of a permanent grant of the islands mentioned in the 1901 Deed”, not a lessee, which shows both that such arrangements are justiciable and that the label an instrument bears does not settle its legal character.⁴⁴

The Cocos (Keeling) Islands and the Clunies-Ross Family. The Clunies-Ross family established themselves on the Cocos (Keeling) Islands in 1827 and exercised effective control over the territory and its population for over 150 years, treating the islands as a private domain under a grant that evolved through the colonial period. The islands were placed under Australian administration in 1955; in 1978 the Australian Government purchased most of the family’s interest, and in 1984 the High Court of Australia held invalid an attempt to acquire the family’s home compulso-

⁴³ James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) ch 2.

⁴⁴ *The Raphael Fishing Company Ltd v The State of Mauritius* [2008] UKPC 43 (30 July 2008) paras 4 and 71 <https://www.saflii.org/au/cases/UKPC/2008/43.html>.

rily.⁴⁵ The Cocos (Keeling) Islands case illustrates both the possibilities and the limitations of quasi-sovereign private entity territorial control: the arrangement was workable for an extended period, but its ultimate resolution through purchase and attempted compulsory acquisition underlines the importance of a comprehensive and binding international treaty framework.

The White Rajahs of Sarawak. James Brooke received a grant of sovereignty over Sarawak from the Sultan of Brunei by treaty of 24 September 1841, and the United Kingdom recognised Brooke as Rajah of Sarawak in 1864. The Brooke family governed Sarawak for over a century.⁴⁶ The Sarawak case is a closer analogue to the Startup States construction than the colonial leases, in that it involved the grant of sovereignty over territory to a non-state entity. Its differences are equally instructive: the Brooke grant was informal, lacked comprehensive treaty architecture, and was eventually absorbed into the colonial order. The Startup States construction addresses each of these weaknesses directly.

The Chinese Treaty Port Concessions. The treaty port concession system established in China through the nineteenth century involved the grant of extraterritorial jurisdiction over defined urban parcels to European powers and Japan. These concessions were held under conditions of Chinese imperial weakness rather than voluntary consent, and are therefore *ab initio* inapplicable as analogues to a consensual Startup States arrangement.⁴⁷ They are instructive, however, in demonstrating the range of jurisdictional arrangements that the international system has historically accommodated, and in reinforcing the centrality of genuine consent to any legitimate territorial arrangement.

The Rupert's Land Acquisition: A Non-Sovereign Grantor. The acquisition of Rupert's Land by Canada in 1870 is instructive precisely because the grantor was not itself a state. The Hudson's Bay Company, a chartered corporation holding quasi-governmental authority under the Royal Charter of 1670, transferred its territorial rights to Canada by Deed of Surrender (1869), with the Crown's authorisation, for the sum of £300,000.

⁴⁵ *Clunies-Ross v Commonwealth* (1984) 155 CLR 193; (1984) 55 ALR 609 (High Court of Australia).

⁴⁶ Steven Runciman, *The White Rajahs: A History of Sarawak from 1841 to 1946* (CUP 1960). The United Kingdom recognised Brooke as Rajah of Sarawak in 1864.

⁴⁷ Par Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (OUP 2012).

This demonstrates that the legal quality of a territorial grant depends upon the authority of the grantor (that is, upon whether that authority is derived from a sovereign) rather than upon the grantor's formal status as a state. The Hudson's Bay Company's quasi-governmental authority was always subordinate to and derivative of the Crown; it is precisely that derivative character that validated the grant when made. In the present construction, there is no such ambiguity: the Grantor State is a fully recognised state, a United Nations Member State, acting through its own constitutional processes, with full legal capacity to make the grant.⁴⁸

The Sark Tenancy: Partial Analogue and Its Limitations. Sark in the Channel Islands is held under a quasi-feudal tenure from the Crown, with the Seigneur paying a nominal quitrent established under the Letters Patent of 1565. Structurally the resemblance to the proposed construction is genuine: a governing entity holds territorial rights under a grant from a sovereign at nominal consideration, exercising internal governmental authority whilst the sovereign grantor retains underlying title. The critical limitation is equally plain. Sark does not possess an independent foreign policy, does not conclude international agreements in its own name, and does not maintain separate diplomatic relations with third states. The Channel Islands' international relations are conducted by the Crown on their behalf, as confirmed by the Kilbrandon Report (1973), and their constitutional status was further elaborated by the Reform (Sark) Law 2008.⁴⁹

⁴⁸ Rupert's Land Act 1868 (UK) 31 & 32 Vict c 105; Deed of Surrender of the Hudson's Bay Company, 19 November 1869, reprinted in E H Oliver (ed), *The Canadian North-West: Its Early Development and Legislative Records* (Ottawa 1914) vol I, 956. On the Hudson's Bay Company's quasi-governmental authority, see generally J E Rea, 'The Hudson's Bay Company and the Northwest' (1970) 4 *Manitoba Law Journal* 1; Arthur S Morton, *A History of the Canadian West to 1870-71* (2nd ed, University of Toronto Press 1973) ch 14.

⁴⁹ Reform of the Island of Sark (Sark) Law 2008, enacted by the Chief Pleas of Sark and approved by the Privy Council. The Reform Law abolished the hereditary Seigneurie as the primary legislative body and replaced it with an elected General Court, bringing Sark's constitutional arrangements into conformity with European Convention on Human Rights requirements identified in ECHR jurisprudence. The Kilbrandon Report (Report of the Royal Commission on the Constitution, Cmnd 5460, 1973) confirmed that the Channel Islands, including Sark, conduct their international relations through the Crown, not independently. The critical gap between the Sark model and the Startup State (no foreign policy capacity, no treaty-making power, no separate international legal personality) is elaborated in relation to the Sark Reform Law and the Kilbrandon findings at Section 4.2 above; Letters Patent of Queen Elizabeth I confirming the Seigneurie of Sark, 6 August 1565; Report of the Royal Commission on the Constitution (Kilbrandon Report), Cmnd 5460 (1973) ch 15, paras 1456-1476; Reform (Sark) Law 2008 (Sark). See also Geoffrey Marston, 'The Sark Constitution and Its Reform' (1978) 27 *International and*

The lesson for the present construction is precise: the Startup State must genuinely cross this threshold. It must have a foreign ministry, an independent treaty-making capacity, and a foreign policy that is its own rather than a projection of the Grantor State's will. This threshold is met, by design, from the moment of the Founding Treaty's entry into force.

Additional Historical Lease Arrangements: Weihaiwei, Jiaozhou Bay, Porkkala, and the Broader Pattern. Beyond the arrangements discussed above, the lease of Weihaiwei by the United Kingdom (1898–1930) and of Jiaozhou Bay by Germany (1898–1914) demonstrate the flexibility of the sovereign lease mechanism across different legal traditions and geopolitical contexts. These arrangements confirm the proposition established in Section 4.1: that plenary jurisdictional authority can be exercised by a lessee state without transfer of underlying territorial title.

Beyond the Chinese treaty port concessions, several additional historical lease arrangements reinforce the doctrinal foundation. The lease of the Porkkala Peninsula from Finland to the Soviet Union (1944 to 1956), the British lease of Weihaiwei from China (1898–1930), the German lease of Jiaozhou Bay (1898–1914), and the Sovereign Base Areas retained by the United Kingdom in Cyprus under the Treaty of Establishment (1960) all demonstrate that international law has consistently accommodated territorial arrangements in which jurisdictional authority is exercised by one state over territory to which another retains underlying title. The broader pattern confirms that the sovereign lease is not an anomaly but a recurrent and well-established instrument of the international territorial order.

The Diego Garcia Arrangement and the British Indian Ocean Territory. The agreement between the United Kingdom and the United States of 30 December 1966, concluded by means of an Exchange of Notes, granted the United States the right to use Diego Garcia and other islands of the British Indian Ocean Territory for defence purposes for fifty years, with provision for extension. The British Indian Ocean Territory was created specifically for the purpose of making this arrangement possible: the islands were detached from Mauritius and Seychelles in 1965 and constituted as a new British Overseas Territory, whose entire purpose was to serve as the legal vehicle for the US-UK defence arrangement.⁵⁰ The Diego Garcia arrange-

Comparative Law Quarterly 474; Yvonne Cripps, 'Sark: The Last Feudal Relic?' [1979] Public Law 250.

⁵⁰ Exchange of Notes between the UK and USA concerning the Availability for Defence Purposes of the British Indian Ocean Territory, 30 December 1966 (610 UNTS 75). The

ment is significant for the Startup States analysis because it illustrates that states have historically been willing to create entirely new territorial entities (the British Indian Ocean Territory itself was a new administrative unit with no pre-existing population at the time of the arrangement) in order to enable a desired international legal configuration. The willingness of states to reshape their territorial arrangements through the medium of treaty for instrumental purposes directly supports the proposition that the Startup States construction is legally achievable.

The Shanghai International Settlement and the Saar Territory: Treaty-Administered International Zones. The Shanghai International Settlement (1863 to 1943) and the Saar Territory (1920–1935) represent further historical instances of treaty-created governance arrangements over defined territory. Both were administered under international treaty frameworks that separated governmental authority from underlying territorial title. Neither constituted a state, but both demonstrate that international law has repeatedly accommodated territorial governance arrangements that disaggregate dominium from imperium, as discussed in Section 2.3.

The Memel (Klaipėda) Territory. The Memel Territory, detached from Germany by the Treaty of Versailles and placed under French administration pending a final determination of its status, was unilaterally seized by Lithuania in January 1923 and subsequently internationalised by the Memel Convention of 8 May 1924. The Convention established Memel as an autonomous territory under Lithuanian sovereignty, with the Allied Powers as guarantors of the autonomy statute. The Memel Territory was absorbed by Nazi Germany in March 1939 under duress.⁵¹ The Memel case is instructive as a negative precedent: it demonstrates the importance of effective international guarantee mechanisms for the enforcement of territorial autonomy arrangements, and the vulnerability of such arrangements to unilateral revision when the major powers are unwilling or unable to enforce the agreed legal architecture. The Startup States construction

British Indian Ocean Territory was constituted by the British Indian Ocean Territory Order 1965. On the legal history of the Diego Garcia arrangements, see David Vine, *Island of Shame: The Secret History of the US Military Base on Diego Garcia* (Princeton UP, 2009) chs 1-3; and Philippe Sands, *'Lawless World'* (Penguin, 2005) ch 7.

⁵¹ On the Memel Territory and the Convention of Klaipėda: Convention concerning the Territory of Memel, 8 May 1924 (29 LNTS 87). On the legal history: D.J. Goodspeed, *The German Wars 1914-1945* (Houghton Mifflin, 1977) 253-256; and Alfred Erich Senn, *Memel: The Lithuanian Dilemma 1923* (Indiana UP, 1976). The territory was seized by Germany in March 1939 after a formal request by the Lithuanian government under duress.

responds to this vulnerability by designing the Founding Treaty's enforcement mechanisms for maximum durability: Article 102 registration, independent arbitration, and the structural alignment of the parties' interests.

The Tangier International Zone: Treaty-Administered Territory as a Partial Structural Analogue. The Tangier International Zone (1923–1956) was established by the Statute of Tangier and placed under multilateral administration whilst preserving Moroccan sovereignty. The Zone operated its own legislative assembly, police force, and courts. The arrangement demonstrates that complex multi-layered governance structures are a proven feature of international treaty practice, supporting the proposition that the Startup States construction's condominium architecture is not without institutional precedent.

The Svalbard Treaty (1920): Multi-Lateral Treaty Governance with Preserved Sovereignty. The Svalbard Treaty, signed at Paris on 9 February 1920, recognised Norwegian sovereignty over the archipelago whilst imposing multilateral obligations including equal access to natural resources, demilitarisation, and environmental protection for all signatory states. The Treaty demonstrates that sovereignty can coexist with substantial treaty-based obligations without diminishing the status of the administering state. For the Startup States construction, Svalbard confirms that a new state can accept extensive servitude obligations whilst retaining full international legal personality.

The Sovereign-to-Sovereign Doctrinal Novelty: Why the Historical Precedents Fall Short and Why That Shortfall is Not Fatal. A critical distinction must be acknowledged. Every significant historical lease precedent involved a grant of jurisdictional authority by one existing state to another existing state. The Startup States construction necessarily departs from this pattern because the lessee entity does not possess pre-existing sovereignty. This doctrinal novelty is real but not disqualifying. The Montevideo criteria are functional and substantive rather than formal or precedential: they ask whether the entity satisfies the criteria of statehood, not whether it acquired its territory through a historically established mechanism. Crawford confirms that the criteria focus on the quality of governance achieved, not the pathway by which it was established.

4.3 The Symbiotic Character of the Arrangement

The 999-year sovereign lease, as conceived in this study, is not a one-sided transaction. It is a symbiotic arrangement in which each party contributes

what the other lacks. The Grantor State holds clear title to territory it cannot develop or benefit from in its current form; it possesses the governmental authority and international legal personality necessary to constitute a new state but lacks the capital, expertise, and institutional design capacity to do so optimally. The Startup State's founding principals possess the capital, expertise, and institutional vision; they lack the territorial foundation and the legal authority to bring a new state into existence unilaterally.⁵²

The arrangement is therefore structurally analogous to a joint venture between a landowner and a developer: the landowner contributes the site; the developer contributes the capital and expertise; both parties share in the value created. The critical distinction from a commercial joint venture is that the arrangement here operates at the level of public international law, and the value created is not merely financial but encompasses the full spectrum of benefits that flow from the establishment of a well-governed, internationally recognised state: diplomatic access, treaty participation, institutional credibility, and the capacity to attract talent, capital, and investment on the strength of a stable legal framework.

4.4 International Servitudes: Legal Character, Doctrinal Controversy, and Applicability to the Startup States Construction

The concept of international servitudes, drawn from Roman and civil law, provides a doctrinal framework for understanding the lasting obligations that the Founding Treaty imposes on the Startup State in relation to the Leased Territory. Oppenheim defined an international servitude as a restriction upon a state's liberty of action in relation to its territory, imposed by treaty in favour of another state or states. The concept remains doctrinally contested but practically operative, as the Åland Islands and Svalbard examples confirm.

The Doctrinal Origins: Oppenheim, Hall, and the Classic Formulation

The classic statement of international servitudes in Anglo-American international law is found in Oppenheim's *International Law*, where the term is defined as rights by which one state may exercise authority over a portion of the territory of another, in certain ways or for certain purposes, or is entitled to demand that another state refrain from exercising its own authority in certain ways.⁵³ W.E. Hall's *A Treatise on International Law*, the

⁵² Paul Collier, *The Bottom Billion* (OUP 2007) 181-183.

⁵³ L. Oppenheim, *International Law: A Treatise* (1st edn, Longmans, 1905) vol 1, 389-392: 'International servitudes are rights vested in one state over the territory of another state...'

leading Victorian-era English treatment of the subject, similarly recognised servitudes as a distinct category, defining them as rights held by one state over the territory of another that derogate from the full sovereignty of the territorial state.⁵⁴ Both Oppenheim and Hall drew heavily on civil law doctrine, in which a servitude is a real right (*jus in re aliena*) attaching to land, imposing a burden on the ‘servient tenement’ and conferring a benefit on the ‘dominant tenement’ (or, in the case of a *servitus in personam*, on a defined person or entity). The civil law distinction between *praedial* (territorial) and *personal* servitudes was understood by both writers to have a direct international law equivalent: a territorial servitude runs with the territory and binds every successor government of the servient state, whilst a personal servitude binds only the current government.

The Lauterpacht Critique and the Contemporary Debate

The concept of international servitudes was subjected to sustained criticism by Hersch Lauterpacht, who argued in his 1927 work *Private Law Sources and Analogies of International Law* that the transposition of private law servitude concepts into international law was doctrinally unsound. Contemporary scholarship has largely moved beyond this critique. The practical operation of arrangements such as the Svalbard Treaty, the Åland Islands demilitarisation regime, and the Kiel Canal internationalisation confirms that obligations running with territory are a recognised and enforceable feature of the international legal order, whatever their formal classification.

The Åland Islands: The Most Significant Territorial Servitude in Practice

The Åland Islands provide the most significant instance of a territorial servitude in modern international practice. The demilitarisation and neutralisation obligations, imposed by the Convention of 1921 and reaffirmed by the Paris Peace Treaty of 1947, bind Finland in respect of the Åland Islands regardless of changes in government. These obligations demon-

The definition was maintained through subsequent editions. See also W.E. Hall, *A Treatise on International Law* (8th edn, OUP, 1924) 47–52. For a contemporary assessment, see Y.Z. Blum, *Historic Titles in International Law* (Martinus Nijhoff, 1965) ch 5.

⁵⁴ Lord McNair, *The Law of Treaties* (OUP, 1961) 656–661 (on ‘Restrictions on the Liberty of Action of States as to Territory and Territorial Waters Analogous to Servitudes’). McNair concluded that whilst the private law analogy is imperfect, the concept of a territorial obligation running with the land is ‘too firmly established in practice to be dismissed.’ See also R.Y. Jennings and A. Watts, *Oppenheim’s International Law* (9th edn, Longman, 1992) vol 1, 674–682. For a modern assessment, see D. O’Connell, *International Law* (2nd edn, Stevens, 1970) vol 1, 533–541.

strate that territorial servitudes are enforceable, durable, and compatible with full sovereignty over the territory in question.

The Svalbard Treaty as a Multilateral Servitude and the Kiel Canal Regime

The Svalbard Treaty, discussed at Section 4.2, provides a clear contemporary instance of a multilateral territorial servitude operating in practice. The Treaty imposes obligations of equal access and demilitarisation upon Norway in respect of Svalbard, obligations that run with the territory and bind Norway as sovereign. These servitudes have not been held to diminish Norwegian sovereignty; they are conditions of the arrangement. The analogy to the Startup States construction is direct: the Founding Treaty's servitude obligations enhance the arrangement's durability and enforceability without compromising the Startup State's sovereign status.

Servitudes as a Condition of the Deal: The Startup State's Perspective

The servitude question must be approached as a practical negotiating reality. A Grantor State will insist upon lasting obligations: rights of access, fishing or resource rights, priority employment for its nationals, environmental obligations, and condominium oversight. These servitudes are not concessions to be minimised but features that secure the arrangement's durability. By incorporating them into the Founding Treaty as territorial obligations running with the land, both parties are protected against future changes of government or policy.

Interim Conclusion to Part IV

Part IV has established four propositions that together provide the legal and historical foundation for the Startup States construction. First, the sovereign lease is a distinct and recognised instrument of international law with a proven track record across multiple legal traditions and historical periods. Second, whilst every significant historical lease precedent involved a grant by one existing sovereign to another, this doctrinal novelty is not fatal, because the Montevideo criteria are functional and substantive rather than formal or precedential. Third, the proposed construction will necessarily incorporate servitude-type obligations that run with the territory: these are not constraints on the arrangement but features that enhance its durability, enforceability, and mutual benefit. Fourth, the execution of a Founding Treaty of this kind is, properly understood, not a diminution of the Grantor State's sovereignty but its fullest available

exercise: the amplification, projection, and ultimate assertion of the state's capacity.

The Ultimate Exercise of Sovereignty: The Amplification Thesis. The Startup States construction invites a reconceptualisation of the traditional understanding of sovereignty. The Grantor State's decision to lease jurisdictional authority is not a diminution of sovereignty but its fullest available exercise: the amplification, projection, and assertion of the state's capacity. By transforming an uninhabited, economically dormant territory into the site of a new state generating economic activity and diplomatic significance, the Grantor State exercises sovereignty in its most creative and productive form.

James Crawford's analysis of the criteria for statehood in *The Creation of States in International Law* confirms this reconceptualisation. Crawford's functional approach to statehood focuses on the quality of governance achieved rather than the pathway by which it was established. The Startup State's leasehold foundation is therefore doctrinally irrelevant to its qualification as a state, provided the Montevideo criteria are satisfied in substance.

The economic dimension of this amplification thesis operates through the zoning and rezoning analogy that is developed in Section 7.4 below. The Grantor State holds, in the Leased Territory, an asset that is presently economically dormant: it generates no tax revenue, no employment, no foreign exchange earnings, and no diplomatic leverage. By executing the Founding Treaty, the Grantor State rezones that asset from a category of zero economic productivity to a category of substantial and permanent economic productivity, without raising taxes, borrowing money, soliciting foreign aid, or subsidising a special economic zone whose returns remain speculative. The upfront capital payment and the recurring lease payments represent, in economic terms, the realisation of a latent asset value that the Grantor State's title to the territory has always contained but has never been able to unlock. The Startup States construction is, in this sense, the instrument by which an existing state amplifies both its legal personality (through treaty creation) and its economic capacity (through territory monetisation) simultaneously, using nothing more than the governmental authority it already possesses.

The Condominium Arrangement: Shared Sovereignty and Its Compatibility with Full Statehood

5.1 The Condominium in International Law

A condominium is an arrangement under international law whereby two or more states exercise concurrent jurisdiction over the same defined territory. The term is derived from Roman law (*con-dominium*, co-ownership) but its international law application is distinct: it describes the sharing of governmental authority over territory, not merely the sharing of proprietary rights. Crawford, Brownlie, and Shaw all treat condominiums as a recognised and legally workable form of territorial governance, noting that the international system has accommodated them in a variety of forms over more than two centuries.⁵⁵

5.2 Historical Instances of Condominium Governance

The Anglo-Egyptian Sudan (1899 to 1956). Established by the Agreement of 19 January 1899 between Great Britain and Egypt, the Condominium of the Sudan was formally governed by both the British and Egyptian governments under a Governor-General appointed by the Egyptian Khedive on the recommendation of the British Government. In practice, British authority was dominant; the condominium nevertheless maintained the

⁵⁵ Crawford, *Creation of States* 520-525; Brownlie, *Principles* 108-110; Shaw, *International Law* 190-193.

formal legal architecture of shared sovereignty for over half a century and was terminated peacefully upon Sudanese independence in 1956.⁵⁶

The New Hebrides/Vanuatu (1906 to 1980). The New Hebrides condominium was established by the Anglo-French Convention of 20 October 1906 and revised by the Protocol of 6 August 1914. It created one of the most complex administrative arrangements in colonial history: separate British and French resident commissioners, separate judicial systems, separate police forces, a joint court, and a neutral zone. The condominium was terminated upon the independence of Vanuatu on 30 July 1980.⁵⁷

Neutral Moresnet (1816 to 1920). Neutral Moresnet was a small territory jointly administered by the Netherlands (later Belgium) and Prussia (later Germany) from 1816 to 1920. Its establishment arose from a dispute over the ownership of a zinc mine and the consequent inability of the Congress of Vienna to agree on the boundary between the two states. The territory acquired a distinctly cosmopolitan character and became the subject of an early proposal for an Esperanto-speaking state. It was ultimately absorbed into Belgium under the Treaty of Versailles.⁵⁸

The Principality of Andorra (1278 to present). Andorra is perhaps the most instructive example of a functioning condominium in contemporary international practice. Co-governed by the President of France and the Bishop of Urgell in their capacities as Co-Princes, Andorra operates under a constitution promulgated in 1993 following approval by referendum. It was admitted to the United Nations on 28 July 1993 and is a full member of numerous international organisations.⁵⁹ Andorra's significance for the Startup States construction is considerable: it demonstrates that a condominium arrangement is not merely compatible with full international legal personality but is compatible with United Nations membership, treaty-making capacity, and all the attributes of statehood.

The Brčko District of Bosnia and Herzegovina (1999 to present): The Most Important Contemporary Condominium. The Brčko District was

⁵⁶ Agreement between Great Britain and Egypt Relative to the Future Administration of the Sudan (Anglo-Egyptian Condominium Agreement), 19 January 1899, 186 CTS 4.

⁵⁷ Convention between Great Britain and France concerning the New Hebrides, 20 October 1906; Protocol of 6 August 1914.

⁵⁸ Philip Droge, "Neutral Moresnet and the Origins of Esperanto" (2019) *Journal of Minority Languages* 14; Final Act of the Congress of Vienna, 9 June 1815, 64 CTS 453, Art XCV.

⁵⁹ Andorra was admitted to the United Nations on 28 July 1993 by UNGA Res 47/9. The Co-Princes of Andorra are the President of France and the Bishop of Urgell.

established by arbitral award and placed under joint sovereignty of the entities of Bosnia and Herzegovina. It demonstrates that a condominium arrangement can operate effectively in a politically sensitive context with international oversight. The District's institutional structure, involving an international supervisor and shared governance, provides a contemporary template for the kind of oversight mechanism envisaged in the Founding Treaty's condominium provisions.

Pheasant Island (Île des Faisans): The World's Oldest Alternating Sovereignty Arrangement. Pheasant Island, in the Bidasoa River on the Franco-Spanish border, has been subject to alternating sovereignty between France and Spain since the Treaty of the Pyrenees (1659). The arrangement demonstrates the notable durability of treaty-based territorial arrangements and confirms that international law accommodates unconventional sovereignty configurations.

The Canton and Enderbury Islands Condominium (1939–1979). The Canton and Enderbury Islands were placed under joint US-UK sovereignty by agreement in 1939, with sovereignty ultimately transferred to Kiribati upon independence. The arrangement demonstrates that condominium governance can function as a transitional mechanism leading to full transfer of title.

The Condominium Oversight Mechanism in the Startup States Construction: Welcomed Accountability, Not Interference. The condominium arrangement serves as an institutional confidence-building mechanism rather than a limitation on sovereignty. The Joint Governance Council, as detailed in Annex A Article 11, provides a structured forum for dispute resolution and mutual accountability. This mechanism is comparable to the institutional oversight arrangements that characterised the early decades of numerous post-colonial states and is designed to be progressively reduced as the Startup State develops autonomous institutional capacity. The condominium provisions discussed in Section 5.1 therefore function as transitional scaffolding rather than permanent structures of dependency.

5.3 The Scaling of Sovereignty: The Corporate Joint-Venture Analogy

The condominium dimension of the Startup States construction serves a specific and deliberately designed function: it provides the Startup State with the governmental infrastructure it cannot independently supply in its formative period whilst preserving its full legal personality and its tra-

jectory towards complete operational independence. The analogy to a corporate joint-venture spin-off is instructive. When a large corporation establishes a new subsidiary and provides it with management services, shared back-office functions, and institutional scaffolding during its formative period, the subsidiary is nevertheless a distinct legal entity with its own legal personality, its own governance structure, and its own long-term trajectory towards independence.⁶⁰

The condominium provisions of the Founding Treaty must be understood as transitional institutional guarantees rather than permanent structures of dependency. Comparable arrangements are common in the early constitutional life of new states. The critical doctrinal distinction is between assistance provided pursuant to treaty and effective control exercised through political subordination. In the present construction, the Startup State's institutions operate under its own constitutional order, and the service arrangements supplied by the Grantor State are contractually defined and terminable under the treaty's review provisions. The distinction between assistance and control is therefore preserved.

The condominium provisions of the Founding Treaty must be drafted with care to ensure that the Startup State's independence is genuine and visible in those domains, above all foreign policy and constitutional governance, that are not subject to the service agreements with the Grantor State. The boundary between a legitimate condominium and an impermissible protectorate is a matter of degree and judgment, and the construction must be maintained with doctrinal care throughout the formative period. The Startup State must, from its inception, exercise genuine and visible independence in all domains not specifically governed by the condominium provisions.

The European Union provides a further illustrative analogy. EU Member States have pooled substantial elements of their governmental authority in a supranational framework, yet each retains full international legal personality and is recognised as an independent state. The pooling of sovereignty does not negate sovereignty; it is, as Crawford observes, one of its most sophisticated expressions.⁶¹

⁶⁰ On transitional services in corporate separations, see Patrick A Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, Wiley 2018) ch 10.

⁶¹ Paul Craig and Grainne de Burca, *EU Law: Text, Cases, and Materials* (7th edn, OUP 2020) ch 1.

The Tabula Rasa Distinction: Deliberately Engineered Statehood by Treaty

6.1 The Tabula Rasa Problem and Its Resolution

The most distinctive and legally exacting feature of the proposed construction is what this study terms the *tabula rasa* character: the Startup State is constituted entirely *de novo* upon territory that had no prior permanent population, organised government, or constitutional order. This feature is at once the construction's greatest legal challenge and its greatest practical advantage.

It is the greatest legal challenge because, as Crawford notes in his comprehensive treatment of the creation of states, the international legal system has a strong structural preference for the *recognition* of existing polities over the *creation* of entirely new ones.⁶² Virtually every state that has emerged in the post-war international order has done so through one of four processes: decolonisation (the recognition of a pre-existing colonial community as an independent state), the dissolution of a larger state (Yugoslavia, the Soviet Union), secession (Bangladesh), or the negotiated independence of a territory with a pre-existing community (East Timor, Montenegro, South Sudan). None of these processes precisely replicates the proposed construction. The *tabula rasa* character is, in this sense, genuinely novel.

It is the greatest practical advantage because the new state enters the world without the historical grievances, ethnic conflicts, territorial disputes, competing elite interests, and institutional dysfunctions that beset

⁶² Crawford, *Creation of States* 85.

every state that has emerged from the political upheavals and decolonisation processes of the twentieth century. The *tabula rasa* state has the opportunity, unique in the modern international order, to build its institutions, its governance culture, and its international relationships from first principles, unconstrained by inherited pathologies.

The resolution of the *tabula rasa* legal challenge lies in two complementary arguments. First, the Montevideo criteria are functional and substantive, not formal or precedential. Crawford's own analysis confirms that the criteria are assessed against actual effectiveness, not against historical templates.⁶³ Second, there are historical precedents for treaty-created states upon blank or near-blank slates, as the next Section demonstrates.

The institutional mechanism by which the Founding Treaty is concluded must also be clarified. The Startup State does not exist prior to the treaty's entry into force and therefore cannot itself be a contracting party in the ordinary sense. The Founding Treaty is therefore concluded between the Grantor State and a Provisional Founding Authority acting as the institutional vehicle for the future state. Such arrangements are not unknown in international practice. Transitional authorities, liberation movements, and provisional administrations have frequently entered into binding international agreements prior to the consolidation of permanent governmental structures. The treaty does not retroactively create the authority that signs it; rather, it recognises the authority as the organisational agent through which the new state will be constituted at the moment of entry into force.

6.2 Historical Precedents for Treaty-Created States

The Vatican City State (1929) and the Bootstrapping Question. The Vatican City State was constituted *de novo* as a territorial state by the Lateran Treaty of 11 February 1929, concluded between the Holy See and the Kingdom of Italy. Before the Treaty, the Holy See was a sovereign non-territorial entity whose legal personality had been continuous since the medieval period: it had concluded concordats with European sovereigns for centuries, and its legal personality as a subject of international law was uninterrupted by the loss of the Papal States in 1870. The Lateran Treaty did not create the Holy See's legal personality; it resolved the territorial disputes flowing from Italian unification and constituted the Vatican City

⁶³ James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) ch 2.

State as the Holy See's territorial expression. The Treaty granted the Holy See sovereignty over a precisely defined 44-hectare parcel within Rome, constituting the Vatican City State as an independent state with full international legal personality.⁶⁴ The Holy See maintains diplomatic relations with more than 180 states and has been a permanent observer at the United Nations since 1964. Its statehood has never been seriously challenged by any state.

The two-entity analysis illuminated by the Lateran Treaty is directly instructive for the Startup States construction. It demonstrates that a new sovereign territorial entity can be constituted by treaty at a defined moment, acquiring full international personality from that moment forward, even where the legal landscape in which it emerges involves complex pre-existing legal personalities. The Vatican City State as such, as a territorial entity distinct from the Holy See as a non-territorial religious legal person, was constituted by treaty. Its international personality as a territorial state has been universally accepted on that basis. This is the *locus classicus* of treaty-created statehood.

A separate and equally fundamental question, one that this study addresses with the rigour it demands, is the question of legal personality at the moment of signature. A treaty requires legal persons as parties, and legal personality must precede treaty-making capacity. How, then, can a Founding Treaty constitute the very entity that is its party?

The answer lies in the concept of the **Provisional Founding Authority** (*auctoritas fundatrix provisoria*) and in the well-established principle of the nascent or inchoate legal person. The Grantor State, acting through its own domestic legislative and constitutional processes prior to the conclusion of the Founding Treaty, enacts legislation constituting a Provisional Founding Authority, a body vested by the Grantor State's domestic law with the specific and limited capacity to negotiate, sign, and ratify the Founding Treaty on behalf of the entity-to-be. The Founding Treaty then provides expressly that from the moment of its entry into force all acts performed by the Provisional Founding Authority are deemed to have been performed by the Startup State as a full legal person, and the Startup State succeeds to all rights and obligations thereby created.

This mechanism has an analogy in the domestic law of commercial entities: the pre-incorporation contract. In the United Kingdom, section 51

64 Treaty between the Holy See and Italy (Lateran Treaty), 11 February 1929, 130 LNTS 243. Crawford, *Creation of States* 221-226.

of the Companies Act 2006 provides that a contract made by or on behalf of a company before its formation has effect, subject to any agreement between the parties, as a contract made with the person purporting to act for the company. The legal act is performed before the legal person exists; the legal person, once constituted, is treated as bound from the outset by the act performed in its name. The analogy is deployed here by way of structural illustration, not direct application: international law governs the Founding Treaty, not the Companies Act. But the structural logic, anticipatory authorisation followed by retrospective vesting, is familiar to legal systems across the world.

The historical record of international law provides direct instances of this mechanism in operation. The Continental Congress of the United States negotiated and concluded the Treaty of Paris (1783) with Great Britain on behalf of an entity, the United States of America, whose definitive constitutional form remained unsettled and whose claim to legal personality was itself dependent on the outcome of the recognition process. The Continental Congress acted as the authorised representative of the nascent republic; its treaty-making acts were retrospectively treated as binding acts of the United States as a full legal person once that personality was consolidated. More recently, the Palestine Liberation Organisation concluded agreements with Israel under the Oslo Accords (1993) as the representative body of the Palestinian people: the legal personality attributed to the Palestinian entity was, in that context, constituted simultaneously with and through the agreement that gave it international recognition. The nascent legal person and the treaty-making act were mutually constitutive.

The practical implementation of the Provisional Founding Authority mechanism is straightforward in legal terms, though it requires the Grantor State to take appropriate domestic legal steps. The Grantor State's legislature enacts an instrument, whether a statute, an Order in Council, a presidential decree, or equivalent constitutional instrument, depending on the Grantor State's constitutional order, that: designates the Provisional Founding Authority by name and composition; defines its mandate as the negotiation and conclusion of the Founding Treaty on behalf of the Startup State; vests it with the legal capacity to bind the Startup State-to-be; and provides that its acts shall be treated as the Startup State's own acts from the moment of the Founding Treaty's entry into force. The Founding Treaty then recites this authorisation in its preamble and includes the vesting and succession provision in its operative articles.

The result is a legally coherent sequence: the Grantor State (an existing legal person) and the Provisional Founding Authority (acting as authorised agent of the nascent legal person) conclude the Founding Treaty; the Treaty enters into force; the Startup State's full legal personality vests simultaneously; and all acts of the Provisional Founding Authority are treated as the Startup State's own acts from the moment of vesting. There is no logical impossibility, and no legal gap. The bootstrapping problem has a clean, historically grounded, and doctrinally coherent solution.

The Free City of Danzig (1919 to 1939). The Free City of Danzig was created by the Treaty of Versailles (1919) and placed under the protection of the League of Nations. Its constitution was negotiated under League auspices; it maintained its own currency, postal system, and legislature, and had the capacity to enter into certain categories of treaty. The Free City was not created upon a blank slate (it had a substantial existing German population), but it was constituted *de novo* as a legal entity by treaty, and its legal architecture was deliberately constructed from first principles.⁶⁵

It must also be acknowledged that several twentieth-century treaty-created territorial entities proved historically fragile. The Free City of Danzig, the Free Territory of Trieste, and the Saar Territory ultimately dissolved under geopolitical pressure. These examples illustrate that treaty architecture alone cannot guarantee political durability. The longevity of any newly constituted state depends not only upon legal design but upon the sustained political support of its population, its founding state, and the broader international community.

Several historical arrangements created territorial entities through international agreements, including the Free City of Danzig, the Free Territory of Trieste, and the Saar Territory. These examples are sometimes invoked as evidence that treaty-created political entities are inherently unstable. A closer examination suggests that their fragility was primarily a product of the geopolitical conflicts in which they were embedded. Each existed as a temporary buffer within unresolved great-power rivalries following major wars. Their instability therefore reflected geopolitical contestation rather than any inherent legal impossibility. The framework explored in this study differs fundamentally in that it assumes voluntary cooperation between states rather than externally imposed settlement regimes.

⁶⁵ Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles), 28 June 1919, 225 CTS 188, Arts 100-108 (Free City of Danzig).

The Free Territory of Trieste (1947 to 1954). The Free Territory of Trieste was established by the Treaty of Peace with Italy (1947) as a state under the guarantee of the United Nations Security Council. No Governor was ever appointed: Zone A was administered by a British and American military government and Zone B by the Yugoslav army, and the Memorandum of Understanding of London of 5 October 1954 handed civil administration of the two zones to Italy and Yugoslavia, a division confirmed by the Treaty of Osimo of 1975.⁶⁶ The Free Territory of Trieste illustrates both the potential and the fragility of internationally constituted entities: its legal framework was sophisticated and its international backing was substantial, but the absence of a durable bilateral treaty commitment between clear parties with aligned long-term interests contributed to its eventual dissolution.

Belgium (1830 to 1839). Belgium emerged as an independent state through the Belgian Revolution of 1830 and was constitutionally constituted in 1831. Its independence was formally recognised and guaranteed by the Treaty of London (1839) between the Great Powers.⁶⁷ Belgium's significance as a precedent is limited but instructive: it illustrates how treaty-based international recognition, when backed by the major powers of the day, can rapidly consolidate a new state's legal position.

The Dissolution of Yugoslavia and the Badinter Commission (1991 to 1993). The dissolution of Yugoslavia produced the most significant body of modern recognition practice through the Badinter Arbitration Commission, which articulated criteria for recognition of new states including respect for democratic governance, human rights, and minority protections. The Commission's work confirms that recognition practice has evolved beyond the Montevideo criteria to incorporate additional conditions. The Startup States construction is designed to satisfy both the Montevideo criteria and the expanded Badinter requirements.

The Treaty of London (1839): The Multilateral Guarantee of Belgian Statehood. Belgium's independence was secured through the Treaty of London of 19 April 1839, which provided a multilateral guarantee of Belgian neutrality and territorial integrity by the major European powers.

⁶⁶ Treaty of Peace with Italy, 10 February 1947, 49 UNTS 3, Annex VI (Free Territory of Trieste). The Free Territory was dissolved by the Memorandum of Understanding of 5 October 1954.

⁶⁷ Treaty between Austria, Great Britain, France, Prussia and Russia, and the Netherlands, and Belgium (Treaty of London), 19 April 1839, 88 CTS 410.

The Treaty demonstrates that new state formation can be embedded in a multilateral treaty framework that provides both recognition and security guarantees. The Startup States construction draws upon this precedent in its emphasis on multilateral engagement and treaty registration under Article 102 of the UN Charter.

The Treaty of Westphalia (1648) and the Treaty of Vienna (1815): Systemic Recognition at the Foundational Moments of the International Order. Both the Peace of Westphalia and the Congress of Vienna created and recognised new states through multilateral treaty action. Switzerland's permanent neutrality was recognised by the Powers in 1815, at Vienna and in the Act of Paris of 20 November 1815. These foundational precedents demonstrate that treaty-based state creation is not an innovation but a recurrent feature of the international legal order at its most formative moments.

The Treaty of Berlin (1878): Conditional Treaty Recognition of New Balkan States. The Congress of Berlin recognised the independence of Serbia, Romania, and Montenegro, subject to conditions including religious freedom and minority protections. The precedent confirms that treaty-based recognition can incorporate substantive conditions, as the Founding Treaty's governance and transparency provisions are designed to do.

The Free City of Kraków (1815–1846): Treaty-Created Statehood in the European Diplomatic Tradition. A particularly instructive precedent is the Free City of Kraków, established by the Congress of Vienna in 1815. Kraków was constituted as a formally independent republic under the joint protection of Austria, Prussia, and Russia. Its status was created by international treaty rather than by revolution or decolonisation, demonstrating that the international system has historically recognised the possibility of new political entities emerging through negotiated legal arrangements. Although Kraków lost its independence in 1846, when Austria annexed it with the agreement of Prussia and Russia after the Kraków Uprising, its existence for over three decades illustrates that treaty-based state formation has precedent within the European diplomatic tradition and is not a wholly novel proposition.

The Austrian State Treaty (1955): Restoration of Statehood by Multilateral Treaty. The Austrian State Treaty, signed at Vienna on 15 May 1955, re-established Austrian sovereignty and imposed permanent neutrality obligations. The Treaty confirms that statehood can be constituted, restored, and conditioned by multilateral treaty action. The Startup States

construction's Founding Treaty operates within this established tradition of treaty-based sovereignty arrangements.

The Singapore Separation Agreement (1965): The Role of Consensual Treaty Action in State Creation. The independence of Singapore on 9 August 1965 is instructive as an illustration of the principle that new statehood is most effectively constituted through consensual bilateral treaty action. The Separation Agreement of 7 August 1965, signed by Malaysia and Singapore, effected the separation of Singapore from the Malaysian federation and simultaneously established Singapore as an independent, fully independent state. It was given effect on 9 August 1965 by the Constitution and Malaysia (Singapore Amendment) Act, passed by the Malaysian Parliament that day.⁶⁸ Singapore's independence was thus entirely a product of consensual treaty action: there was no revolution, no declaration of independence against the will of the parent state, and no international conflict. The parent state (Malaysia) consented; the separation was effected by treaty; and the new state came into existence as a full member of the international community. Singapore was admitted to the United Nations on 21 September 1965, six weeks after independence.

The Singapore case confirms the proposition that parental state consent is the decisive factor in the speed and completeness of international recognition. Singapore's separation from Malaysia on 9 August 1965, effected by mutual agreement, resulted in immediate UN admission. The contrast with contested separations reinforces the central design principle of the Startup States construction: consensual, treaty-based state creation commanded by the parent state's own constitutional processes.

6.3 The Role of Parent State Consent: Montenegro and Kosovo

The significance of parent state consent to new state formation is illuminated by contrasting the experiences of Montenegro and Kosovo. Montenegro declared independence from the State of Serbia and Montenegro on 3 June 2006 following a referendum approved by 55.5% of voters, marginally exceeding the 55% threshold established by the Constitutional

⁶⁸ Separation Agreement between Malaysia and Singapore, 7 August 1965; ratified by the Malaysian Parliament on 9 August 1965. The relevant instruments include the Constitution and Malaysia (Singapore Amendment) Act 1965 (Malaysia) and the Republic of Singapore Independence Act 1965 (Singapore). See Albert Lau, *A Moment of Anguish: Singapore in Malaysia and the Politics of Disengagement* (Eastern Universities Press, 2003); and Chan Heng Chee and Obaid ul Haq (eds), *The Prophetic and the Political: Selected Speeches and Writings of S. Rajaratnam* (Graham Brash, 1987) ch 1.

Charter. Serbia recognised Montenegro's independence on 15 June 2006. Montenegro was admitted to the United Nations on 28 June 2006.⁶⁹ The parent state's recognition was the decisive factor in Montenegro's rapid and uncontroversial admission to the international community.

Kosovo declared independence from Serbia on 17 February 2008 without Serbian consent. The ICJ Advisory Opinion (2010) confirmed that the declaration did not violate general international law, but this legal finding has not translated into universal recognition: as of 2026, Kosovo has been recognised by over one hundred states but is not a UN member due to opposition from Russia and China. The contrast with Montenegro's rapid acceptance confirms the decisive importance of parent-state consent.

⁶⁹ Montenegro declared independence on 3 June 2006 following a referendum on 21 May 2006. Admitted to the United Nations on 28 June 2006 by UNGA Res 60/264.

The Superiority of Accountable Statehood from Inception over All Historical Alternatives

7.1 The Argument from History

The proposed construction does not emerge in a historical vacuum. The history of international relations includes numerous instances of quasi-sovereign arrangements, private governmental authority, and experimental forms of political organisation that preceded, paralleled, or attempted to substitute for the nation state model. The principal historical categories are: chartered company rule, personal sovereign holdings, and the colonial concession system. An examination of these alternatives, conducted without sentimentality, reveals a consistent pattern: each was characterised by the absence of accountability, the deliberate avoidance of international legal obligations, and the extraction of value from local populations without the constraints of the responsibility of a state. The proposed construction is designed as the precise antithesis of this pattern.

7.2 The British East India Company

The British East India Company received its first royal charter from Queen Elizabeth I on 31 December 1600 and over the following two centuries accumulated what can only be described, in retrospect, as governmental authority over a vast subcontinent without any of the legal accountability that

attaches to a recognised state.⁷⁰ At its height, the Company commanded a private army of over 200,000 soldiers, administered territories containing hundreds of millions of people, and exercised judicial, legislative, and executive authority with no meaningful accountability to the populations it governed or to any international legal framework.

The Company's power was ultimately transferred to the British Crown by the Government of India Act 1858, in the aftermath of the Indian Rebellion of 1857, precisely because the model of private governmental authority without public accountability had proved both morally indefensible and politically unsustainable. The lesson for the Startup States construction is unambiguous: the arrangement must impose upon the new state, from its very first moment of existence, the full obligations of international legal accountability. The Founding Treaty's transparency provisions, its human rights commitments, its environmental obligations, and its dispute resolution mechanisms are not supplementary features; they are the core of the construction's ethical and legal architecture.

7.3 The Congo Free State

The Congo Free State (1885 to 1908) was the personal sovereign holding of King Leopold II of Belgium, recognised by the Powers around the Berlin Conference of 1884 and 1885 and governed as Leopold's private property. The atrocities committed in the Congo under Leopold's rule, documented by Roger Casement and E. D. Morel, included systematic forced labour, mutilation, murder, and the destruction of communities on a scale that places it among the gravest atrocities of the colonial era.⁷¹ The Congo Free State is the most extreme example of what happens when governmental authority is exercised without accountability, without transparency, and without the constraints of international legal obligation.

The contrast with the Startup States construction could not be more stark. The Congo Free State was constituted precisely to *avoid* accountability; the Startup State is constituted precisely to *embrace* it. The Congo Free State operated in secrecy; the Startup State operates in full transparency.

⁷⁰ Nick Robins, *The Corporation That Changed the World* (2nd edn, Pluto Press 2012); Philip Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (OUP 2011). The Government of India Act 1858 transferred the Company's powers to the Crown.

⁷¹ Adam Hochschild, *King Leopold's Ghost* (Mariner Books 1999); E D Morel, *Red Rubber* (1st edn, T Fisher Unwin 1906); Roger Casement, *Report to Parliament on the System of Administration in the Independent State of the Congo* (1904, Cd 1933).

The Congo Free State exploited its territory and population for private profit; the Startup State is designed to serve the mutual interests of both parties and the broader international community. The history of Leopold's Congo is, in a very real sense, the negative image of the Startup States model.

7.4 The Three Analogies: Zoning, Midwifery, and the Corporate Spin-Off

Three analogies, each drawn from a different domain of human organisation, illuminate complementary aspects of the Startup States construction. They are the zoning analogy, the midwifery analogy, and the corporate joint-venture spin-off analogy. Each analogy illuminates a different dimension of the construction; each has its limits, which must be acknowledged honestly.

The Zoning Analogy. When a municipality or planning authority re-zones land from agricultural use to residential or commercial use, extraordinary value is created without any physical transformation of the land itself. The legal designation changes; the physical reality remains constant; the economic value is transformed. Developers who partner with municipalities and compensate them for the rezoning act are not regarded as corrupt for doing so: the value arises from regulatory change, not from extraction or dispossession.⁷²

The same logic applies to the Startup States construction. The Grantor State's administrative act of designating a portion of its territory as the foundation of a new state unlocks latent value that did not previously exist. Compensation reflects the opportunity cost of foregone alternative uses, not the sale of sovereignty itself. Once recognition has occurred, subsequent transactions are, by definition, between states. The zoning analogy addresses directly the objection that the construction constitutes the "commodification" of sovereignty, by demonstrating that the creation of value through regulatory or administrative action is a routine, legitimate, and entirely uncontroversial feature of both domestic and international governance.

The Monaco and Beausoleil Illustration. The zoning analogy finds its most vivid real-world expression in the juxtaposition of the Principality of Monaco and the French commune of Beausoleil. The two jurisdictions

⁷² William A Fischel, *The Economics of Zoning Laws* (Johns Hopkins University Press 1985) ch 1; Richard Epstein, *Takings: Private Property and the Power of Eminent Domain* (Harvard University Press 1985) 112-115.

share a physical border that, in places, runs through the middle of a street: they enjoy the same Mediterranean climate, the same architecture, the same restaurants, the same views, the same physical infrastructure. Yet property values on the Monegasque side are, consistently and systematically, many multiples of those on the French side. The premium is not explained by geography, climate, or amenity, which are identical. It is explained entirely by legal designation: Monaco is an independent state with its own fiscal regime, its own constitutional order, and its own international legal personality; Beausoleil is a French commune subject to French law, French taxation, and French jurisdiction.⁷³ This illustration reinforces the zoning analogy with empirical precision: the transformation of a territory's legal designation (from subject territory to state) generates a value premium that is economically real, historically documented, and entirely analogous to the premium generated by a rezoning decision. The administrative act of legal designation, not any physical transformation of the land, creates the value.

The Midwifery Analogy. The second analogy is drawn from the most ancient of the caring professions. A midwife does not create the infant; the infant exists in its own right, with its own potential, its own trajectory, and its own destiny. What the midwife provides is the skilled, caring, and professionally responsible assistance that makes the transition from potential to reality as safe, as orderly, and as auspicious as possible. The analogy to the Grantor State's role in the Startup States construction is precise: the Grantor State does not create the Startup State's sovereignty; the sovereignty emerges from the combined operation of law, treaty, and effective governance. What the Grantor State provides is the constitutional architecture, the territorial foundation, the initial recognition, and the institutional scaffolding that make the transition from potential to reality safe, orderly, and durable.

The midwifery analogy also captures something important about the relationship between the Grantor State and the Startup State after the Founding Treaty's entry into force. The midwife's role does not end at birth; skilled aftercare is as important as the birth itself. The condominium

⁷³ The Monaco/Beausoleil property value differential is widely documented in real estate literature. See, e.g., Knight Frank, *Monaco Residential Market Review* (2023); Savills, *Prime Residential World Cities Report* (2022). The Principality of Monaco's constitutional status is governed by the Treaty of Versailles (1919) art 436 and the Franco-Monegasque Convention of 17 July 1918; see also Pierre Ortolan, 'The Constitutional Status of Monaco' (2001) 12 *European Public Law* 405.

provisions of the Founding Treaty are, in this sense, the institutional expression of the midwifery relationship: they provide the skilled aftercare that sustains the new state during its formative period.

The Corporate Joint-Venture Spin-Off Analogy. The third analogy is drawn from corporate law. When a large corporation identifies a high-potential subsidiary or division and decides to establish it as an independent entity through a spin-off, the process typically involves the parent company providing the new entity with an initial capital injection, management services, shared back-office functions, and institutional scaffolding during the formative period. The new entity has its own legal personality, its own board, its own governance structure, and its own long-term trajectory towards complete independence. The parent company retains a temporary governance role; the new entity is nevertheless fully autonomous.⁷⁴

The analogy to the Startup States construction is direct. The Grantor State is the parent; the Startup State is the spin-off. The Founding Treaty is the spin-off agreement. The condominium provisions are the transitional service agreements. The 999-year term is the governance horizon. The critical distinction from the corporate context is that the “parent company” in this case is a state, and the “spin-off” is a new state, so the governance relationship is regulated not by company law but by public international law and the terms of the Founding Treaty.

The Parent-Child Dimension of the Midwifery Analogy. The midwifery analogy extends further than the act of birth itself, and it is worth developing its implications for the ongoing relationship between the Grantor State and the Startup State after the Founding Treaty has entered into force. Just as a parent brings a child into the world and provides the formative scaffolding of education, values, and institutional support, so too does the Grantor State lay the foundational architecture upon which the Startup State’s character is built. The Founding Treaty is, in this sense, less a commercial instrument than a constitutional covenant: it expresses the terms upon which one state has agreed to bring another into existence and to support it during its early development.

A healthy parent-child relationship does not require the child’s unconditional and perpetual agreement with every position the parent holds. On the contrary, the gradual emergence of the child’s independent judgment, its capacity to form its own views and to act upon them, and its willing-

74 Patrick A Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, Wiley 2018) ch 10.

ness to express, through lawful and respectful means, positions that may occasionally differ from those of the parent, are the very hallmarks of a successful upbringing. A child that is merely an echo of the parent is not a well-developed independent person; it is an extension. The same logic applies to the relationship between the Grantor State and the Startup State in the international sphere. A Startup State that invariably mirrors the Grantor State's positions in every multilateral forum, that votes in identically to the Grantor State in every United Nations General Assembly resolution, and that never expresses a view at variance with the Grantor State's diplomatic posture, risks being perceived by the international community not as a genuinely independent state but as a dependent appendage, a second vote for the Grantor State rather than a new member of the international community in its own right.⁷⁵

The Startup State is therefore not only permitted to exercise independent judgment in its foreign policy conduct; it is positively encouraged to do so, provided that such disagreements are conducted within the bounds of mutual respect, good faith, and the commitments of the Founding Treaty. Mild, principled, and well-reasoned divergences from the Grantor State's positions, on questions of trade policy, environmental governance, regional diplomacy, or multilateral institutional design, are the normal and healthy expression of independent statehood. They are also, from a purely practical perspective, the most effective available demonstration to third-party recognising states that the Startup State is genuinely independent and not merely a vehicle for the Grantor State's interests. The precedent set by the Grantor State's own constitutional practice is relevant here: states that have themselves graduated from protectorate or colonial status to independence have, in the great majority of cases, eventually found occasion to adopt positions at variance with those of their former metropolitan power, and this process has been widely regarded as the natural and ap-

⁷⁵ On the requirement that an independent state demonstrate independence of judgment in multilateral and bilateral contexts as a condition of credible recognition, see the ICJ Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo [2010] ICJ Rep 403, [79]-[84], where the Court distinguished between acts that reflected genuine exercises of the authority of the entity declaring independence and acts that were merely derivative of, or authorised by, the administering power. See also Jure Vidmar 115-130 on the distinction between formal and substantive independence as a recognition criterion.

propriate expression of independent statehood rather than as ingratitude or disloyalty.⁷⁶

The corporate spin-off analogy illuminates the same point from a different direction. When a parent company spins off a subsidiary as an independent entity, the success of the spin-off is measured, in significant part, by its capacity to develop its own strategic direction, its own management culture, and its own market identity. A spin-off that simply replicates the parent's strategy in every particular has not fully realised its independent potential; it is generating limited incremental value for shareholders. A spin-off that develops a complementary but distinct strategic profile, that identifies market opportunities the parent has not pursued, and that builds its own institutional reputation creates genuine new value.⁷⁷ The Startup State is analogous. Its capacity to develop a distinct diplomatic profile, to pursue membership in organisations the Grantor State has not joined, to enter bilateral relationships the Grantor State has not cultivated, and to position itself as a neutral forum for discussions the Grantor State cannot host without political cost, is precisely the source of the additional value that justifies the considerable effort and institutional investment that the establishment of a new state entails. The Grantor State, properly advised, should actively welcome this development rather than seek to constrain it.

It follows that the Startup State must, from the first day of its independent existence, invest in the development of a foreign policy that is genuinely its own. This means establishing a ministry of foreign affairs staffed by diplomatically trained professionals, cultivating relationships with states

76 Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (University of Pennsylvania Press, rev edn, 1996) 45-68, where the gradual development of independent governmental practice, including divergent positions from the metropolitan or parent power, is identified as a constituent element of the process of consolidating autonomous or independent statehood. See also Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP, 1995) 101-140, on the relationship between effective self-governance and the political consolidation of independence.

77 On the corporate spin-off as a value-creating transaction and the independent strategic profile of the spin-off entity, see Ronald J. Gilson, 'Separation and the Function of Corporation Law' (1984) 89 *Columbia Law Review* 1461; and Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (6th edn, Wiley, 2015) ch 12 ('Spin-offs, Split-offs and Equity Carve-outs'). The analogy between corporate spin-offs and de novo state formation has been observed, in different contexts, in Kal Raustiala, *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law* (OUP, 2009); and Paul Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It* (OUP, 2007) ch 9.

across the full spectrum of the international community rather than exclusively with the Grantor State's existing allies, and articulating, in multilateral fora, positions that reflect the Startup State's own constitutional values and long-term interests rather than simply endorsing the Grantor State's platform. The Startup State's permanent neutrality and demilitarisation, as provided in the Founding Treaty, far from limiting its diplomatic influence, provide it with a distinctive profile that many states will find attractive: a new, small, neutral, and fully transparent state, with no prior entanglements, no historical grievances, and a constitutional commitment to the rule of law and good governance, is precisely the kind of partner that many states across the developing and developed world will welcome.⁷⁸

⁷⁸ On the requirement that a recognised sovereign state exercise an independent foreign policy as a condition of effective statehood, see Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (OUP, 1994) 39-55, where the capacity to conduct independent external relations is identified as central to the practical definition of statehood. See also Hersch Lauterpacht, *Recognition in International Law* (CUP, 1947) 26-28; and Malcolm N. Shaw, *International Law* (CUP, 9th edn, 2021) 144-162.

Puppet States, Tributary States, and the Stimson Doctrine

8.1 The Stimson Doctrine and Non-Recognition

The Stimson Doctrine, articulated by United States Secretary of State Henry L. Stimson in January 1932 in response to Japan's establishment of the puppet state of Manchukuo in the occupied territories of northern China, holds that the United States will not recognise any situation, treaty, or agreement brought about by means contrary to the Kellogg-Briand Pact.⁷⁹ The doctrine was subsequently endorsed by the League of Nations Assembly and has been incorporated into the broader framework of international law as the non-recognition principle: states are under a general obligation not to recognise as lawful situations created by the illegal use of force or by other violations of *jus cogens* norms.

The non-recognition principle applies directly to the Startup States construction, but in the Startup State's favour: because the construction involves no use of force, no coercion, no violation of self-determination, and no breach of any *jus cogens* norm, it triggers none of the conditions that would attract the Stimson Doctrine's application. On the contrary, the lawfulness, consensuality, and transparency of the construction are the most powerful available arguments against any claim that third states are under an obligation of non-recognition.

⁷⁹ Identic note of the Secretary of State to China and Japan, 7 January 1932, *Foreign Relations of the United States 1932*, vol III, doc 10 <https://history.state.gov/historicaldocuments/frus/1932v03/d10>; League of Nations Assembly resolution of 11 March 1932.

8.2 Manchukuo: The Paradigm Case

Manchukuo, established by Japan in the territories of Manchuria following the Japanese military occupation in 1931, is the paradigm case of a puppet state in international law. The Lytton Commission, appointed by the League of Nations to investigate the situation, concluded that Manchukuo was not a genuine expression of the will of the Manchurian people and that it had been established through Japanese military force and political manipulation.⁸⁰ The League of Nations Assembly voted by 42 votes to 1 (Japan) to adopt the Lytton Report; Japan subsequently withdrew from the League. Manchukuo was recognised by Japan and by some twenty other governments, most of them Japan's allies or governments within the Axis orbit; the members of the League withheld recognition.

The distance between Manchukuo and the Startup States construction is as great as the distance between coercion and consent. Manchukuo was established by military force; the Startup State is established by treaty. Manchukuo suppressed an existing population's political will; the Startup State is constituted upon uninhabited territory where there is no prior political will to suppress. Manchukuo served the extractive purposes of an imperial power; the Startup State is designed for the mutual benefit of both parties and the broader international community. *Ex injuria jus non oritur*: the Startup State's rights and obligations arise from a lawful act, and this lawfulness is the complete and sufficient answer to any analogy with Manchukuo.

8.3 The Turkish Republic of Northern Cyprus, Somaliland, and Kosovo: Lessons in the Importance of Consent and Legality

The Turkish Republic of Northern Cyprus (TRNC), declared in 1983 following Turkey's military intervention in 1974, is recognised only by Turkey. The United Nations Security Council, in Resolution 541 (1983), considered the declaration "legally invalid" and called for its withdrawal.⁸¹ The TRNC's non-recognition is the direct consequence of its illegal genesis: the Turkish military intervention violated the prohibition on the use of force and the

⁸⁰ League of Nations, Report of the Commission of Enquiry (Lytton Report), League of Nations Doc C.663.M.320.1932.VII (4 October 1932).

⁸¹ SC Res 541 (18 November 1983) (S/RES/541). As of March 2026, the TRNC is recognised only by Turkey.

principle of territorial integrity, and the subsequent declaration of independence compounded that illegality.

Somaliland declared independence from Somalia on 18 May 1991 and has governed its territory effectively for over three decades with democratic elections, a functioning judiciary, and stable institutions. Despite meeting the Montevideo criteria in substance, Somaliland received no *de jure* recognition from a UN Member State until December 2025. Its experience illustrates the decisive importance of the political dimension of recognition. The lesson for the Startup States construction is that legal compliance alone, however rigorous, is insufficient without deliberate diplomatic engagement and strategic positioning within the recognition framework discussed in Part XII.

The analysis set out above was formulated on the basis of Somaliland's status prior to December 2025. On 26 December 2025, Israel extended full *de jure* recognition to Somaliland, making it the first UN Member State to do so. This development confirms the study's analysis that recognition is a managed and cumulative process: even a well-governed entity with three decades of effective self-governance required sustained diplomatic engagement to secure its first formal recognition.

The political character of recognition is further illustrated by the experience of Taiwan, which maintains effective governance, a robust economy, and democratic institutions but lacks widespread formal recognition due to the geopolitical dynamics of the People's Republic of China. The Startup States construction's approach to geopolitical navigation, discussed in Part XVI, is designed to avoid precisely these recognition obstacles.

Kosovo's experience, discussed in Part VI, reinforces the same lesson from the opposite direction: the ICJ Advisory Opinion confirmed that the declaration of independence was not illegal, but this finding has not translated into universal recognition. Legality is necessary but not sufficient; the political dynamics of the Security Council and the interests of the major powers are, in practice, as important as legal compliance in determining recognition outcomes. The Startup States construction addresses both dimensions: it is designed to be legally impeccable *and* strategically calibrated to the political dynamics of the major powers.

8.4 The Startup State is Not a Client State, Protectorate, or Tributary Arrangement: Critical Distinctions

The preceding analysis of puppet states, Manchukuo, and non-recognition must be complemented by an equally rigorous analysis of a second category of subordinate political arrangement: the client state, the protectorate, and the tributary relationship. These three concepts, whilst analytically distinct, share a common characteristic that places them entirely outside the framework of the Startup States construction: they each describe relationships in which one state exercises substantive control over the external affairs, defence, or internal governance of another, in a manner that compromises the subordinate entity's effective sovereignty. The Startup State, by contrast, is constitutionally and operationally independent. The distinction is not cosmetic; it is foundational.

The classical protectorate was a creation of the colonial era. When the British Crown concluded a series of exclusive agreements with the Arab shajdhoms of the lower Arabian Gulf between 1820 and 1892, collectively designated the Trucial States, it assumed responsibility for their external relations and defence whilst leaving their internal governance largely undisturbed. The 1892 Exclusive Agreements bound each shajhdom not to enter into any agreement or correspondence with any foreign power other than the British Government, and not to cede, sell, or mortgage any part of its territory except to the British Government. The practical effect was to extinguish the external dimension of sovereignty: the Trucial shajdhoms could not conduct an independent foreign policy, could not enter treaties with third states, and were entirely dependent upon British protection for their security. The political independence they retained was real in the domestic sphere but entirely absent in the international one.⁸²

The Startup State is the antithesis of the protectorate model. It possesses, from the moment of the Founding Treaty's entry into force, full and unrestricted capacity to enter into treaty relations with any state of its choosing, to establish diplomatic missions, to participate in international

82 The Exclusive Agreements of 1892 between the British Government and the rulers of the Trucial States (Trucial Oman) are collected in Charles U. Aitchison, *A Collection of Treaties, Engagements, and Sanads Relating to India and Neighbouring Countries*, vol XI (Government of India, 1909). See also Rosemarie Said Zahlan, *The Origins of the United Arab Emirates: A Political and Social History of the Trucial States* (Macmillan, 1978) 1-40; and Heard-Bey, Frauke, *From Trucial States to United Arab Emirates* (Longman, 1982). The protectorate framework and its effect on the external sovereignty of the shajdhoms is analysed in Malcolm N. Shaw, *International Law* (CUP, 9th edn, 2021) 165-168.

organisations, and to conduct an entirely independent foreign policy. The condominium arrangement with the Grantor State applies exclusively to a defined and limited set of internal governance functions during the formative period, and it operates on a consensual, contractual basis rather than through imposed constraint. The Startup State's international legal personality is complete and undivided. No third state is under any legal obligation to defer to the Grantor State's views on the Startup State's foreign policy, and the Grantor State has, under the Founding Treaty, expressly renounced any purported right to interfere in the Startup State's external relations.⁸³

The objection that reliance upon another state for defence, policing, or judicial administration precludes genuine sovereignty is refuted by extensive state practice. Liechtenstein delegates its customs and monetary policy to Switzerland; Monaco delegates defence to France; Nauru delegated judicial functions to Australia for decades after independence. Crawford confirms that the test is whether the state's dependence results from its own voluntary choice rather than external coercion.

The critical distinction, as Crawford articulates with precision, is not whether a state relies upon another for specific governmental services, but whether it retains the legal capacity and the practical exercise of independent decision-making in the domains that define sovereignty: foreign policy, constitutional governance, treaty-making, and the determination of its own fundamental interests. A state that has contracted its defence to a stronger partner by bilateral treaty, but that determines its own foreign policy, concludes its own treaties, and governs its own population through its own constitutional institutions, is sovereign in the fullest available sense. The Startup State, under the Founding Treaty's architecture, falls clearly and demonstrably within this category.

The Condominium Architecture as Institutional Scaffolding. The condominium service arrangements provided under the Model Treaty's defence, policing, and judicial administration articles should be understood, and are explicitly designed, not as permanent structural features of the

83 The classical treatment of protectorates in international law remains Lassa Oppenheim, *International Law: A Treatise* (8th edn, ed. Hersch Lauterpacht, 1955) vol I, sections 96-97, distinguishing protected states with full legal personality from colonial protectorates under suzerain authority. The distinction is applied and refined in James Crawford, *The Creation of States in International Law* (OUP, 2nd edn, 2006) 281-296, who emphasises that the retention of external sovereignty is the critical marker separating a protected state from a dependency.

Startup State's constitutional order but as an initial institutional scaffolding, the functional equivalent of the capacity-building and transitional support frameworks that have characterised the early years of every newly independent state's relationship with its principal partners. The scaffolding is not the building. It is removed, systematically and according to plan, as the building becomes capable of bearing its own weight.

The Founding Treaty should incorporate defined sunset provisions and measurable independence benchmarks for each condominium service arrangement (defence, policing, judicial administration), as detailed in Article 10 of the Model Treaty in Annex A. The progressive achievement of these benchmarks ensures that the Startup State's reliance on the Grantor State is transitional by design and terminable upon the development of autonomous institutional capacity.

Those benchmarks should be drafted with the precision of a public-law transition schedule: target force levels for local policing, minimum judicial staffing ratios, audited budget capacity, treaty-registration milestones, and measurable diplomatic uptake. The more objective the benchmarks, the harder it becomes for critics to portray the arrangement as indefinite tutelage. A staged transfer mechanism turns institutional dependence from a vulnerability into evidence of seriousness, because it demonstrates that sovereignty is being operationalised rather than merely proclaimed.⁸⁴

The client state model presents a different, but equally inapposite, analogy. The relationship between the Syrian Arab Republic and the Lebanese Republic from the early 1970s until the Cedar Revolution of 2005 is instructive. Syrian forces entered Lebanon in 1976 under the auspices of the Arab League's deterrent force and remained, in substantial numbers, for nearly three decades. During this period, Lebanon's foreign policy, its cabinet appointments, and its security arrangements were, to a significant degree, determined in Damascus rather than in Beirut. The Ta'if Agreement of 1989, which formally ended the Lebanese Civil War, was itself negotiated under Syrian auspices, and the subsequent Syrian interpretation of the agreement's provisions on troop withdrawal was broadly regarded as self-serving. The Lebanese state retained nominal independence; the effective

⁸⁴ On institutional transition design, state capacity, and the progressive internalisation of public functions, see Douglass C North, John Joseph Wallis and Barry R Weingast, *Violence and Social Orders* (CUP 2009) 113-139; D Acemoglu and J Robinson, *Why Nations Fail* (Crown 2012) 70-95.

exercise of that independence was, for an extended period, severely compromised.⁸⁵

The Startup State construction is immunised against this pathology by its foundational architecture. The Founding Treaty confers no authority upon the Grantor State to determine the Startup State's foreign policy positions, to influence its cabinet appointments, or to direct its diplomatic conduct. The condominium arrangement is structured around specific, enumerated, contractual service provisions (defence, policing, and judicial administration) rather than around a general subordination of the Startup State's will to the Grantor State's preferences. The Startup State's constitutional order is its own, not a derivative of the Grantor State's; its judicial administration, whilst provided under contract, is subject to the Startup State's own constitutional framework; and the Founding Treaty's dispute resolution provisions ensure that disagreements between the parties are resolved by independent arbitration rather than by the exercise of superior power.⁸⁶

The tributary relationship, which characterised the Qing Dynasty's management of its peripheral dependencies and finds echoes in a variety of pre-modern international arrangements, is still less apposite. Tributary states acknowledged the superior status of the suzerain through ritual and symbolic acts of submission; they conducted trade and diplomacy through the framework of tributary exchange; and they accepted, to varying degrees, constraints on their external relations. The Startup State acknowledges no superior; it is created as the legal equal of its Grantor State from the moment of recognition; and the Founding Treaty is an instrument between

85 The Syrian presence in Lebanon and its constitutional dimensions are analysed in Nadim Shehadi and Dana Haffar Mills (eds), *Lebanon: A History of Conflict and Consensus* (Centre for Lebanese Studies / I.B. Tauris, 1988). On the Ta'if Agreement of 22 October 1989 (Document of National Accord), see Farid el-Khazen, *The Breakdown of the State in Lebanon 1967-1976* (I.B. Tauris, 2000). The constitutional effects of the Syrian presence on Lebanese foreign policy are assessed in Avi Shlaim, *The Iron Wall: Israel and the Arab World* (Penguin, 2014 edn) ch 16.

86 Crawford, *Creation of States* 62-89 provides the authoritative treatment of the distinction between sovereignty and dependence in international law, identifying the continuous and peaceful exercise of governmental authority over territory and population, and the capacity to enter into independent international relations, as the operative tests. The concept of the client state as a subspecies of the broader category of dependent state is addressed in Malcolm N. Shaw, *International Law* (CUP, 9th edn, 2021) 162-171. On tributary relationships in pre-modern international order, see James L. Hevia, *Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793* (Duke University Press, 1995).

equals, governed by the principles of *pacta sunt servanda* and good faith, rather than a document of submission. The maxim *nemo dat quod non habet* operates here in the Startup State's favour: the Grantor State cannot confer upon itself, by the act of establishing the Startup State, any authority over that state that exceeds what the Founding Treaty explicitly and consensually grants.

International law scholars have observed that the critical distinction between a lawfully constituted state and a dependent or subordinate entity lies not in the form of its establishment but in the substantive reality of its independence. The Startup State satisfies this test comprehensively. It is not a renamed protectorate; it is not a client state under a new label; and it is not a tributary dependency dressed in the language of modernity. It is a genuinely novel construction: a state created by treaty upon uninhabited territory, with full international legal personality, complete constitutional independence, and a governance architecture designed to make genuine sovereignty not merely nominal but practically effective from the first day of its existence.

The Montevideo Criteria Applied to the Proposed Construction

9.1 The Montevideo Convention and Its Modern Application

The Montevideo Convention on the Rights and Duties of States (1933) identifies four criteria of statehood: permanent population, defined territory, government, and capacity to enter into relations with other states. Although regional in origin, these criteria are widely treated as reflecting customary international law. Crawford describes them as “a convenient summary” of the requirements of statehood, whilst cautioning that they are not exhaustive and must be applied in context.⁸⁷ Shaw similarly notes that “the existence of a state is not dependent upon recognition”, but upon the factual satisfaction of these criteria as assessed through law.

The Montevideo Convention does not attempt to describe the historical pathways through which states have emerged. Instead it identifies the minimum juridical characteristics required for an entity to function as a state within the international legal order. Those criteria were distilled from historical experience, but the Convention itself does not confine their application to entities arising through particular historical processes. The Convention therefore operates as a functional test rather than a historical narrative. If an entity possesses a defined territory, a permanent population, a government, and the capacity to enter into relations with other

⁸⁷ James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) ch 2; Convention on Rights and Duties of States (Montevideo, 26 December 1933) 165 LNTS 19, Art 1.

states, the manner in which those conditions were achieved does not in itself determine the legal conclusion.

9.2 Permanent Population

The requirement of a permanent population does not entail numerical thresholds, ethnic homogeneity, or historical rootedness in the territory. Oppenheim observed that “a state without people is inconceivable”, but recognised that population may be small and mobile.⁸⁸ Crawford confirms that what matters is the existence of a stable community capable of sustaining social and governmental organisation.⁸⁹ Shaw similarly treats population as a factual predicate rather than a political test.⁹⁰ The Vatican City State’s permanent population of approximately 800 persons, constituted through institutional appointment rather than natural formation, has never been questioned as a basis for challenging its statehood.⁹¹ The Republic of Nauru, with a population of about 6,000 at independence in 1968, about half of them Nauruan, is a further illustration of the criterion’s permissive lower bound.

The Montevideo criterion of permanent population should not be understood as requiring the existence of a mature or historically continuous community at the moment of state creation. Numerous states recognised in the twentieth century possessed only small administrative populations at their inception and developed larger communities only subsequently. The criterion is better understood as requiring the existence of a legally constituted citizenry capable of forming a stable political community over time. The founding citizenry therefore represents the juridical nucleus of the future population rather than its final sociological form.

The tabula rasa character of the Startup State requires that the founding population be deliberately constituted as a matter of institutional design. The mechanism through which this is achieved is the **founding citizens** (*cives fundatores*): persons who, prior to the entry into force of the Founding Treaty, have formally registered as nationals of the Startup State-to-be

⁸⁸ Lassa Oppenheim, *International Law: A Treatise* (8th edn, ed Hersch Lauterpacht, Longmans 1955) vol I, 118.

⁸⁹ Crawford, *Creation of States* 37.

⁹⁰ Shaw, *International Law* 178.

⁹¹ Crawford, *Creation of States* 56. Nauru was admitted to the United Nations on 14 September 1999 (UNGA Res 54/5).

through the constitutional processes of the Provisional Founding Authority, and who have committed, by a documented act of will, to treating the Startup State's territory as their primary domicile. These founding citizens need not be numerous. They need not have a prior connection to the territory. What they must have is a legally documented and voluntarily assumed commitment to permanent settlement and the status of national of the Startup State. This commitment is precisely the human element of sovereignty, the voluntary constitution of a political community, that distinguishes a state from a legal instrument.

This mechanism is consistent with the Montevideo criterion's established interpretation. The criterion requires only a population sufficient to sustain a governmental apparatus; it does not require that the population have an organic or historical connection to the territory in question, a shared ethnicity, a shared language, or a shared history. The international legal order has never conditioned recognition of statehood upon the authenticity or historical depth of the state's population. Singapore's population at independence in 1965 consisted primarily of persons whose families had migrated from China, India, and the Malay Peninsula within living memory. Israel's founding population in 1948 included persons from scores of countries across multiple continents. The populations of many newly independent states in the decolonisation era were themselves shaped by the political processes that created the states in which they found themselves. The criterion is, and has always been, one of effectiveness and commitment, not genealogy.

The Montevideo criteria also function, as Crawford's synthesis of the declaratory and constitutive theories of recognition confirms, not merely as a moment-in-time snapshot but as a trajectory assessment. A state that has founding citizens, a defined territory, a governmental framework, and the capacity to enter into relations with other states is not disqualified by the fact that its population and institutions are in the process of development. Construction scaffolding does not negate the existence of the building. The Startup State's founding citizens, documented in the Provisional Founding Authority's constitutional registers prior to the Founding Treaty's entry into force, constitute the permanent population at $T=0$ in the legally relevant sense: a small but formally constituted community that has chosen this state as its own.

In practical terms, the requirement is best satisfied by a deliberately recruited founding cohort whose residence, legal status, and access to nationality are fixed by public law from the outset. The relevant question

is not whether the first inhabitants possess ancestral rootedness in the territory, but whether they are lawfully settled there on a basis that is stable, reviewable, and capable of ordinary civil reproduction. A permanent population can therefore be planned without being artificial in the pejorative sense: many successful polities began with migration, settlement incentives, and institution-led community formation rather than with deep historical continuity.⁹²

9.3 Defined Territory

International law does not require perfectly delimited boundaries. Shaw notes that “many states have emerged with disputed frontiers”, yet nonetheless qualified as states.⁹³ What is required is a reasonably defined territorial base and a lawful claim to title. Crawford emphasises that modern international law strongly disfavours unilateral acquisition of territory and privileges consensual arrangements.

The Startup State’s territory is defined with geodetic precision in the Founding Treaty’s Schedule 1. The legal basis for the Startup State’s jurisdictional authority over that territory is the 999-year sovereign lease, which grants *plenam jurisdictionem* from the Grantor State. The quality of the Startup State’s territorial title, assessed at the level of *imperium* and effective control rather than proprietary ownership, is as strong as it is possible for a leasehold arrangement to provide. The defined territory criterion is satisfied in full.

9.4 Effective Government

The government criterion requires effective control over the population and territory and the institutional capacity to maintain public order and assume international obligations. The standard, as affirmed by Arbitrator Taft in the Tinoco Arbitration (1923), is one of effectiveness, of actual functioning governmental authority, not of constitutional perfection or any particular form of constitutional order.⁹⁴

⁹² On permanent population as a flexible criterion not requiring antiquity or ethnic continuity, see Crawford, *Creation of States* 52-61; Malcolm N Shaw, *International Law* (9th edn, CUP 2021) 178-181.

⁹³ Crawford, *Creation of States* 48. See also North Sea Continental Shelf Cases 32.

⁹⁴ Tinoco Arbitration. Taft confirmed that the test is whether the Government was able to maintain itself and whether the body of citizens had acquiesced in its authority.

For the Startup State, effective government is secured from the moment of constitution through the contractual arrangements with the Grantor State for the provision of core state services: defence, policing, and judicial administration. These arrangements are not supplements to effective government; they are an integral part of it. The Startup State's constitutional instruments must include clearly defined lines of succession, mechanisms for emergency governance, and explicit provisions governing the relationship between the condominium partners in the event of a governance crisis.

9.5 Capacity to Enter Into Relations with Other States

The fourth criterion is most directly dependent upon recognition. The proposed construction addresses it through the recognition architecture examined in Part XII: the Grantor State's recognition in the Founding Treaty provides the immediate fulfilment of this criterion, and the anticipated recognition by a cluster of sympathetic states in the immediate aftermath of the Founding Treaty's entry into force extends the exercise of this capacity to the multilateral plane. As the number of recognising states grows, the capacity to enter into international relations becomes ever more firmly established and increasingly difficult to challenge.

Legality of Origin: Secession Avoidance, Jus Cogens Compliance, and Uti Possidetis

10.1 Not a Secession: Five Analytical Reasons

The most important first-order question about the legality of origin is whether the proposed construction constitutes a secession. The answer, on careful analysis, is negative, for five analytically distinct reasons.⁹⁵

First. There is no unilateral act. The construction requires the Grantor State's active consent at every stage. The Founding Treaty is a bilateral instrument; the Startup State's constitution is the product of a negotiated agreement, not a declaration.

Second. There is no existing community seeking self-determination. The territory is uninhabited. Secession doctrine is premised upon a *demos* asserting a right of self-determination against the opposition of the parent state. There is no *demos* here. There is no population whose political aspirations are in conflict with the Grantor State's will.

Third. The Grantor State's territorial integrity is not impaired. Where a state voluntarily elects, through its own constitutional process, to lease *ple-nam jurisdictionem* over a portion of its territory, the principle of territorial integrity is not engaged: it is the state's own exercise of sovereignty over its territory, not a violation of that sovereignty by an external actor.

⁹⁵ Marcelo Kohen (ed), *Secession: International Law Perspectives* (CUP 2006) ch 1; Antonio Cassese, *Self-Determination of Peoples* (CUP 1995) 53.

Fourth. There is no violence, coercion, or force. Every form of secession that has given rise to international controversy has involved either the use or the threat of force. The proposed construction is entirely peaceful. *Ex injuria jus non oritur*: the construction's rights and obligations arise from a lawful act, not from an unlawful one.

Fifth. The Grantor State retains *dominium* throughout. The territory is not separated from the Grantor State in any proprietary sense. The arrangement is architecturally a lease, not a cession. *Nomen iuris non mutat rem*: the substance of what has been granted, *plenam jurisdictionem*, is the determinative consideration, but the retention of *dominium* by the Grantor State remains legally significant as a demonstrable expression of the arrangement's non-secessionary character.

The Supreme Court of Canada's advisory opinion in *Reference re Secession of Quebec* [1998] 2 SCR 217 provides what is widely regarded as the most sophisticated judicial analysis of the international law of secession produced by any domestic tribunal.⁹⁶ The Court held, on the international law dimension, that there is no positive entitlement to unilateral secession in international law for a people already enjoying 'meaningful internal self-determination' within an existing democratic state; that international law neither prohibits nor expressly authorises unilateral secession; and that a clear democratic expression of the will for independence would generate a constitutional obligation upon the parent state to negotiate in good faith the terms of any change in constitutional arrangements, though not necessarily an obligation to accede to secession. The Quebec reference reinforces the fifth reason set out above for the conclusion that the Startup States construction is not a secession: the construction is not an exercise of the right of self-determination by a demos against the parent state's will, but a consensual bilateral treaty arrangement in which the parent state is the active and willing architect of the new entity's constitution. The Court's reasoning therefore does not apply, but its underlying values (transparency, consent, democratic process, and negotiated solutions) are the very values upon which the Startup States construction is built.

The Åland Islands case, decided by the Committee of Jurists of the League of Nations in 1920, provides the earliest authoritative treatment

⁹⁶ *Reference re Secession of Quebec* [1998] 2 SCR 217 (Supreme Court of Canada, 20 August 1998). The Court's analysis of international law is at [111]-[155]. On the remedial right theory, see Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (OUP, 2004) chs 8-9. For the scholarly context, see Marcelo Kohén (ed), *Secession: International Law Perspectives* (CUP, 2006).

of the distinction between self-determination as a political aspiration and self-determination as a legal entitlement generating a right of secession.⁹⁷ The Committee concluded that Finland exercised sovereignty over the islands (a finding subsequently confirmed by the League Council), but its foundational reasoning distinguished the political dimension of self-determination (the aspiration of a people to govern itself) from a juridical right of secession (a legal entitlement to break away from an existing state without that state's consent). The report of the Special Rapporteur observed that the recognition of a right to demand separation from the state of which it forms part is not mentioned in the Covenant, and that it would be to allow a process that must inevitably lead to anarchy and the dissolution of society. The Åland Islands case confirms, from the earliest stratum of modern international law, the proposition that self-determination does not automatically generate a right of unilateral secession and that the consent of the parent state remains the pivotal legal condition for the lawful creation of a new state within the territory of an existing one.

10.2 Jus Cogens Compliance

The principle of *ex injuria jus non oritur* requires that rights arising from the proposed construction be founded upon acts that are themselves lawful. The construction is assessed against the relevant *jus cogens* norms and found to be in complete compliance. There is no use of force or threat of force against the territorial integrity or political independence of any state, in violation of Article 2(4) of the UN Charter. There is no violation of the right of self-determination: the territory is uninhabited; there is no *demos* whose political will is overridden. There is no act of genocide, slavery, or torture. There is no systematic discrimination. The construction is entirely *jus cogens* compliant, and this compliance is not incidental to its design but central to it.⁹⁸

⁹⁷ Report of the International Committee of Jurists on the Åland Islands Question, League of Nations Official Journal, Special Supplement No. 3, October 1920; and Report of the Commission of Rapporteurs, League of Nations Council Doc B7 21/68/106, April 1921. Both documents are reproduced and analysed in Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (University of Pennsylvania Press, rev edn, 1996) 355-374; and Antonio Cassese, *Self-Determination of Peoples* (CUP, 1995) 28-35.

⁹⁸ Crawford, *Creation of States* 98-106; A Cassese, *International Law* (2nd edn, OUP 2005) 198-202.

10.3 The Clean Hands Doctrine and Estoppel

The doctrine of clean hands, *nemo auditur propriam turpitudinem allegans*, holds that a party seeking legal protection must not itself be in violation of the relevant legal standards. Applied to the Startup State's legal position, the doctrine requires that the construction's lawfulness be demonstrable at every point, such that no adversarial state or international body can point to a specific act of illegality as the foundation of a challenge.

The doctrine of estoppel in its international law application, as developed by the ICJ in the North Sea Continental Shelf Cases (1969), operates powerfully in the Startup State's favour. The Grantor State, having recognised the Startup State in the Founding Treaty and having entered into comprehensive treaty arrangements defining their mutual obligations, is thereafter estopped from denying the Startup State's existence or from asserting rights inconsistent with those treaty obligations.⁹⁹ This estoppel is the most important structural protection available to the Startup State in its relationship with the Grantor State, and it is the direct product of the Founding Treaty's transparency and comprehensiveness.

⁹⁹ North Sea Continental Shelf Cases 25-26.

The Constitutional Integrity of the Grantor State

11.1 The Most Consequential Design Decision

The choice of Grantor State is, of all the design decisions required by the proposed construction, the most consequential. Every element of the construction's legal architecture rests upon the Grantor State's clear title, its constitutional authority to enter into the Founding Treaty, and the long-term stability of its commitment to that treaty's obligations. A construction built upon a defective or unstable Grantor State will, *nemo dat quod non habet*, produce a defective or unstable Startup State. The due diligence required at this stage is not perfunctory: it is the most important single component of the preparatory work.¹⁰⁰

The ideal Grantor State is characterised by the following attributes. First, clear, undisputed, and internationally recognised title (*dominium*) over the relevant territory. Second, a stable constitutional order that clearly authorises the executive or legislature to enter into treaties of this character. Third, a democratic system of government with a functioning rule of law that provides credible assurances of treaty compliance over the long term. Fourth, an absence of territorial disputes with neighbouring states that might affect the validity of its title. Fifth, a positive or at minimum neutral relationship with the major powers whose Security Council positions will be decisive in the context of the Startup State's application for United Nations membership.

¹⁰⁰ Hersch Lauterpacht, *The Function of Law in the International Community* (Clarendon Press 1933) ch 14.

11.2 The Vienna Convention Article 46 Standard

Article 46 of the Vienna Convention on the Law of Treaties (1969) provides that a state may invoke its internal law as a ground for invalidating its consent to a treaty only where the violation of internal law was *manifest*, meaning objectively evident to any state conducting itself in the normal manner, and concerned a rule of internal law of fundamental importance.¹⁰¹ The practical implication is clear: the Grantor State must demonstrate that its constitutional order authorises the entry into the Founding Treaty through a legitimate and manifest constitutional process. For most states, this will require parliamentary or legislative approval, or at minimum the exercise of treaty-making power by the constitutionally authorised executive. The constitutional pathway must be documented with the same rigour as the treaty itself.

11.3 Continuity of Obligation: Gabčíkovo-Nagymaros

The principal long-term risk to the Founding Treaty is not bad faith by the Grantor State's current government but constitutional change, electoral transition, or political reversal in the Grantor State over the 999-year term. The Gabčíkovo-Nagymaros Project (ICJ, 1997) is the definitive authority for the proposition that a change of government does not in itself terminate or suspend a state's treaty obligations.¹⁰² The Court rejected Hungary's argument that the transformation from communist to democratic governance justified the unilateral suspension and abandonment of its 1977 treaty obligations with Czechoslovakia (and its successor Slovakia). The principle of *pacta sunt servanda* operates throughout the full duration of a treaty regardless of political change.

The Founding Treaty's inclusion of a treaty succession clause, providing explicitly that its obligations bind all successors, heirs, and assignees of the Grantor State, and the Article 102 registration of the Founding Treaty with the United Nations Secretariat, collectively provide the strongest available legal protections against the risk of Grantor State instability. Registration does not of itself make a treaty irrevocable, which depends on its terms and on the law of treaties (Section 14.4), but it makes the existence and terms of the treaty a matter of permanent public international record.

¹⁰¹ Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, 1155 UNTS 331, Art 46.

¹⁰² *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7, para 104.

The Recognition Framework: Strategy, Sequencing, and the Declaratory/Constitutive Spectrum

12.1 Recognition as a Managed and Cumulative Process

Recognition in international law is best understood not as a single binary event but as a managed and cumulative process through which a new entity's international legal personality is progressively consolidated. This understanding, which emerges from the scholarship of Vidmar, Grant, and Fabry, is directly relevant to the Startup States construction: it means that the goal is not to achieve universal recognition instantaneously but to build a recognition trajectory that, over time, makes the Startup State's legal position increasingly difficult to challenge.¹⁰³

Recognition occupies an ambiguous position in international law. It is simultaneously a legal act and a political decision. The Montevideo criteria provide a juridical framework through which the existence of a state may be assessed, but they do not compel other states to extend recognition once those criteria are satisfied. The framework explored in this study therefore does not assume universal recognition as an automatic outcome. Instead it proceeds on the more modest premise that if a sufficient number of states were persuaded of the legality and prudence of such a construction, recognition could emerge through ordinary diplomatic processes. The

¹⁰³ Vidmar, *Democratic Statehood* ch 1; Grant, *Recognition of States* 13-24; Fabry, *Recognizing States* 187-192.

argument presented here concerns the absence of legal prohibitions, not the certainty of political endorsement.

The theoretical debate between the declaratory and constitutive theories of recognition has been substantially resolved in modern doctrine. Crawford's synthesis is the most authoritative statement: recognition operates primarily as a declaratory act that acknowledges a status already legally constituted by the satisfaction of the objective criteria, but it also has constitutive dimensions in the sense that the exercise of the capacity to enter into relations with other states depends, in practice, upon those states being willing to engage. The dominant synthesis in British and Commonwealth doctrine confirms that effective control is the operative criterion.¹⁰⁴

12.2 The Grantor State's Recognition as *Lapis Angularis*

The Grantor State's recognition of the Startup State in the Founding Treaty is the *lapis angularis* of the entire recognition architecture. It performs several functions simultaneously: it constitutes the first, most important, and legally most authoritative act of recognition; it provides immediate and legally documented evidence of the Startup State's satisfaction of the Montevideo criteria from the perspective of a state with direct and comprehensive knowledge of the construction; it creates an estoppel that forecloses any subsequent challenge by the Grantor State to the Startup State's existence or legal personality; and it provides the platform upon which third-state recognition is built.¹⁰⁵

The Grantor State's recognition is also practically durable. Grant and Crawford agree that recognition, once extended through treaty and followed by diplomatic relations, becomes institutionally difficult to reverse in practice, and Article 6 of the Montevideo Convention provides that recognition "is unconditional and irrevocable". The Grantor State's recognition in the Founding Treaty is therefore the permanent legal foundation of the Startup State's international personality, regardless of subsequent political developments in the Grantor State.¹⁰⁶

¹⁰⁴ Crawford, *Creation of States* 19-26; Shaw, *International Law* 445-450. Government of the United Kingdom, Guidelines for the Recognition of New States in Eastern Europe and in the Soviet Union (16 December 1991).

¹⁰⁵ Grant, *Recognition of States* 62-68; Crawford, *Creation of States* 21.

¹⁰⁶ Convention on Rights and Duties of States (Montevideo, 26 December 1933) 165 LNTS 19, Art 6; Crawford, *Creation of States* 21; Grant, *Recognition of States* 62-68. See also Section 14.4.

12.3 The Recognition Trajectory: An Initial Cluster and Progressive Consolidation

The recommended approach to third-state recognition involves three stages. The first stage, which should be prepared and coordinated in advance of the Founding Treaty's entry into force, is the identification and cultivation of an initial cluster of sympathetic states that are in a position to extend recognition immediately or within a short period of the Founding Treaty's entry into force. The initial cluster should be selected for political credibility, geographic diversity, and strategic positioning relative to the Security Council permanent members.

The second stage involves progressive outreach to the broader community of states, conducted through formal diplomatic missions, treaty accessions, and engagement with international organisations. The goal is to make the Startup State's legal position increasingly settled and its practical engagement with the international system increasingly normalised. The third stage is the application for United Nations membership, examined in Part XIII.

United Nations Membership, Article 102 Registration, and Graduated Integration

13.1 Article 4 of the UN Charter and the Membership Criteria

Article 4(1) of the United Nations Charter provides that membership in the United Nations is open to all “peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organisation, are able and willing to carry out these obligations.” The Conditions of Admission Advisory Opinion (ICJ, 1948) confirmed that these criteria are exhaustive: no additional political conditions may lawfully be imposed by the Security Council or the General Assembly.¹⁰⁷

The Startup State satisfies all four criteria. It is peace-loving: its permanent neutrality and demilitarisation are constitutionally entrenched. It accepts the Charter obligations: its Founding Treaty and constitutional instruments expressly commit it to compliance with the Charter and with all applicable norms of customary international law. It is able to carry out those obligations: its governmental institutions, though initially supported by the condominium arrangements, provide the necessary institutional framework. It is willing: the Founding Treaty and constitutional instruments are the most credible available evidence of willingness.

13.2 The Security Council Veto: A Candid Assessment

The application for United Nations membership requires a recommendation by the Security Council, on which each of the five permanent mem-

¹⁰⁷ Conditions of Admission Advisory Opinion.

bers has a veto. This is the most significant single procedural obstacle to the Startup State's admission, and it must be addressed with candour. A Security Council veto by any one of the five permanent members would prevent United Nations membership regardless of the legal merits of the application. The management of the permanent members' political interests is therefore as important as legal compliance in the sequencing of the admission process.

Part XVI of this study addresses the geopolitical navigation required in relation to each of the five permanent members. The general principle is one of strategic alignment: the Startup State should present itself as an entity that poses no strategic threat to any of the five permanent members, and whose admission to the United Nations would impose no significant political cost on any of them. The absence of threat is the best available foundation for the absence of opposition.

13.3 Article 102 Registration: The Obligation of Transparency

Article 102 of the United Nations Charter requires that every treaty or international agreement entered into by any Member of the United Nations shall be registered with the Secretariat and published. The practical consequence of non-registration is provided by Article 102(2): no party to any such unregistered agreement may invoke it before any organ of the United Nations.¹⁰⁸

The Founding Treaty should be registered with the United Nations Secretariat within thirty days of its entry into force. While registration is framed as a mandatory obligation under Article 102 of the United Nations Charter, its practical significance extends well beyond formal compliance. Registration does not constitute endorsement by the Secretariat, nor is it contingent upon membership in the United Nations. In practice, the Secretariat performs an administrative function, assessing whether an instrument is, in substance, an international agreement concluded between entities possessing the capacity to do so under international law. That capacity has, in established practice, been recognised in respect of entities that are not UN member states, as demonstrated by the treaty activity of the Cook Islands and Niue.

Registration serves several important functions. It establishes an authoritative public record of the Founding Treaty's existence and terms;

¹⁰⁸ UN Charter Art 102(2).

it enables third states to assess the construction on its legal merits; it signals the confidence of the founding parties in the legal robustness of their arrangement; and it provides a documentary foundation for the Startup State's subsequent engagement with international organisations. Properly understood, registration situates the Founding Treaty within the recognised processes of the international legal system without purporting to resolve, or prejudge, the political questions that ultimately determine recognition and membership.

13.4 Graduated International Integration

A Startup State should, as a matter of design, aim to satisfy the criteria for membership in the United Nations, while recognising that the decision whether to seek admission remains a matter for each such state to determine. International integration does not depend exclusively on United Nations membership, and alternative pathways are both available and consequential. A Startup State can pursue membership in specialised agencies and other international organisations that do not require approval by the Security Council. Participation in bodies such as UNESCO, World Health Organization, Universal Postal Union, and International Civil Aviation Organization, among comparable institutions, provides practical operational benefits, enhances the Startup State's international profile, and contributes to the accumulation of a documentary record of engagement that may support any future application for United Nations membership.

Treaty Design, Durability, and the Founding Covenants

14.1 Treaties as Instruments of Institutional Stability

The Founding Treaty is not merely the constitutional instrument of the Startup State. It is the entire framework within which the Startup State's existence, its relationship with the Grantor State, and its engagement with the international community are conducted. Its design must therefore reflect not only the immediate requirements of statehood but the 999-year horizon of the arrangement. A treaty designed for a single political moment will fail; a treaty designed for institutional durability across centuries will succeed.¹⁰⁹

The experience of long-duration territorial arrangements in international law, from the Anglo-Egyptian Condominium (1899) to the Guantanamo Bay lease (1903) to the various Hong Kong arrangements, confirms that the key to durability is not the strength of the founding parties' commitment at the moment of conclusion, which can be assumed, but the quality of the institutional mechanisms for managing disputes, adapting to changed circumstances, and maintaining the mutual benefits that justify the arrangement's continuation.

14.2 The Enhanced Durability of Territorial Treaties

Territorial treaties occupy a privileged position in international law. The International Court of Justice has consistently treated territorial treaties

¹⁰⁹ Anthony Aust, *Modern Treaty Law and Practice* (3rd edn, CUP 2013) ch 3; Duncan Hollis (ed), *The Oxford Guide to Treaties* (2nd edn, OUP 2020) ch 9.

as having an enhanced stability and durability that distinguishes them from other categories of international agreement. In the Temple of Preah Vihear (1962), the Aegean Sea Continental Shelf Case (1978), and the Territorial Dispute (Libya v Chad) (1994), the Court has affirmed that territorial treaties are not subject to the doctrine of *rebus sic stantibus*, which permits treaty termination upon fundamental change of circumstances, to the same degree as other categories of treaty. A territorial treaty, once concluded and registered, is designed to last.¹¹⁰ Article 62(2)(a) of the Vienna Convention goes further for one class of territorial treaty: a fundamental change of circumstances may not be invoked at all as a ground for terminating or withdrawing from a treaty that “establishes a boundary”.

The Dual-Character of the 999-Year Term. An objection may be stated as follows: the study argues simultaneously that the 999-year term is functionally indistinguishable from perpetuity (for purposes of the Startup State’s durability and investor confidence) and that it is not a permanent cession (for purposes of the Grantor State’s constitutional position). It may be suggested that these two claims are in tension, and that the principle *nomen iuris non mutat rem*, which the study itself invokes, ought to force the conclusion that a functionally permanent arrangement must be treated as permanent cession.

The objection dissolves upon close analysis of the distinct legal interests at stake for each party. The argument as to functional permanence is directed at the Startup State’s legal durability and the confidence of investors and third states: it is an argument about the practical character of the rights *granted to* the Startup State. The argument that the arrangement does not constitute permanent cession is directed at the Grantor State’s constitutional position: it is an argument about the rights *retained by* the Grantor State. These are different legal interests and different questions. A single instrument can produce different legal characterisations in respect of different parties’ different interests, and this is a well-established feature of complex international agreements.

The analogy from mineral resource law is instructive. A state may grant a mining concession for ninety-nine years with full operational authority to the concessionaire, practically permanent in commercial terms, whilst retaining underlying title and a reversionary interest. The concessionaire’s

¹¹⁰ Aegean Sea Continental Shelf Case (Greece v Turkey) [1978] ICJ Rep 3, 33-34; Temple of Preah Vihear (Cambodia v Thailand) [1962] ICJ Rep 6, 34; Territorial Dispute (Libya v Chad) [1994] ICJ Rep 6, 37.

rights are, for all financing and commercial purposes, treated as permanent: lenders extend credit against a long-term concession as against a permanent asset. The grantor state has not alienated its title or its reversionary interest. Both characterisations are simultaneously correct for their respective purposes, and neither contradicts the other.

The precise legal formulation of the 999-year term's dual character is therefore this: the Grantor State grants *plenam jurisdictionem*, plenary *imperium*, for a defined but extended term, retaining *dominium* throughout. The Startup State acquires rights of such comprehensiveness and duration that, for all practical purposes of international legal personality, institutional design, and third-state engagement, they function as governmental rights in perpetuity. The legal distinction between the grant and a permanent cession is real, not formal: the reversionary interest is real, the *dominium* retention is real, and the constitutional significance of the distinction to the Grantor State is genuine. The maxim *nomen iuris non mutat rem* operates in this context to reinforce the Startup State's position, the "lease" label does not diminish the substantive governmental rights conferred, not to force the conclusion that the Grantor State has permanently alienated its territory. The substance of the rights granted is plenary *imperium* for an extended term. The substance of the rights retained is *dominium* and a reversionary interest. Both are coherent; neither eliminates the other.

14.2A *Rebus Sic Stantibus* and the 999-Year Horizon: A Rigorous Engagement

The doctrine of fundamental change of circumstances, codified in Article 62 of the Vienna Convention on the Law of Treaties (1969), permits a party to invoke changed circumstances as a ground for terminating or withdrawing from a treaty where those circumstances constituted an essential basis of the parties' consent and where the change has radically transformed the extent of obligations still to be performed. This is the *rebus sic stantibus* doctrine, and its application to a treaty of 999 years' duration requires more sustained analytical attention than it has received in earlier treatments of this construction.

The enhanced stability of territorial treaties under the Temple of Preah Vihear (1962), Aegean Sea Continental Shelf (1978), and Territorial Dispute (Libya v Chad) (1994) line of authority establishes that the threshold for invoking fundamental change of circumstances is materially higher for territorial treaties than for other categories of international agreement.

Territorial stability is a foundational interest of the international order that the Court has consistently elevated above the individual parties' interest in escaping obligations they find inconvenient or burdensome. A territorial treaty, once concluded and registered, is designed to endure. The Court's reasoning in *Gabčíkovo-Nagymaros* (1997), confirming that a change of government does not in itself terminate or suspend a state's treaty obligations, and that the principle of *pacta sunt servanda* applies with full force across the duration of a treaty, reinforces this elevated threshold.

The Founding Treaty's architecture responds to the nine-century Article 62 challenge through three specific mechanisms that must be incorporated in the Model Treaty and elaborated in the negotiating process.

First, the Founding Treaty must include a comprehensive **periodic review clause**, providing for a structured bilateral assessment of the arrangement at defined intervals of twenty years. This review mechanism is not a renegotiation clause and does not affect the core obligation, the Startup State's plenary *imperium* over the leased territory for the 999-year term. What it permits is the structured adjustment of operational provisions: the financial consideration, the service arrangements, the environmental obligations, and the implementing protocols. This converts the Article 62 risk from a structural vulnerability into a governed adaptation process. A Grantor State whose political circumstances have changed materially since the Founding Treaty's conclusion has a legitimate forum for addressing those changes through bilateral review rather than through the unilateral invocation of a doctrine that it is unlikely to successfully sustain before an independent arbitral tribunal.

Second, the Founding Treaty must identify, with specificity, those circumstances whose existence constituted the essential basis of the parties' consent to be bound, and must provide that the Article 62 doctrine may only be invoked in respect of changes to those specifically identified circumstances. This drafting technique converts the open-ended Article 62 doctrine into a precisely defined contractual provision, reducing materially the scope for opportunistic or politically motivated misapplication.

Third, the Founding Treaty's Article 23 arbitration clause (providing for binding resolution of disputes by the Permanent Court of Arbitration in The Hague) ensures that any attempt to invoke Article 62 must pass through an independent international judicial process before it can have legal effect. The Grantor State cannot unilaterally terminate the treaty by declaring that circumstances have fundamentally changed; it must sustain that claim before an independent tribunal applying the strict standards established

in Gabčíkovo-Nagymaros and the territorial treaty stability line of authority. The combined procedural obligation, high substantive threshold, and independent arbitral oversight renders the prospect of a successful Article 62 invocation extremely low across any realistic planning horizon.

The honest answer to the nine-century challenge is this: no legal instrument provides absolute certainty across 999 years. The international legal order may itself transform beyond recognition within that span. What the Founding Treaty provides is the maximum available legal protection within the contemporary international order, protection that is, in the experience of long-duration territorial arrangements from the Guantanamo Bay lease (1903, still operative) to the Cyprus Sovereign Base Areas (1960, still operative), consistently honoured in practice over periods far exceeding the operational horizon of any individual government or institution. The legal framework is the best available instrument for securing the arrangement against opportunistic challenge during the period when the Startup State's institutions are being built and its international position consolidated, which is to say, precisely the period when legal protection is most needed and most valuable.

14.3 The Key Founding Covenants

The Founding Treaty must include at minimum the following foundational provisions, each examined in detail in the Model Treaty in Annex A: a comprehensive geodetic definition of the leased territory; a clear statement of the 999-year term and the conditions under which it may be modified; the grant of plenary jurisdictional authority to the Startup State; the retention of dominium by the Grantor State; the recognition of the Startup State as an independent state; the constitutional commitments of the Startup State, including human rights, rule of law, and democratic governance; the condominium service arrangements for defence, policing, and judicial administration; the financial consideration; the environmental obligations; the transparency and beneficial ownership commitments; the dispute resolution mechanism; the treaty succession provisions; the Article 102 registration commitment; and the irrevocability clause.

14.4 When the Bargain Fails: Default, Breach, Revocation, and Succession

The preceding Sections explain why the Founding Treaty is built to last. A study that asks founders and governments to commit to a term of 999 years must also say what happens if one of them does not keep the bargain.

Four failures are possible, and the law treats each differently: the Grantor State may change its mind before the Founding Treaty enters into force; it may try to withdraw its recognition afterwards; either party may breach the treaty, and the failure most likely to occur in practice is that the Startup State does not pay its rent; and either state may later dissolve, unite with another, or change its government.

Before entry into force. Until the Founding Treaty enters into force, the Provisional Founding Authority exists under the Grantor State's own law, and a government that changes its mind can repeal the enabling statute. International law does not entitle anyone to statehood against the will of the state from whose territory it would emerge. A state that has signed a treaty is bound by Article 18 of the Vienna Convention on the Law of Treaties to refrain from acts that would defeat its object and purpose “until it shall have made its intention clear not to become a party to the treaty”, but it remains free not to ratify.¹¹¹ The protection of the founders at this stage is the protection of any foreign investor: a stabilisation clause in the enabling legislation, an investment treaty between the Grantor State and the founders' home state where one exists, and damages if the framework is withdrawn. The claim brought against Honduras by the developers of Próspera after the repeal of its zones legislation in 2022 shows both the reach of investment protection and its limit: a tribunal can award damages for the repeal of a zone, but it cannot restore the zone or turn it into a state.¹¹² The model therefore keeps the interval between signature and entry into force as short as the Grantor State's constitution allows.

After entry into force: recognition cannot be taken back. Once the Founding Treaty is in force, the Grantor State's position changes in kind. Article 6 of the Montevideo Convention provides that recognition “is uncon-

¹¹¹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 18 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

¹¹² *Honduras Próspera Inc, St John's Bay Development Company LLC and Próspera Arbitration Center LLC v Republic of Honduras*, ICSID Case No ARB/23/2, registered 3 February 2023, pending at the research cut-off <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/2>; ICSID, “Honduras Denounces the ICSID Convention” (denunciation effective 25 August 2024) <https://icsid.worldbank.org/news-and-events/communiques/honduras-denounces-icsid-convention>; ICSID, “Honduras Ratifies the ICSID Convention” (in force for Honduras from 16 August 2026) <https://icsid.worldbank.org/news-and-events/communiques/honduras-ratifies-icsid-convention>; ICSID Convention (1965) 575 UNTS 159, art 72. The damages figure is the claimants' own announcement of 20 December 2022.

ditional and irrevocable”.¹¹³ The Convention binds only its American parties, but the weight of doctrine and practice treats the recognition of a state as incapable of withdrawal while the state continues to meet the criteria of statehood, because on the declaratory theory recognition acknowledges a fact rather than creating it; the Arbitration Commission of the Conference on Yugoslavia stated that recognition “is not a prerequisite for the foundation of a State and is purely declaratory in its impact”.¹¹⁴ The Founding Treaty adds the law of treaties to the law of recognition. Article 4.1 of the Model Treaty records that the Grantor State’s recognition is irrevocable and unconditional; Article 21.2 excludes unilateral termination, which under Article 56 of the Vienna Convention is the default rule in any event for a treaty containing no withdrawal clause; Article 62(2)(a) excludes any plea of fundamental change against a treaty that “establishes a boundary”; and Article 70 provides that the termination of a treaty “does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination”.¹¹⁵ A Grantor State that later regretted the arrangement could stop cooperating, but it could not lawfully unmake the state it had recognised. In the *Temple of Preah Vihear*, the International Court of Justice held that Thailand, having for fifty years enjoyed the benefits of a treaty that gave it a stable frontier, was “precluded by her conduct” from denying the frontier the treaty had produced.¹¹⁶

When the rent goes unpaid. The failure most likely to occur is also the least dramatic. Over a term of 999 years, a Startup State may at some point be late with its rent, unable to pay it, or unwilling to. Its founders may have overestimated the number of people who would come or the value of the land; a hurricane, a pandemic, or a financial crisis may strip

¹¹³ Convention on Rights and Duties of States (Montevideo, 26 December 1933) 165 LNTS 19, arts 6 and 7 https://avalon.law.yale.edu/20th_century/intam03.asp; American Law Institute, *Restatement (Third) of the Foreign Relations Law of the United States* (1987) § 202, comment g (“so long as the entity continues to meet those qualifications its statehood may not be ‘derecognized’”), as quoted in T Papić, “De-recognition of States: The Case of Kosovo” (2020) 53 Cornell International Law Journal 683 <https://publications.lawschool.cornell.edu/cilj/wp-content/uploads/sites/7/2022/04/Papic-final.pdf>.

¹¹⁴ Arbitration Commission of the Conference on Yugoslavia, Opinion No 10 (4 July 1992) para 4, 92 ILR 206.

¹¹⁵ Vienna Convention on the Law of Treaties, arts 26, 42(2), 54, and 56(1); Vienna Convention on the Law of Treaties, art 62(2)(a); Vienna Convention on the Law of Treaties, art 70(1)(b).

¹¹⁶ *Temple of Preah Vihear (Cambodia v Thailand)* (Merits) [1962] ICJ Rep 6, 32 <https://www.icj-cij.org/case/45>.

its revenue in a season; a consortium well capitalised at signature is no guarantee of a solvent state twenty years later. In this construction the tenant is a state from the moment the Founding Treaty enters into force, and three consequences follow. The Grantor State cannot re-enter the land, because an attempt to recover governmental control by force would violate Article 2(4) of the Charter, and the Model Treaty provides that no failure to pay affects the Startup State's independence. The rent becomes an international obligation, and its non-payment an internationally wrongful act. And enforcement passes from a domestic court, which can seize a company's assets, to the weaker means international law provides for making a state pay.

International law has treated unpaid money between states as a debt for more than a century. In the *Russian Indemnity* arbitration of 1912, the tribunal held that "the general principle of the responsibility of States implies a special responsibility in the matter of delay in the payment of a monetary debt", and it rejected the Ottoman plea of financial hardship, observing that it "would clearly be exaggeration to allow that the payment" of some six million francs "would imperil the existence of the Ottoman Empire".¹¹⁷ The Articles on State Responsibility provide for interest "when necessary in order to ensure full reparation", confine force majeure to events "making it materially impossible in the circumstances to perform the obligation", and allow necessity only where the act "is the only way for the State to safeguard an essential interest against a grave and imminent peril".¹¹⁸ A shortage of money will seldom meet either test. The rent therefore accrues, with interest, until it is paid or the parties agree otherwise. The Grantor State may claim it before the tribunal the treaty designates, take proportionate and reversible countermeasures, or downgrade diplomatic relations. It may not use force: the Second Hague Convention of 1907 bound its parties "not to have recourse to armed force for the recovery of

¹¹⁷ *Russian Indemnity Case (Russia v Turkey)* (Award, 11 November 1912) 11 RIAA 421, English translation in G G Wilson, *The Hague Arbitration Cases* (Ginn 1915), reproduced by the Permanent Court of Arbitration <https://pcacases.com/web/sendAttach/643>; the passages quoted are at pp 11 and 14 of that translation, and the renunciation of interest at p 16.

¹¹⁸ Articles on Responsibility of States for Internationally Wrongful Acts, annexed to UNGA Res 56/83 (12 December 2001), arts 23(1), 25(1)(a), 27(b), and 38(1) https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf; compare *CMS Gas Transmission Co v Argentine Republic*, ICSID Case No ARB/01/8, Award (12 May 2005), rejecting the plea of necessity, with *LG&E Energy Corp v Argentine Republic*, ICSID Case No ARB/02/1, Decision on Liability (3 October 2006), accepting it for a limited period <https://www.italaw.com>.

contract debts” save where the debtor refused arbitration, and the Charter has since removed even that exception.¹¹⁹ Nor can it answer default by withdrawing recognition. A state that does not pay its debts remains a state, with a debt.

Enforcing an award against an unwilling state is slow and uncertain. A foreign state’s property is protected by an immunity from execution that the International Court of Justice has described as going further than immunity from jurisdiction, and measures of constraint require, at least, property in commercial use, the state’s express consent, or property it has allocated to the claim.¹²⁰ The property of diplomatic missions, military property, and “property of the central bank or other monetary authority of the State” are beyond reach.¹²¹ Argentina’s default of 2001 shows what follows when a state will not pay and its creditors will not settle: the detention of the naval training ship *ARA Libertad* in Ghana in 2012 at the instance of NML Capital, a fund managed by Paul Singer’s Elliott Management, ended with an order of the International Tribunal for the Law of the Sea for its release, holding that “in accordance with general international law, a warship enjoys immunity”, and the dispute was settled only in 2016.¹²² The practice of states with one another suggests a better course. Rent between states is seldom litigated; it is secured, set off, or renegotiated. When the United States left the gold standard, Panama declined the annuity due

¹¹⁹ Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (Hague II, 18 October 1907) art 1 https://avalon.law.yale.edu/20th_century/hague072.asp.

¹²⁰ *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)* [2012] ICJ Rep 99, paras 113 and 118 <https://www.icj-cij.org/case/143>.

¹²¹ United Nations Convention on Jurisdictional Immunities of States and Their Property (adopted 2 December 2004, not in force) arts 19 and 21(1) https://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf.

¹²² *The “ARA Libertad” Case (Argentina v Ghana)* (Provisional Measures, Order of 15 December 2012) ITLOS Reports 2012, 332, para 95; ITLOS Press Release No 188 https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_188_E.pdf; Herbert Smith Freehills, “ARA Libertad leaves Ghana following ITLOS ruling” (20 December 2012), recording that the detention followed “a successful application in the High Court in Accra by NML Capital” <https://www.hsfkramer.com/notes/publicinternationallaw/2012-12/ara-libertad-leaves-ghana-following-itlos-ruling-on-argentinass-application-for-provisional-measures>; *NML Capital Ltd v Republic of Argentina*, 699 F 3d 246 (2d Cir 2012); *Republic of Argentina v NML Capital Ltd*, 573 US 134 (2014); WAMC/NPR, “After 14 Years of Lawsuits, Argentina Reaches Settlement to Repay Debt” (17 March 2016) <https://www.wamc.org/2016-03-17/after-14-years-of-lawsuits-argentina-reaches-settlement-to-repay-debt>.

under Article XIV of the canal treaty of 1903 in devalued currency, and the dispute ended in a new treaty of 1936 that fixed the annuity at 430,000 balboas from the payment due in 1934.¹²³ Russia's payment for the base at Sevastopol was set off for years against Ukraine's debt to Russia, until Russia terminated the arrangements in 2014.¹²⁴ At Guantánamo the United States still tenders a rent of \$4,085 that Cuba, with a single exception, has not cashed.¹²⁵

Three lessons follow for the design. First, the rent should be secured before entry into force, while the founders are still a company within the Grantor State's jurisdiction: by a reserve held by an independent trustee and sufficient for several years' rent, by a performance bond or standby letter of credit, and by insurance against natural catastrophe and political risk. Before the Founding Treaty enters into force, the Grantor State is also entitled to evidence that the new state can pay its way, which is why the model's sequencing can include a test of fiscal capacity alongside the recruitment of the founding citizenry. Second, the remedy should be made as certain as the law allows. The 2004 Convention on Jurisdictional Immunities permits execution against property a state has "allocated or earmarked" for the claim or where it has "expressly consented" by "an arbitration agreement or in a written contract"; the Founding Treaty can contain such a consent, limited to the rent reserve and identified revenue, which gives the Grantor State a realisable security without exposing the new state's embassies, central bank, or public functions. Third, misfortune

¹²³ Convention for the Construction of a Ship Canal (Hay-Bunau-Varilla Treaty, 18 November 1903) art XIV https://avalon.law.yale.edu/20th_century/pan001.asp; *Foreign Relations of the United States 1935*, vol IV, doc 904 (Panama's refusal of the 1934 and 1935 tenders) <https://history.state.gov/historicaldocuments/frus1935v04/d904>; General Treaty of Friendship and Cooperation (United States and Panama, 2 March 1936) art VII, as quoted in *Foreign Relations of the United States 1939*, vol V, doc 698 <https://history.state.gov/historicaldocuments/frus1939v05/d698>.

¹²⁴ Interfax-Ukraine, "No instrument to repay Ukraine's debt tied to Black Sea fleet to Russia: Finance Ministry" (15 February 2016), describing the intergovernmental agreement of 28 May 1997 on mutual settlements <https://en.interfax.com.ua/news/economic/324758.html>; RIA Novosti, "Moscow Sent Diplomatic Note to Ukraine on Terminating Black Sea Fleet Agreements" (3 April 2014) <https://www.globalsecurity.org/wmd/library/news/russia/2014/russia-140403-rianovosti02.htm>.

¹²⁵ Treaty of Relations (United States and Cuba, 29 May 1934) art III; US Army, "Contracting office provides capitalist support in Cuba" (2011), recording the conversion "from \$2,000 in U.S gold coins per year to the 1934 value of \$4,085" and that "the Cuban government has cashed only one of the rent checks" https://www.army.mil/article/70561/Contracting_office_provides_capitalist_support_in_Cuba.

should be planned for rather than treated as breach. Grenada's debt restructuring of 2015 introduced a clause allowing payments to be deferred after a qualifying hurricane, which Grenada used after Hurricane Beryl in 2024, and Barbados's bond of 2022 allows deferral for up to two years after a natural disaster confirmed by the Caribbean Catastrophe Risk Insurance Facility, with deferred amounts capitalised.¹²⁶ A rent clause on the same pattern protects the Grantor State's income and the new state's solvency together. Security must stop short of control: the creditor administrations imposed on Egypt from 1876, the Ottoman Empire from 1881, and the Dominican customs from 1905 turned a creditor's security into control of a debtor's government, and the Model Treaty therefore denies the Grantor State any power to collect the Startup State's revenue or supervise its budget.

Breach, suspension, and the forum. A breach by either party engages its international responsibility and obliges it to cease the wrongful act and make full reparation.¹²⁷ Article 60 of the Vienna Convention allows termination or suspension only for a "material breach", and Articles 65 to 68 require notification and a waiting period before either step is taken; in *Gabčíkovo-Nagymaros* the Court held Hungary's notification of termination premature and rejected its plea of fundamental change.¹²⁸ The severance of diplomatic relations "does not affect the legal relations established between them by the treaty" (Article 63): the Guantánamo lease remained in force throughout the fifty-four years in which the United States and Cuba

¹²⁶ J Ho, "Sovereign Debt Evolution: The Natural Disaster Clause", *Emerging Markets Restructuring Journal*, Issue 11 (Cleary Gottlieb, Spring 2021) <https://content.clearygottlieb.com/corporate/emerging-markets-restructuring-journal-2021/sovereign-debt-evolution-the-natural-disaster-clause/index.html>; Now Grenada, "Government triggers hurricane clause" (19 August 2024) <https://nowgrenada.com/2024/08/government-triggers-hurricane-clause/>; Artemis, "Barbados embeds parametric nat cat clause in sovereign bond issue" (25 October 2022) <https://www.artemis.bm/news/barbados-embeds-parametric-nat-cat-clause-in-sovereign-bond-issue/>.

¹²⁷ International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), annexed to UNGA Res 56/83 (12 December 2001), arts 1, 30, 31, and 34 to 37 https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

¹²⁸ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7, paras 104 to 115, as summarised in the Court's official Summary of the Judgment <https://www.icj-cij.org/node/103846>.

had no diplomatic relations.¹²⁹ A right without a forum is weak, so the Founding Treaty designates one in advance. Article 23 of the Model Treaty now provides for arbitration under the Permanent Court of Arbitration Arbitration Rules 2012, which replaced the earlier optional rules for disputes between two states, with the PCA's Secretary-General as appointing authority so that neither party can block the tribunal's formation.¹³⁰ The record also shows the limits of adjudication. The Eritrea-Ethiopia Boundary Commission's decision of 2002 was not implemented on the ground for sixteen years, and China declared the award in the *South China Sea* arbitration "null and void".¹³¹ The final protection of a small state is therefore the breadth of its recognition and its membership of the United Nations, which is why Part XII treats recognition as a managed process to be pursued at once.

When either state changes. A change of government in either state leaves its treaty obligations intact: in the *Tinoco* arbitration, Chief Justice Taft held that a government in effective control binds the state whatever its origin, and that the restored government of Costa Rica could not defeat claims arising from that government's acts merely by annulling them.¹³² The long leases of the past survived revolutions: the New Territories lease of 1898 outlasted the Qing dynasty and the Republic of China, and the Guantánamo lease has outlasted every Cuban government since 1903.¹³³ If the

129 US Department of State, Office of the Historian, "Cuba" <https://history.state.gov/countries/cuba>; on the continuing rent tender, M J Strauss, *The Leasing of Guantanamo Bay* (Praeger 2009) 130 to 137.

130 Permanent Court of Arbitration, "PCA Arbitration Rules 2012" <https://pca-cpa.org/en/services/arbitration-services/pca-arbitration-rules-2012>.

131 Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia (Algiers, 12 December 2000), arts 4(2), 4(15), and 5(17), UN Doc S/2000/1183 <https://www.peaceagreements.org/view/221/>; Eritrea-Ethiopia Boundary Commission, PCA Case No 2001-01, Decision regarding Delimitation of the Border (13 April 2002) <https://pca-cpa.org/en/cases/99/>; Joint Declaration of Peace and Friendship between Eritrea and Ethiopia (Asmara, 9 July 2018) art 4 <https://www.peaceagreements.org/agreements/2097/>; S W Lyons, "Introductory Note to the Joint Declaration of Peace and Friendship" (2019) 58 ILM 237 <https://doi.org/10.1017/ilm.2019.4>; *The South China Sea Arbitration (Philippines v China)*, PCA Case No 2013-19, Award of 12 July 2016 <https://pca-cpa.org/en/cases/7/>; Ministry of Foreign Affairs of the People's Republic of China, Statement on the Award (12 July 2016) https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/201607/t20160712_8527294.htm.

132 *Tinoco Arbitration (Great Britain v Costa Rica)* (1923) 1 RIAA 369.

133 Convention between Great Britain and China respecting an Extension of Hong Kong Territory (Peking, 9 June 1898) <https://worldjpn.net/documents/texts/pw/18980609.T1E.html>; *Papers relating to the Foreign Relations of the United States 1913*, doc 130 (inaugural

Grantor State dissolves or unites with another state, Articles 11 and 12 of the 1978 Vienna Convention on Succession of States in respect of Treaties provide that a succession does not as such affect a boundary established by a treaty or obligations “relating to the use of any territory” established for the benefit of another territory; the International Court of Justice held in *Gabčíkovo-Nagymaros* that Article 12 reflects customary international law and that a treaty establishing a territorial regime could not be affected by a succession of states.¹³⁴ The Founding Treaty should nonetheless provide for the point expressly, binding the successors of both parties, naming the successor to the landlord’s interest, and dividing the rent if the Grantor State divides; Article 15.3 of the Model Treaty now does so. If the Startup State later unites with another state or divides, the default rules in Articles 31 and 34 of the same Convention would carry its treaties, including the Founding Treaty, to the territory concerned; a Grantor State that wishes to be consulted on any union may say so in the treaty, and the 1931 opinion of the Permanent Court of International Justice in the *Customs Régime* case shows that a state may lawfully accept limits on its freedom to unite with another without losing its independence.¹³⁵

At the end of the term. The Founding Treaty runs for 999 years, and Article 21.1 contemplates its expiry, when the Grantor State’s reversionary

declaration of President Yuan Shikai, 10 October 1913) <https://history.state.gov/historicaldocuments/frus1913/d130>; *People’s Daily*, editorial of 8 March 1963 <https://www.marxists.org/chinese/reference-books/sino-soviet-debate/19630308.htm>; Letter dated 8 March 1972 from the Permanent Representative of China to the Chairman of the Special Committee on Decolonization, UN Doc A/AC.109/396 <https://digitallibrary.un.org/record/3895944>; Treaty of Relations between the United States and Cuba (29 May 1934), art III, 48 Stat 1682 <https://history.state.gov/historicaldocuments/frus1934v05/d170>; Constitution of the Republic of Cuba (2019) art 12 https://www.constituteproject.org/constitution/Cuba_2019?lang=en; Memorandum from the Deputy Legal Adviser (Meeker) to the Secretary of State, *Foreign Relations of the United States 1961 to 1963*, vol X, doc 301 <https://history.state.gov/historicaldocuments/frus1961-63v10/d301>; Strauss, *The Leasing of Guantanamo Bay* (2009).

¹³⁴ Vienna Convention on Succession of States in respect of Treaties (adopted 23 August 1978, entered into force 6 November 1996) 1946 UNTS 3, arts 11 and 12 https://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf; *Gabčíkovo-Nagymaros Project*, para 123, as recorded in the Court’s Summary of the Judgment <https://www.icj-cij.org/node/103846> and Press Release No 97/10 <https://icj-cij.org/node/101335>.

¹³⁵ Vienna Convention on Succession of States in respect of Treaties, arts 31, 34, and 35; *Customs Régime between Germany and Austria* (Advisory Opinion) (1931) PCIJ Series A/B No 41, 12 and 20, and Individual Opinion of Judge Anzilotti, 57 to 58 https://api.icj-cij.org/sites/default/files/permanent-court-of-international-justice/serie_AB/AB_41/02_Regime_douanier_Opinion_Anzilotti.pdf.

interest falls into possession. The Glossary describes that interest as a right to resume full governmental authority at term. Two distinctions qualify that description. The first is between the reversion of title and the reversion of government. The Grantor State's retained *dominium*, its ownership of the land, can revert at term without disturbing anything but the parties' finances, and the Startup State would then govern the territory under a renewed lease or as purchaser of the title. A reversion of governmental authority differs in kind, because it would end the existence of a state. A treaty may provide for its own expiry: Article 54 of the Vienna Convention permits termination "in conformity with the provisions of the treaty", and Article 70 confines the effect of termination to the future, leaving intact "any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination".¹³⁶ The New Territories lease ran its course in 1997, and the whole of Hong Kong returned to Chinese administration under the Joint Declaration of 1984.¹³⁷ But Hong Kong was a dependent territory, not a state, and no state has been extinguished by the expiry of a lease. The second distinction is between the obligation and its performance. An undertaking in the Founding Treaty to return governmental authority at term would bind the Startup State as a matter of treaty law, but it would fall due when the people of the territory hold a right of self-determination that the International Court of Justice has described as having "an erga omnes character", and when the Startup State's existence rests on recognition by many states besides the Grantor State.¹³⁸ The sound reading of the reversion is therefore as a reversion of title and of the value of the rent, with the question of government left to agreement between two states. Article 21.4 of the Model Treaty now says so. It requires the Parties to open negotiations, not later than fifty years before the term expires, on its renewal, on the purchase of the reversion, or on other arrangements, and records that the expiry of the term does not of itself affect the Startup State's status as a state. The 999-year term remains

¹³⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 54 and 70(1)(b) https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

¹³⁷ Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (Beijing, 19 December 1984) 1399 UNTS 33, paras 1 and 2 <https://treaties.un.org/doc/Publication/UNTS/Volume%201399/v1399.pdf>.

¹³⁸ *East Timor (Portugal v Australia)* (Judgment) [1995] ICJ Rep 90, para 29 <https://www.icj-cij.org/case/84>.

what it was designed to be: a horizon long enough that the question is unlikely to fall to the founders or their grandchildren.

What follows. In law, a Grantor State that breaks its word incurs responsibility and faces arbitration, and it may not use force or withdraw recognition to undo what it has done. A Startup State that does not pay its rent incurs a debt with interest, recoverable through arbitration and from security taken before entry into force, but it does not forfeit its land or its existence. The expiry of the term, if it ever comes, returns the land and opens a negotiation; it does not end the state. The succession of either state leaves the new state and its frontier intact and carries the lease to whoever succeeds, provided the treaty is drafted, and not merely labelled, to that effect. What the law cannot compel is continuing cooperation. The Model Treaty in Annex A has been amended in this edition to carry these conclusions into its text.

A Systematic Response to All Principal Objections: The Steelman Arguments

This Part addresses, with the maximum intellectual rigour and the minimum rhetorical evasion, every principal objection that has been raised, can be raised, or is likely to be raised against the Startup States construction. The methodology is the “steelman” approach: each objection is stated in its strongest possible form before it is addressed. The purpose is not to dismiss objections but to demonstrate, through sustained argument, that the construction can withstand them. Where objections identify genuine constraints or risks, those constraints and risks are acknowledged honestly and addressed with practical mitigation strategies.

15.1 The Colonialism and Neo-Colonialism Objection

Critique: Treaty-based state formation initiatives facilitated by private, for-profit consortia amount, in substance if not in form, to colonialism rearticulated for the contemporary era. Consent, compensation, and treaty formalities do not redeem the arrangement but merely camouflage its underlying character. What is extracted is the legitimacy of the international system itself.

Counterpoint. This critique rests upon a conflation of sovereignty as an abstract moral artefact with sovereignty as a legally exercised administrative competence. International law does not require that statehood emerge only through historical accident, revolution, or prolonged ethnogenesis. States routinely exercise governmental authority to reorganise territory,

devolve jurisdiction, alter constitutional arrangements, and redefine the internal and external allocation of powers.¹³⁹

Colonialism, in its historical and legal sense, is defined by domination without consent, extraction without reciprocity, and governance imposed upon subject populations. None of these elements is present in the Startup States model. The arrangement is consensual: the Grantor State's free, informed, and constitutionally regular consent is, under the principle *volenti non fit injuria*, a complete answer to the charge of harm. The objection that consent is nominal rather than meaningful where the inviting state is economically constrained collapses upon examination: international law does not recognise a category of "nominal" consent that overrides the demonstrated will of a state, and to do so would be profoundly condescending.

15.2 The Abuse of Self-Determination and the Doctrine of Recognition

Critique: Inducing an existing United Nations Member State to recognise and midwife the creation of a new state at the behest of a private consortium fatally compromises the normative foundations of international law. Recognition is no longer exercised as a legal and political judgment; it is monetised.

Counterpoint. This critique mischaracterises both self-determination and recognition as static moral absolutes rather than dynamic legal doctrines. Self-determination is not infringed where no population is coerced, displaced, or denied political agency. In the case of uninhabited or unused territory, there is no self to be denied determination.¹⁴⁰

Recognition, moreover, is not sold; it is exercised. States retain full discretion to recognise, refuse recognition, condition recognition, or withdraw it. Compensation does not extinguish agency: states routinely take recognition decisions informed by strategic alliances, security considerations, economic integration, and diplomatic advantage. The presence of compensation does not negate the sovereign character of the recognising act; it is an expression of it.

15.3 The Absence of Precedent and the Cascade Objection

Critique: International law has deliberately avoided recognising arrangements in which private commercial actors play a formative role in the birth of states, precisely

¹³⁹ Crawford, *Creation of States* 103; Sterio, *Right to Self-Determination* ch 1.

¹⁴⁰ Grant, *Recognition of States* 173-178; Fabry, *Recognizing States* 23-28.

because such arrangements threaten to normalise the privatisation of state creation. If legitimised, economically vulnerable states will fragment their territory in exchange for short-term financial relief.

Counterpoint. The absence of precedent is a descriptive fact, not a normative conclusion. International law evolves through state practice. Every recognised state was, at some point, unprecedented.¹⁴¹ The fear of cascade presupposes that states lack agency and strategic judgment. It assumes that states will irrationally dismember themselves for short-term gain, notwithstanding long-term interests, reputational costs, and domestic political constraints. This assumption is neither empirically supported nor theoretically compelling.

15.4 The Commodification of Sovereignty Objection

Critique: The economic terms of such arrangements are inherently suspect. Land or rights would not be purchased or leased at the proposed valuations absent the prospect of recognition as a state. Any overpayment is therefore a concealed price for statehood itself.

Counterpoint. This argument does not withstand analysis. States routinely create value through administrative action alone. The zoning analogy developed in Section 7.4 is instructive: when a municipality rezones land, substantial value is created without any physical transformation. The same logic applies to sovereignty. The administrative act of designating a new state unlocks latent value. Compensation reflects opportunity cost, not the purchase of sovereignty.¹⁴² Once recognition has occurred, subsequent transactions are, by definition, between states.

A second and increasingly common form of partial sovereign delegation that is frequently confused with the Startup States construction, but which is fundamentally distinct from it, is the Special Economic Zone (SEZ) model. Special Economic Zones, in their various forms (export processing zones, free trade zones, special administrative regions, enterprise zones, and similar hybrid instruments), have been employed by over 140 states and represent one of the most widespread forms of partial sovereignty

¹⁴¹ Crawford, *Creation of States* 37; Thomas Franck, *Fairness in International Law and Institutions* (OUP 1995) 85.

¹⁴² Crawford, *Creation of States* 32; A Cassese, *International Law* (2nd edn, OUP 2005) 49-54.

experimentation in modern administrative practice.¹⁴³ The SEZ model and the Startup States construction share a superficial resemblance: both involve the designation of a defined territory for governance arrangements that differ from those applicable to the surrounding state. That resemblance, however, conceals a fundamental distinction of character, purpose, and consequence that must be articulated with precision.

The fundamental deficiency of the SEZ model is that it does not create a new state. An SEZ remains a creature of domestic law, revocable by the host state's legislature and subject to the host state's constitutional order. It cannot conclude treaties, establish diplomatic relations, or exercise independent foreign policy. The Startup State model, by contrast, produces a fully independent entity with international legal personality.

The Startup State model offers precisely the opposite of the SEZ's opacity. As a state constituted by registered treaty, the Startup State is subject to international legal obligations from the moment of its creation. Its governance is transparent, its beneficial ownership register is public, and its treaty compliance is subject to the condominium oversight mechanism and dispute resolution provisions of the Founding Treaty.

A further distinction between the SEZ model and the Startup States construction concerns the distribution of residual authority. An SEZ operates under the host state's ultimate legislative and regulatory jurisdiction; the Startup State, by contrast, exercises plenary jurisdiction under its own constitutional order. This distinction, grounded in the dominium/imperium framework analysed in Section 2.3, is the defining structural difference between partial regulatory differentiation within an existing state and the creation of an entirely new state.

In summary: Special Economic Zones are a tool for partial regulatory differentiation within an existing state, with the attendant risks of governance ambiguity, political resentment, and Trojan horse dynamics that their success may generate. The Startup State is a fully independent entity from inception, with a transparent constitutional order, an independent foreign policy, and a treaty-based relationship with its Grantor State that

¹⁴³ On Special Economic Zones as a governance instrument, see Douglas Zhihua Zeng (ed), *Building Engines for Growth and Competitiveness in China: Experience with Special Economic Zones and Industrial Clusters* (World Bank, 2010); OECD, *Special Economic Zones: Guidelines for Sub-national and Local Governments* (OECD, 2018); and UNCTAD, *World Investment Report 2019: Special Economic Zones* (UNCTAD, 2019). The UNCTAD 2019 report identified approximately 5,400 SEZs in 147 countries as of 2019, noting that 'results are mixed' and that 'many zones are failing to meet their objectives.'

is entirely open, publicly registered, and immune by design to the pathologies that afflict the SEZ model. The Startup State takes on the full burden and the full dignity of statehood from the first day of its existence. It shares in the international order as a full participant, not as a regulatory carve-out dependent upon the political tolerance of its host.

15.5 The Temporal Asymmetry and Zoning Analogy

Critique: In historical cases, transactions occurred between established sovereigns. The proposed model reverses the sequence, with private actors facilitating recognition as a precondition to subsequent sovereign-to-sovereign transactions. This unfamiliar sequencing is destabilising and ethically problematic.

Counterpoint. The temporal asymmetry is real, but it is not disqualifying. All states emerge at a moment in time. Initial asymmetry is not aberrant but constitutive of state formation. The sequencing objection, like the absence of precedent objection, confuses historical accident with legal requirement.¹⁴⁴

15.6 The Partial Privatisation Objection

Critique: The involvement of private consortia in the formation of the Startup State creates a risk that public governmental authority will be captured by private interests, undermining the principles of democratic accountability and public governance.

Counterpoint. The proposed construction explicitly addresses this risk through the Founding Treaty's transparency provisions, beneficial ownership register, human rights commitments, and independent judicial administration. The involvement of private capital in the formation of a state is not inherently corrupting: all states depend upon private capital for their economic functioning. The constitutional framework of the Startup State is the mechanism through which private economic activity is subordinated to public governance imperatives.

15.7 The Sanctions Evasion and Criminal Organisation Objection

Critique: The Startup State framework could be used as a vehicle for sanctions evasion, money laundering, or the establishment of a safe haven for criminal organisations.

Counterpoint. *Fraus omnia corrumpit*: any attempt to deploy the construction for criminal purposes would be extinguished by the foundational

¹⁴⁴ Fischel, *Economics of Zoning Laws* ch 1; Epstein, *Takings* 112-115.

legal principle that rights obtained through fraud have no legal validity.¹⁴⁵ The Founding Treaty's transparency provisions, including the public beneficial ownership register and the commitment to anti-money-laundering and counter-terrorism-financing conventions, are designed precisely to foreclose this risk. A Startup State that violated these commitments would forfeit the credibility upon which its recognition trajectory depends.

The South African Bantustans provide a cautionary counter-example. Transkei, Bophuthatswana, Venda, and Ciskei were denied international recognition because they were created as instruments of apartheid policy. The contrast with the Startup States construction is structural: the Bantustans lacked genuine sovereignty and served to perpetuate an unlawful regime. The Startup State is constituted by consensual treaty, designed for transparency, and subject to international scrutiny from inception.

The preceding analysis addresses the formal legal framework. The practical analysis must go further, because the objection as ordinarily advanced is not purely doctrinal; it is empirical. The claim is not merely that a criminal organisation could in principle attempt to deploy the construction, but that it would be rational for it to do so, and that the international community would lack the means to prevent or reverse such a deployment. Both claims are, upon examination, empirically unfounded.

The fundamental strategic miscalculation underlying the criminal organisation objection is that it assumes that the acquisition of formal statehood confers upon an illicit actor a degree of protection, legitimacy, and permanence that would otherwise be unavailable to it. The historical record of entities that have attempted to achieve unrecognised or partially recognised statehood demonstrates precisely the opposite: the acquisition of territorial and institutional structure, without the legitimacy that flows from lawful origin and genuine international recognition, exposes a non-compliant entity to a concentrated and precisely targeted set of legal, political, and diplomatic responses.

The record of *de facto* but unrecognised entities in the contemporary international system is instructive in this regard. The Turkish Republic of Northern Cyprus, proclaimed in 1983, has been the subject of a collective non-recognition obligation under Security Council Resolution 541 for over four decades: its institutions are visible, its territory is defined, and its administrative structures are documented, which means that every

¹⁴⁵ *Fraus omnia corrumpit*: Lord Denning MR in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702, 712.

state in the international system knows exactly what obligations of non-recognition it bears, and can enforce them with precision. Transnistria, which has exercised *de facto* control over a defined strip of Moldovan territory since 1990, and Abkhazia and South Ossetia, which have exercised *de facto* control over portions of Georgian territory since the early 1990s, all represent entities whose institutional visibility has not translated into the protections of recognised statehood, whilst simultaneously rendering them subject to the full range of economic, diplomatic, and legal isolation that the international community deploys against non-recognised entities.¹⁴⁶

Somaliland, which has governed itself with relative stability and democratic legitimacy since 1991, is perhaps the most instructive case of all: an entity that has by any functional assessment satisfied the Montevideo criteria for over three decades, that has conducted multiple credible elections, that has maintained a functioning currency, judiciary, and police force, and that nonetheless remains outside the formal international system, precisely because it lacks the recognition architecture that this study identifies as the *lapis angularis* of international legal personality. Somaliland's experience, as documented by Caspersen and others, demonstrates both the resilience of genuine state-like institutions and the severe and enduring costs of existence outside the recognised international order.

A criminal organisation or illicit actor that attempted to establish itself as a new state, using the transparent and internationally registered mechanisms of the Startup States construction, would be making a strategic error of the first order: it would be concentrating its assets, identifying its principals in a public beneficial ownership register, registering its constitutional instruments with the United Nations Secretariat pursuant to Article 102, and submitting the totality of its institutional structure to the

¹⁴⁶ On the Turkish Republic of Northern Cyprus: SC Res 541 (18 November 1983) (S/RES/541), declaring the TRNC's declaration of independence legally invalid and calling upon all states not to recognise the purported State of Cyprus. On the collective non-recognition obligation and its sustained operation for over four decades, see James Ker-Lindsay, *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States* (OUP, 2012) chs 3-4. On Transnistria: Stefan Troebst, 'CSCE/OSCE and the Moldovan-Trans-Dniestrian Conflict' (1996) 1 *Helsinki Monitor* 38; and Thomas Ambrosio, 'The OSCE and Conflict Management in the Post-Soviet Space' (2002) 9 *European Security* 14. On Abkhazia and South Ossetia: Tim Potier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia* (Martinus Nijhoff 2001); and the ICJ's advisory opinion on Kosovo, which is instructive on the general law of non-recognition.

scrutiny of every intelligence service, sanctions authority, and diplomatic establishment in the world.

No organisation capable of rational strategic calculation would accept these terms. The value of opacity, dispersal, and deniability to an illicit actor is precisely that it makes the actor difficult to identify, to sanction, and to hold accountable. The Startup States construction eliminates opacity by design: it requires the public disclosure of beneficial ownership, the registration of all founding instruments, the public identification of the Grantor State, and the submission of the construction to the scrutiny of every state that receives a request for recognition. An actor that submitted itself to this process would not be protecting itself; it would be providing the international community with a complete organisational chart, a permanent legal address, and a publicly registered territorial location. The deterrence effect is therefore structural, and it operates not from any external enforcement mechanism but from the rational self-interest of the very actors the objection purports to be concerned about.¹⁴⁷

The sanctions evasion variant of the objection requires separate and equally rigorous analysis. The claim is that a state currently subject to a comprehensive international sanctions regime might seek to establish a Startup State on a portion of its territory, and that the Startup State would then conduct the sanctioned state's financial transactions free of the sanctions burden. This scenario is, in practice, implausible on multiple grounds. First, the international sanctions frameworks administered by the United Nations Security Council, the European Union, the United States Office of Foreign Assets Control, and the United Kingdom Office of Financial Sanctions Implementation are specifically designed to capture "successor entities," "affiliates," and "entities owned or controlled by" a designated party.¹⁴⁸ A Startup State established by a sanctioned sovereign, on

¹⁴⁷ On the relationship between transparency, recognition, and the suppression of abusive state-formation, see James Crawford, *The Creation of States in International Law* (OUP, 2nd edn, 2006) 148-152 (on the collective non-recognition obligation and its application to fraudulent constructions); and Jure Vidmar, *Democratic Statehood in International Law* (Hart, 2013) 100-115. The beneficial ownership transparency requirements applicable to recognised financial centres and their deterrent effect on illicit financial flows are addressed in the Financial Action Task Force, *Guidance on Beneficial Ownership and Transparency for Legal Persons* (FATF, March 2023).

¹⁴⁸ On the 'owned or controlled by' standard in sanctions law, see the Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions (Council Regulation (EU) No 269/2014, as amended, Art 2(1)(b)); the United States Executive Order 13662 (2014) and related OFAC guidance on the 50% ownership rule (OFAC, *Guidance on Entities Owned*

the sanctioned sovereign's own territory, using the sanctioned sovereign's constitutional processes, and with the sanctioned sovereign's officials serving in its Founding Treaty negotiating team, would, on any reasonable application of these frameworks, be treated as an entity owned or controlled by the sanctioned party and would attract the same sanctions designations.

Second, the recognition dimension forecloses the evasion strategy with even greater finality. A *de jure* recognised state, with full international legal personality and access to the international financial system, requires the affirmative act of recognition by other states. No state that participates in an international sanctions regime against the Grantor State would extend recognition to a Startup State established by that Grantor State for the transparent purpose of sanctions evasion. The recognition would be politically toxic: it would be characterised by the sanctions-administering states as complicity in the evasion. A Startup State that could not obtain recognition from any significant international financial centre, any major trading partner, or any multilateral development institution would have no access to the international financial system, no capacity to enter bilateral trade agreements, and no practical ability to conduct the transactions that the sanctions were designed to prevent. The evasion scheme would be self-defeating at the moment of its execution.¹⁴⁹

Third, the sanctions evasion scenario rests on a misunderstanding of the recognition dynamic. A state created for the purpose of evading sanctions would require widespread international recognition to be effective, yet recognition is precisely the mechanism through which the international

by Persons Whose Property and Interests in Property Are Blocked, August 2014); and UN Security Council Res 1267 (1999), as periodically updated, establishing the consolidated sanctions list and the criteria for designation of associated entities. On successor-entity designation, see also Koen Lenaerts, 'Sanctions, Countermeasures and Other Responses to Internationally Wrongful Acts' (2019) 56 Common Market Law Review 3.

¹⁴⁹ The fourth Montevideo criterion (capacity to enter into relations with other states) is the most directly relevant to the question of independent foreign policy: see Montevideo Convention on the Rights and Duties of States, 26 December 1933, 165 LNTS 19, Art 1(d). Crawford, *Creation of States* 62-66 emphasises that this criterion requires the actual and effective capacity to conduct independent international relations, not merely the absence of formal legal prohibition. A state whose foreign policy is in practice determined by another state does not, on this analysis, satisfy the fourth Montevideo criterion. On the sanctions evasion point specifically, see UN Security Council Res 2347 (2017) on the protection of cultural property and related anti-evasion provisions; and Bryan Early, *Busted Sanctions: Explaining Why Economic Sanctions Fail* (Stanford University Press, 2015) ch 4 (on the conditions under which sanctions evasion via nominally independent entities is detected and countered).

community exercises quality control over new state formation. The circularity is fatal to the objection: the very recognition that would make the arrangement useful is the recognition that would never be granted.

The Condominium as Institutional Oversight Mechanism.

It is worth stating with clarity an important structural point that the preceding analysis implies but does not make explicit: the condominium arrangement itself is an oversight mechanism. The Grantor State, as the provider of policing and judicial administration under the service agreements, is simultaneously the most proximate and the most knowledgeable supervisory authority for the Startup State's governance. A Grantor State whose officials staff the Startup State's courts and whose police officers enforce its laws cannot plausibly be unaware of serious or systematic violations of the Startup State's constitutional commitments: its own officials are the instruments through which any such violations would have to pass or be actively concealed. The condominium arrangement does not merely provide governmental services; it embeds a structurally interested party, the Grantor State, whose own reputation, treaty obligations, and international credibility are engaged, in the daily operational fabric of the Startup State's governance.

This is oversight without subordination. The Grantor State is a treaty partner with active, concrete, and enforceable interests in the Startup State's compliance with its founding commitments. That interest is not the interest of a superior; it is the interest of a state whose international reputation is bound up with the success and integrity of an arrangement it helped to create. The distinction matters: the condominium produces accountability through aligned incentives rather than through hierarchical command.

Furthermore, the appropriate response to the recognised limitation of beneficial ownership enforcement in a new state is to supplement the Startup State's nascent domestic regulatory capacity with external treaty-based obligations. From the earliest stage after its founding, the Startup State should enter into bilateral agreements on mutual legal assistance, tax information exchange, and anti-money-laundering cooperation with a critical mass of established jurisdictions, beginning with the Grantor State and extending progressively to major financial centres and FATF member states. These bilateral agreements create external enforcement obligations that operate independently of the Startup State's own, as yet developing, domestic enforcement capacity. Transparency, in this architecture, is not a unilateral aspiration but a network of bilateral legal obligations

enforceable before the Founding Treaty's arbitral mechanism and, progressively, before the full range of international judicial and quasi-judicial bodies.

The sanctions evasion and criminal organisation objection, properly analysed, therefore collapses into an argument not against the construction but in its favour: it is precisely because the construction requires transparency, public registration, beneficial ownership disclosure, and the active political engagement of a sufficient recognition cluster that it is structurally inhospitable to the pathologies the objection identifies. A construction designed for criminal purposes would, by the act of attempting to use this framework, render itself maximally visible to the international community and maximally vulnerable to the sanctions and enforcement mechanisms that community possesses. *Fraus omnia corrumpit* and rational self-interest operate in parallel to produce the same conclusion: the construction is, by its architecture, incompatible with the ends of those who would seek to abuse it.

The proposition that notorious actors would be deterred from attempting to abuse the Startup States framework is further confirmed by the empirical record of what happens to existing states that fall under the influence, real or perceived, of criminal organisations or actors. The consequences for the state's government and for the individuals associated with it are severe and well-documented. The indictment of former Panamanian President Manuel Noriega by a United States federal grand jury in February 1988 on drug trafficking and money laundering charges, and his subsequent removal from power by United States military forces in Operation Just Cause in December 1989, demonstrated with considerable clarity that even the formal apparatus of a recognised state offers no durable sanctuary to a government whose leadership has become identified with narco-trafficking.¹⁵⁰ The United States justified the intervention, in part, on the ground that Noriega had converted Panama's governmental apparatus into an instrument of organised crime; Panama's formal sovereignty was in-

¹⁵⁰ Frederick Kempe, *Divorcing the Dictator: America's Bungled Affair with Noriega* (I.B. Tauris, 1990). The federal indictments of February 1988 (SD Fla, Cases 88-79-CR and 88-80-CR) charged Noriega with drug trafficking, racketeering, and money laundering. The legal basis and proportionality of Operation Just Cause (December 1989) are analysed in Anthony D'Amato, 'The Invasion of Panama Was a Lawful Response to Tyranny' (1990) 84 *AJIL* 516; and Louis Henkin, 'The Invasion of Panama under International Law: A Gross Violation' (1991) 29 *Columbia Journal of Transnational Law* 293.

sufficient to prevent the intervention once that characterisation had taken hold in the relevant political and legal assessments.

The trajectory of Venezuelan President Nicolás Maduro provides a vivid illustration of the principle that international engagement creates accountability. Maduro's indictment by the United States Department of Justice on narcotics trafficking charges in 2020, and his capture by United States forces on 3 January 2026 and arraignment in New York, demonstrate that state sovereignty does not insulate governmental actors from international legal consequences. A Startup State whose governance fell below the standards of the Founding Treaty would face analogous accountability mechanisms through the condominium oversight provisions and the dispute resolution framework of Article 23.

The critical qualification is that criminal association need not be proven to a criminal standard for recognition to be denied. The political dimension of recognition means that mere suspicion of illicit purpose is sufficient to prevent the international community from extending recognition. The sanctions and asset-freezing frameworks of the United Nations, the European Union, and the United States operate on an 'owned or controlled by' standard that captures indirect associations. This reality makes the Startup States construction's transparency architecture not merely desirable but existentially necessary.

A distinct objection holds that the construction will be deployed primarily as a sophisticated tax avoidance vehicle. The response is that tax competitiveness, whilst relevant to any state's economic strategy, is unlikely to be the Startup State's *raison d'être*. Numerous existing jurisdictions already provide fiscal efficiency with greater certainty and lower transaction costs. The Startup State's competitive advantages lie in its constitutional architecture, the absence of institutional path dependencies, and the premium attaching to full statehood, as illustrated by the Monaco/Beausoleil differential discussed in Section 7.4.

The experience of the British Overseas Territories is instructive. The United Kingdom's willingness to intervene in the governance of the British Virgin Islands (Commission of Inquiry, 2022) and the Turks and Caicos Islands (direct rule imposed, 2009) demonstrates that a Grantor State with retained constitutional oversight possesses meaningful enforcement mechanisms. The condominium provisions of the Founding Treaty provide analogous institutional safeguards.

The conclusion is that tax competitiveness, whilst undoubtedly relevant to the Startup State's economic strategy, is unlikely to be the *raison d'être*

of any well-conceived Startup State, and for good reason: it is not a sufficient value proposition to justify the complexity and cost of establishing a new state when numerous existing jurisdictions already provide fiscal efficiency with greater certainty and lower transaction costs. The Startup State's competitive advantages lie elsewhere: in the constitutional architecture of its governance, in the absence of inherited legal obligations and institutional path dependencies, in its capacity to attract talent and capital on the strength of a well-designed legal framework, and in the intangible but commercially significant premium that attaches to full statehood. The Monaco-Beausoleil illustration developed in Part VII of this study captures this premium with empirical precision: the value is not in the tax rate but in the legal designation. A Startup State that wishes to offer a competitive fiscal environment is entirely free to do so, as any state may structure its domestic tax regime as it sees fit; but this capacity is one feature among many of a full identity as a state, not the identity's entire content.

The reputational imperative applies with equal force to the fiscal dimension of the Startup State's development. A Startup State that wishes to attract investment and talent must demonstrate governance quality, institutional credibility, and regulatory integrity. The transparency provisions of the Founding Treaty, discussed in Section 15.14, ensure that the Startup State's fiscal and regulatory framework is subject to continuous international scrutiny.

15.8 The Irreversibility and Regret Problem

Critique: Once established, the Startup State cannot easily be dismantled. The Grantor State and the international community are locked into a 999-year arrangement whose consequences cannot be fully foreseen. Irreversibility is a defect, not a feature.

Counterpoint. Irreversibility is a feature, not a bug, of well-designed international legal arrangements. The international legal order is premised upon the stability and durability of treaties. A construction that could be reversed at will would provide no institutional certainty and attract no credible investment or community formation. The 999-year term is a deliberate design choice; the Founding Treaty's amendment and dispute resolution mechanisms provide the safety valves through which genuine grievances can be addressed without resort to unilateral termination.¹⁵¹

¹⁵¹ Aust, *Modern Treaty Law and Practice* ch 22; Franck, *Fairness in International Law* 85.

15.9 The Two-Tier International Order Objection

Critique: The Startup States model creates a two-tier international order in which wealthy private actors can effectively purchase statehood whilst existing peoples and states, lacking capital, cannot access the same pathway. This is structurally unjust.

Counterpoint. The international order already accommodates states of vastly different sizes, populations, wealth levels, and institutional capacities. Luxembourg, Iceland, and Singapore are among the most prosperous societies on Earth; their small size and prosperity have not disqualified them from full participation in the international order. The relevant question is not whether the construction benefits those with capital; it is whether it complies with the law and serves the interests of all parties.¹⁵²

15.10 The Treaty Saturation and Normalisation Risk

Critique: If the Startup States model is normalised, the proliferation of small states created by private actors will fragment the international order and undermine the coherence of the international legal system.

Counterpoint. The international legal system has accommodated the proliferation of small states since decolonisation without experiencing systemic fragmentation. The United Nations General Assembly currently has 193 Member States. The Westphalian state system has proved remarkably adaptive to changes in the number and character of its constituent members.¹⁵³

15.11 The Effective Control Sustainability Objection

Critique: A Startup State on a remote, sparsely populated island will struggle to maintain the continuous effective governmental control required by the Montevideo criteria. Any extended interruption risks triggering a statehood failure.

Counterpoint. The contractual service arrangements with the Grantor State for defence, policing, and judicial administration are specifically designed to maintain effective governmental control throughout the formative period. The Founding Treaty's emergency governance provisions provide the institutional backstop. The risk is real but it is managed, not

¹⁵² Caspersen, *Unrecognized States* ch 7. Singapore separated from Malaysia on 9 August 1965 and was admitted to the United Nations on 21 September 1965.

¹⁵³ Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) ch 1.

eliminated, and its management is central to the design of the construction.

15.12 The Recognition Reciprocity Problem

Critique: The Startup State will need to extend recognition to other states in order to enter into bilateral relations. Its recognition decisions will be scrutinised by the major powers and may provoke diplomatic reactions that undermine its own recognition trajectory.

Counterpoint. The recommended policy is one of *minima recognitio*: beginning with a narrow and uncontroversial recognition list and expanding it only as the Startup State's position in the international system is consolidated. The most sensitive recognition decisions, including the One China question and the Palestinian statehood question, are addressed in Part XVI. The general principle is that the Startup State's recognition decisions are signals to the Security Council permanent members and must be managed with the same strategic care as the recognition trajectory itself.

15.13 The Ecological and Environmental Objection

Critique: The establishment of a new state upon a remote, ecologically sensitive island creates significant risks of environmental degradation, habitat destruction, and species loss that are inconsistent with the international community's obligations under international environmental law.

Counterpoint. The Founding Treaty's environmental provisions, including the commitment to carbon neutrality, the prohibition on ecologically destructive development, and the accession to all applicable international environmental conventions, are designed to ensure that the Startup State is an environmental leader, not an environmental risk. The Model Treaty's environmental provisions in Article 13 reflect the conviction that the establishment of a new state provides a unique opportunity to demonstrate the compatibility of institutional innovation with the highest standards of environmental stewardship.¹⁵⁴

¹⁵⁴ Philippe Sands and others, *Principles of International Environmental Law* (4th edn, CUP 2018) ch 2; Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26/Rev.1 (Vol I), Annex I, Principle 2.

15.14 The Transparency Imperative as the Best Available Safeguard

The most effective single response to all of the objections addressed in this Part is the transparency imperative. A construction that is entirely public in its documentation, its purposes, and its principals; that is registered with the United Nations Secretariat pursuant to Article 102; that includes a public beneficial ownership register; that is subject to independent judicial oversight; and that operates within the full framework of international human rights and environmental obligations is a construction that forecloses, by design, the pathologies that the objections are designed to identify.¹⁵⁵ Transparency is not merely a response to objections; it is the foundational ethical commitment of the entire enterprise.

15.15 The Consent Quality Objection

Critique: The formal consent of the Grantor State to the Founding Treaty may be structurally compromised. A state that faces severe fiscal pressures, debt obligations, or the economic consequences of underdeveloped territory may consent to the Startup States arrangement not because it is freely choosing the best available option but because it is the least bad option available from a position of economic weakness. Consent obtained in conditions of acute economic vulnerability is not the same as genuinely free consent in the VCLT sense, and the arrangement may therefore be vulnerable to challenge under Article 52 of the Vienna Convention on the Law of Treaties, which renders void treaties procured by coercion of the state.

Counterpoint. Article 52 of the VCLT provides that a treaty is void if procured by the threat or use of force. The Founding Treaty is designed to be concluded through the Grantor State's constitutional processes, subject to parliamentary ratification, and registered under Article 102 of the UN Charter. These procedural safeguards ensure that the consent is genuine, informed, and constitutionally authorised. The transparency provisions examined in Section 15.14 provide additional assurance against the risk of structural coercion.

¹⁵⁵ Thomas Franck, "The Emerging Right to Democratic Governance" (1992) 86 AJIL 46; Anne Peters, *Beyond Human Rights* (CUP 2016) ch 8.

15.16 The Permanent Population Authenticity Objection

Critique: The Startup State's permanent population will be, at least initially, composed of persons who have chosen to relocate to the new state for economic or lifestyle reasons rather than persons who have an organic historical, cultural, or linguistic connection to the territory. This 'constructed' population lacks the legitimacy of a people in the sense recognised by international law, and the Startup State's capacity to enter into relations with other states will be compromised by the absence of a genuine national community.

Counterpoint. The permanent population criterion, as interpreted by the ICJ and leading publicists, requires a stable community capable of sustaining statehood, not a historically continuous or ethnically homogeneous one. The Vatican City State's population (approximately 800 persons) demonstrates that no minimum threshold exists. The Startup State's founding citizenry, as discussed in Section 9.2, constitutes the juridical nucleus of a future population assembled deliberately through constitutional processes.

Geopolitical Navigation: The Security Council Permanent Members and the Recognition Calculus

16.1 The Fundamental Principle: The Absence of Threat

The fundamental principle governing the Startup State's approach to the permanent members of the Security Council is this: the Startup State should present itself as an entity with whom recognition involves no strategic cost. A new state that is small, demilitarised, permanently neutral, transparent in its constitution and governance, free of entanglement in any contested territorial claim, and explicitly committed to the peaceful resolution of disputes through international legal mechanisms is a state that poses no strategic threat to any existing power. The absence of threat is the best available foundation for the absence of opposition.¹⁵⁶

16.2 The People's Republic of China

The People's Republic of China's position on Taiwan is among the most consequential geopolitical variables in the Security Council context. Any new state that extends formal diplomatic recognition to Taipei rather than Beijing will, as a matter of observable geopolitical reality, face a near-certain Chinese veto at the Security Council. This study does not prescribe whether any particular Startup State should or should not adopt a One China policy; it merely identifies this as one of the more prominent fault

¹⁵⁶ Ruth Russell, *A History of the United Nations Charter* (Brookings 1958) ch 7.

lines that founders and builders of new states must bear in mind when designing their recognition strategy.¹⁵⁷

The recognition question is not limited to the China-Taiwan issue. Analogous sensitivities exist in other domains: recognising the State of Palestine might, for example, risk an American veto, whilst treating Crimea as Russian territory could provoke a French, British, or American veto. The more general principle for founders to consider is one of *minima recognitio*: beginning with a narrow and uncontroversial recognition list and expanding it only as the Startup State's position in the international system is consolidated.

16.3 The Russian Federation and Other Permanent Members

Russia's positions on Crimea, the Donbas, Abkhazia, and South Ossetia create potential pressure points. A principled and consistent policy of formal agnosticism on all contested territorial questions, grounded in expressed respect for the UN Charter's provisions on the peaceful resolution of disputes and the prohibition on the use of force, offers the best available protection against geopolitical weaponisation of the admission process.¹⁵⁸

For the United States, the United Kingdom, and France, the most important factors will be the identity and credibility of the Grantor State, the transparency of the process, and the absence of strategic threat. A construction involving a Grantor State that is a democracy with a sound human rights record and a transparent legal system, with founding principals who are publicly identified and unconnected to sanctions regimes, is likely to receive a sympathetic reception from all three Western permanent members.

¹⁵⁷ On the China/Taiwan question in the law and politics of recognition, see UNGA Res 2758 (XXVI) (25 October 1971); Jerome A Cohen and others, 'Taiwan and International Law' (2019) 38 UCLA Pacific Basin Law Journal 1; and the discussion in this study of Taiwan, Palestine, and Kosovo as examples of entities whose international status demonstrates that recognition, UN membership, and broad diplomatic acceptance are analytically distinct.

¹⁵⁸ UNSC, draft resolution S/2014/189, vetoed by the Russian Federation on 15 March 2014; UNGA Res 68/262 (27 March 2014), "Territorial integrity of Ukraine". Russia recognised Abkhazia and South Ossetia on 26 August 2008.

16.4 The State of Palestine and the United States Veto: A Cautionary Hypothesis

Consider, by way of cautionary hypothesis, the scenario in which the Startup State, shortly after its founding and before its application for UN membership, extends recognition to the State of Palestine. The State of Palestine is recognised by more than 150 of the 193 member states of the United Nations, after a wave of recognitions in September 2025 that included the United Kingdom and France, and was admitted to UNESCO in 2011.¹⁵⁹ Recognition of Palestine would not, of itself, be unlawful: the majority of United Nations Member States have done so, and the ICJ's Advisory Opinion of July 2024 reinforced the international community's collective obligations in relation to the Palestinian people's right to self-determination.¹⁶⁰

However, the United States has historically opposed Palestinian UN membership through the threat or exercise of its Security Council veto, and recognition of the State of Palestine by the Startup State at an early and sensitive stage could provoke a United States veto when the Startup State's own application for UN membership is considered. The risk is manageable only through careful sequencing: the recognition of contested states should be deferred, as a matter of strategic prudence, until after UN admission is secured. The hypothesis illustrates a broader principle: the Startup State's recognition decisions are not merely bilateral acts. They are signals to the Security Council's permanent members about political alignments and strategic judgment.

¹⁵⁹ UNGA Res 67/19 (29 November 2012) (non-member observer State status); UNESCO General Conference, admission of Palestine as a Member State (31 October 2011). The number of recognising states rose from about 142 in July 2025 to more than 150 after the recognitions of September 2025.

¹⁶⁰ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion, 19 July 2024) <https://www.icj-cij.org/case/186>.

Residual Vulnerabilities, Recommended Sequencing, and Conclusion

The argument advanced in this study should ultimately be understood as an exploration of legal possibility rather than a claim of doctrinal inevitability. The Startup States framework proposes a novel institutional pathway situated within the existing structure of international law. Its feasibility depends not only upon legal reasoning but upon political judgment, diplomatic prudence, and institutional experimentation. The purpose of this analysis has been to demonstrate that the international legal order does not foreclose such experimentation.

17.1 Residual Legal Vulnerabilities

The Tabula Rasa Novelty. No case in the history of international law precisely replicates the deliberate engineering of a new state from uninhabited territory by treaty without any pre-existing community. Third states may approach the arrangement with caution commensurate with its novelty. The Startup States Society regards this caution as appropriate and welcomes rigorous doctrinal scrutiny.

Title Quality. The Startup State's possessory interest is derivative of the Grantor State's title. *Nemo dat quod non habet*: any defect, dispute, or ambiguity in the Grantor State's underlying title propagates into the Startup State's territorial foundation. Exhaustive legal due diligence on the chain of title is indispensable.

The Protectorate Risk. The boundary between a legitimate condominium and an impermissible protectorate is a matter of degree and judgment. The construction must be maintained with doctrinal care through-

out the formative period. The Startup State must, from its inception, exercise genuine and visible independence in those domains, including foreign policy and constitutional governance, that are not subject to the condominium provisions.

The Recognition Gap. Even a legally impeccable new state may face political non-recognition for geopolitical reasons entirely unrelated to legal merit. The mitigation lies in the sequencing and management of the recognition process, as described in Part XII, and in the strategic navigation of the Security Council permanent members' interests, as described in Part XVI.

Grantor State Constitutional Stability. A constitutional crisis, democratic breakdown, or territorial loss in the Grantor State represents the most serious long-term risk. The Founding Treaty's treaty succession clause and the principle of the continuity of state responsibility provide the primary legal protections. The choice of a constitutionally stable, democratically governed Grantor State is the most important practical mitigation.

Financial Failure and Default. A Startup State built on private capital may fail to attract the population or investment its founders expected, or may be struck by a natural disaster or financial crisis, and may then be unable to pay its rent. Section 14.4 explains why a default would leave the new state and its territory intact while giving the Grantor State a debt, interest, and an arbitral remedy, and why the security worth having (a funded rent reserve, a limited consent to execution, insurance, and a disaster-deferral clause) must be taken before the Founding Treaty enters into force. Founders should treat the rent as the first charge on the new state's public finances; a Grantor State should require evidence of fiscal capacity before it ratifies.

17.2 Recommended Sequencing

The recommended sequencing for the establishment of the Startup State proceeds through six stages. Stage One: identification of the territory and exhaustive due diligence on the Grantor State's title, constitutional capacity, and long-term stability. Stage Two: negotiation of the Founding Treaty in complete confidence with the most highly qualified legal counsel in public international law available. Stage Three: preparation and promulgation of the Startup State's constitutional instruments, citizenship laws, and governmental organisation. Stage Four: simultaneous entry into force

of the Founding Treaty; declaration of the Startup State's existence; coordinated recognition by the initial recognition cluster; careful calibration of the recognition strategy in light of the geopolitical sensitivities identified in Part XVI; and Article 102 registration of the Founding Treaty. Stage Five: commencement of bilateral treaty negotiations; applications for membership in specialised agencies and international organisations; and establishment of permanent diplomatic missions. Stage Six: application for admission to the United Nations, which requires a recommendation of the Security Council and a decision of the General Assembly.¹⁶¹

17.3 Synthesis of the Argument

The seventeen Parts of this study, taken together, constitute a systematic and comprehensive analysis suggesting that the pathway to new statehood described in these pages is legally available, doctrinally sound, historically grounded, and practically achievable. The synthesis of the argument proceeds through six interlocking propositions, each independently established and collectively dispositive.

The first proposition is that the international territorial order is closed and that no meaningful alternative to the treaty-based sovereign lease remains open for those who seek to bring a new recognised state into existence on dry land. This is not a limitation imposed by any single legal rule but the cumulative effect of the entire contemporary international legal system, from the prohibition on the use of force to the Antarctic Treaty to the UNCLOS regime for maritime zones. The pathway proposed in this study is not merely better than the alternatives; in any practically and legally meaningful sense, it is the only pathway.

The second proposition is that the construction satisfies the conditions of legality. It involves no violation of *jus cogens* norms. It does not engage the prohibition on the use of force. It does not infringe the principle of *uti possidetis*. It is not a secession. It is not a unilateral declaration of independence. The Grantor State's constitutional integrity is required as a precondition of the construction's validity, and its freely given consent is the *lapis angularis* of the entire legal architecture. It is, in short, the most legally impeccable available method of new state creation, and the legal objections to it dissolve upon systematic examination.

¹⁶¹ UN Charter, Art 4(2); Provisional Rules of Procedure of the Security Council, rules 58 to 60; Rules of Procedure of the General Assembly, rules 134 to 138.

The third proposition is that the construction has deep and diverse historical antecedents. The sovereign lease, the condominium, the treaty-created state, the internationalised territory, the servitude regime, the guaranteed neutral state: all have historical instances that illuminate the legal terrain and provide direct precedent for specific elements of the construction. None of those instances provides a perfect parallel, for the simple reason that the construction is genuinely novel in its specific combination of elements: the use of a sovereign lease as the territorial foundation for the creation of a new state *ex novo*, rather than the extension of an existing one. But novelty within a framework of historical grounding is the normal condition of doctrinal progress in international law.

The fourth proposition is that the construction is institutionally robust. The Founding Treaty's architecture, incorporating constitutional entrenchment, Article 102 registration, independent arbitration, a beneficial ownership register, human rights commitments, and a condominium oversight mechanism, provides the maximum available assurance of durability and accountability. The Startup State is not a legal construct of convenience but a genuinely state from the moment of the Founding Treaty's entry into force, with all the institutional apparatus that genuine sovereignty requires.

The fifth proposition is that the construction is commercially viable and economically rational for all parties, and that its specific structural features, the 999-year exclusive lease and the condominium arrangement, are designed not merely to satisfy international legal requirements but to make the construction politically achievable within the domestic constitutional order of the Grantor State.

The Rezoning Argument. The zoning analogy developed in Section 7.4 applies directly to the temporal asymmetry objection. The administrative redesignation of territory from one legal classification to another creates value through legal transformation rather than physical change, as the Monaco and Beausoleil illustration confirms empirically. The Startup States construction operates as precisely this kind of rezoning at the sovereign level: a remote or economically dormant parcel of territory is redesignated through treaty, unlocking latent value without extracting it from anyone.

The Monaco/Beausoleil property differential, referenced in Section 7.4, confirms that the value premium attaching to sovereign designation is real, measurable, and substantial. The identical physical environment on either

side of the border yields starkly different economic outcomes by virtue of legal classification alone.

This value creation is not extracted from anyone. The Grantor State's underlying *dominium* is preserved. The surrounding states are unaffected. The international community gains a new Member willing to accept the full range of the Charter's obligations. The value is created from within the existing international legal system, by applying its own instruments to their fullest lawful extent.

The Startup Culture Analogy. The Startup States model engages deliberately with the vocabulary and logic of technology entrepreneurship. Just as a startup enterprise operates on leased premises with contracted services whilst building independent capacity over time, the Startup State operates on leased territory with contracted governmental services whilst progressively developing autonomous institutional infrastructure.

The hospitality industry analogy reinforces this point, and it is worth pressing further than the obvious comparison. The largest hotel enterprises in the world, Marriott International, Hilton, Hyatt, and IHG, do not, as a rule, own the hotels, resorts, and casinos that bear their names. Their value lies in the standard, the system, the brand, and the operational covenant; the underlying real property is owned by others, leased back, or managed under franchise. The largest transportation enterprises in the world, Uber, Lyft, and Didi, do not own fleets of motor vehicles. The largest technology enterprises in the world do not own the hardware on which their software runs. In each case, the enterprise that creates the most value is the enterprise that controls the institutional capacity, the governance layer, and the system of rules and incentives, not the enterprise that holds title to the physical substrate. This is not a peripheral or accidental feature of the modern economy; it is its defining structural logic.

The question this study poses is whether the same structural logic may apply to states. If the most consequential hospitality companies in the world do not need to own hotels, and the most consequential transportation companies in the world do not need to own vehicles, then why should the countries of the future need to own the underlying land upon which they operate and from which they govern? The Startup State answers that question in the negative. Sovereignty, like brand equity, inheres in institutional capacity rather than in title to the underlying land. The countries of the future may not merely accept this condition; on the Startup States thesis, they may actively prefer it, leasing the territorial substrate from a willing Grantor State and directing all available capital toward the

construction of the governance infrastructure that alone produces durable value of statehood.

So too with the Startup State. The distinction between *dominium* and *imperium*, discussed in Section 2.3, provides the analytical foundation for this construction.

The Grantor State receives certain and immediate economic benefit from a territory that previously generated none. The Startup State receives the territorial and legal foundation for the governance experiment that its principals seek to conduct. The international community receives a new member that is constitutionally committed to good governance, transparency, and the rule of law from its first moment of existence. The economic argument and the legal argument point in the same direction.

The sixth and final proposition is that the construction is ethically defensible. It creates no victims. It displaces no population. It violates no territorial claim. It does not exploit any existing community's vulnerability or marginality. It is, in the fullest available sense, a consensual and transparent exercise in state creation for the benefit of all parties, conducted in the full light of international law and the full scrutiny of the international community.¹⁶²

Final Observation

The Westphalian international order, established by the Peace of 1648 and elaborated over the subsequent four centuries, has always contained within it the capacity for legitimate state creation through treaty. The Peace of Westphalia recognised new states. The Congress of Vienna guaranteed them. The Treaty of Berlin conditioned them. The Lateran Treaty created them. The Montenegro independence framework replicated them in the modern era. At each moment, the international community has demonstrated that its legal architecture is sufficiently flexible to accommodate new forms of political community, provided that those forms are grounded in consent, transparency, and compliance with the fundamental norms of the international order. The Startup States construction is the twenty-first-century expression of that capacity: the deliberate, treaty-

¹⁶² On the ethical and philosophical foundations of consensual state creation, see Lea Brilmayer, *American Hegemony: Political Morality in a One-Superpower World* (Yale UP, 1994) ch 5 (on the moral conditions for the exercise of international authority); and Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (OUP, 2004) chs 7-8 (on the legitimacy conditions for new state creation). The Startup States construction satisfies Buchanan's primary institutional moral principles: it involves no violation of individual rights, no injustice in the distribution of natural resources, and no violation of the territorial rights of any existing state.

based creation of a new state by a willing sovereign, for purposes that are transparent and aligned with the values that the international community proclaims.¹⁶³ The question is not whether the international legal order permits such a construction; the analysis presented in this study suggests that it does. The question is whether those with the legal sophistication and institutional commitment to pursue it will do so.¹⁶⁴

International law does not create states by itself. Political will, diplomatic recognition, and institutional commitment remain decisive factors in the emergence of new states. The purpose of this analysis is therefore not to suggest that legal design alone produces statehood, but rather to demonstrate that international law does not foreclose the possibility of state formation through peaceful agreement between sovereign actors.

It bears emphasis that the proposed model is, upon reflection, considerably more conservative and more Westphalian in its character than its novelty might initially suggest. Every element of the construction depends upon, and reaffirms, the foundational institutions of the existing international order: it proceeds by treaty, requiring the formal consent of existing recognised states; it is grounded in a defined and precisely delimited territory, the bedrock of the Westphalian system; it relies upon international registration under Article 102 of the United Nations Charter to ensure public documentary verification; and it operates through the recognised practice of state recognition, which vests in each sovereign the discretion to decide, through diplomatic channels, whether to acknowledge the new entity's legal existence. The model does not rupture the existing order, circumvent its institutions, or invoke any doctrine of unilateral entitlement. On the contrary, it asks only that existing states exercise the governmental authority they already possess, through the legal instruments already available to them, in a manner that produces a new member of the international community that enters that community through its front door, creden-

¹⁶³ On the Montenegrin framework, see the Constitutional Charter of the State Union of Serbia and Montenegro, 4 February 2003, Art 60; on the Lateran Treaty, see Section 6.2.

¹⁶⁴ On the adaptive capacity of the international legal order to accommodate new forms of sovereign community, see Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (CUP, 2001) 492-511; Vaughan Lowe, *International Law* (OUP, 2007) chs 1-2 (on the sources and development of international law); and Rosalyn Higgins, *Problems and Process* 38-48 (on the role of judicial creativity in the development of international law norms). The Startup States Society's thesis finds support in Lowe's observation that 'the international legal order is not a closed system: its institutions and its norms evolve in response to the changing needs and capacities of the states and peoples that it serves.'

tialled, transparent, and fully committed to the Charter's obligations. A more conservative pathway to new statehood is difficult to conceive.

17.4 Conclusion

There exists, at the present moment in the development of public international law, a legally available, ethically defensible, and practically achievable pathway to the lawful creation of a new independent state on dry land. That pathway is the 999-year sovereign lease of uninhabited, undisputed territory from a willing Grantor State, simultaneously constituted as a new state through a Founding Treaty that grants plenary jurisdictional authority to the Startup State whilst retaining underlying title in the Grantor State. The construction proposed in this study operates entirely within the existing international legal order and adheres, to the greatest extent possible, to the principles of sovereign equality, territorial integrity, and consensual obligation that form the foundation of the so-called Westphalian system of states.

The construction satisfies the Montevideo criteria. It avoids *jus cogens* violation in every material respect. It is fully consistent with both the declaratory and constitutive theories of recognition. It is grounded in a genuine symbiotic relationship between the Grantor State and the Startup State, a relationship in which each party contributes what the other lacks and in which neither party's interests are served by the failure of the arrangement. It is designed for durability, built to last through the entire 999-year term that is its architectural horizon.

Four characteristics define the construction and distinguish it from all historical analogues and all competing models: it is entirely consensual, founded upon the free, informed, and legally documented will of both parties; it is entirely transparent, public in its documentation, its purposes, and its principals; it is entirely compliant with the applicable norms of international law, from *jus cogens* to the Vienna Convention to the Montevideo criteria; and it is designed for durability, structured to produce a Startup State that is institutionally robust, diplomatically integrated, and constitutionally secure.

The *tabula rasa* character of the proposed construction is not a weakness to be overcome but a strength to be embraced. The new state enters the world without the historical grievances, ethnic conflicts, territorial disputes, and institutional dysfunctions that beset every state that has emerged from the conflicts, decolonisation processes, and political com-

promises of the twentieth century. It has the opportunity to build, from its very first moment of existence, the institutions, the governance culture, and the international relationships that will determine its character for the full 999-year term.

That opportunity is, in the considered view of the Startup States Society, among the most significant that the current international legal order makes available. The question is whether there exist the legal sophistication, the institutional patience, and the political commitment to pursue it. This study is dedicated to those who believe that the answer is yes.

The construction proposed in this study stands in a long and distinguished tradition of legal creativity within the framework of sovereign equality. It does not seek to circumvent the international order but to work within it, deploying every instrument that the law of nations provides: the treaty, the lease, the condominium, the recognition, the servitude, and the constitutional charter. It asks only that a willing state exercise its governmental authority in the most expansive way available to it under international law: by constituting, through treaty, a new state upon a defined and undisputed parcel of its territory, and by thereafter nurturing that entity through a condominium oversight mechanism designed to ensure that the obligations accepted in the Founding Treaty are honoured and that the arrangement serves the interests of both parties throughout its 999-year duration.

The Ultimate Test: Politics, Will, and the Limits of Law.

A white paper that claims to be honest about the international legal order must be equally candid about its limits. The construction set out in these pages is intended to be legally robust, and the author has sought throughout to ensure that it is as rigorously defensible as the current state of international law permits. However, legal soundness is not, in the contemporary international order, a sufficient condition for political success.

The recognition of a new state is, at its foundation, a political act. The Grantor State's decision to enter into the Founding Treaty will be shaped by domestic politics, parliamentary arithmetic, public opinion, and the foreign policy interests of its government at the relevant moment. The decision of third states to extend recognition is equally political. The Security Council's recommendation of United Nations membership is, above all, political. Each of the five permanent members retains the legal right to exercise a veto for any reason, or for no stated reason, and the history of the Security Council demonstrates that this right has been exercised for reasons that bear little relation to the legal merits of an applicant's position.

This study does not pretend otherwise. The legal framework it constructs is not a mechanism that produces recognition automatically upon the satisfaction of its technical requirements. It is a platform, and arguably the strongest available, upon which the political work of building a new state's international position can be conducted with the greatest degree of legal confidence. A state whose legal foundations are impeccable, whose documentary record is transparent, whose founding principles are credible, and whose governance commitments are demonstrably honoured will be better placed to pursue recognition and membership through the diplomatic channels that will ultimately determine its fate.

It cannot compel recognition; no legal instrument can. What it can do is minimise legal obstacles to recognition and reduce doctrinal objections to its existence to the greatest extent possible, leaving only the political calculus of each individual recognising state to be addressed through diplomacy. That is where every state-formation exercise ultimately arrives in any event, regardless of the legal pathway taken. The difference that the Startup States construction offers is that it reaches that political conversation without unresolved legal questions, without tainted origins, and without the stigma of illegality that has affected states emerging through force, unilateral declaration, or the dismemberment of a non-consenting sovereign. The legal framework provides a principled and carefully constructed basis upon which that process can proceed.

The Larger Vision: Peaceful Innovation Within the International Order.

The international legal order, as it has developed since 1945, represents humanity's most sustained and sophisticated attempt to manage the use of force, protect the sovereignty of states, and create the institutional conditions for peaceful cooperation between polities. That project has a profound structural limitation that it has never resolved. The existing pathways to new statehood are, with vanishing exceptions, catastrophic in human terms. Conquest is prohibited. Forced dissolution produces the carnage of Yugoslavia and the instability of Somalia. Unilateral secession, even where it succeeds, produces entities that exist in permanent legal limbo: Kosovo after nearly two decades cannot obtain a Security Council recommendation; Somaliland after three decades remains outside the formal international system.

The Startup States model proposes something more modest, and precisely for its modesty, more achievable: a lawful, consensual, transparent pathway to new statehood that produces no losers, violates no existing rights, engages no peremptory norm, and generates no humanitarian cost.

The Grantor State consents freely, receives genuine economic benefit, and retains its underlying title and its reversionary interest. The Startup State acquires the full range of sovereign capacities and the institutional platform to exercise them responsibly. The international community receives a new Member that has entered the system through the front door, with its documentary credentials in order, committed from its first moment to the rules that the international order requires.

This is not merely a legal argument. It is an argument from the internal logic of the international legal order itself. A system that provides elaborate procedural protection for states that emerge from violence, genocide, and forced dissolution, and that declines to accommodate a state that emerges from consent, transparency, and peaceful treaty, has produced an incentive structure that is precisely inverted. The Startup States construction proposes to correct that inversion by demonstrating that the law, properly applied, is entirely adequate to accommodate and protect consensual new statehood. The instruments are not novel; they are the oldest in the international legal arsenal. The application is new. The opportunity is real.

The Startup States Society submits this analysis to scholars, practitioners, diplomats, and statesmen who share the conviction that the peaceful, lawful, and accountable creation of a new state is not merely a theoretical possibility but a practical and achievable goal. The law is ready. The instruments are available. The historical precedents illuminate the path. What remains is a question not of law but of will, not of doctrine but of vision, and not of possibility but of the courage to attempt what is, upon rigorous analysis, entirely achievable.¹⁶⁵

¹⁶⁵ The case for peaceful, lawful, and institutionally grounded experimentation within the international legal order is developed by Philip Allott, *Eunomia: New Order for a New World* (OUP, 1990) chs 17-18; by Vaughan Lowe, 'The Politics of Law-Making: Are the Method and Character of Norm Creation Changing?' in Michael Byers (ed), *The Role of Law in International Politics* (OUP, 2000) 207; and by Benedict Kingsbury, 'Sovereignty and Inequality' (1998) 9 *European Journal of International Law* 599. The broader argument that the international legal order retains and should retain the capacity to accommodate consensually negotiated new forms of state organisation is consistent with the treatment in James Crawford, 'The Creation of States in International Law' 427-435, and with the general trajectory of the ILC's work on the fragmentation of international law (ILC Report, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law', UN Doc A/CN.4/L.682, 13 April 2006).

17.5 Limitations of the Analysis

It must be emphasised that the argument developed in this study concerns legal possibility rather than political probability. Public international law rarely functions as the engine that brings states into existence. More commonly it provides the vocabulary through which political developments are later described and stabilised. The present analysis therefore does not suggest that legal doctrine alone can produce a new state. Rather, it demonstrates that if a state were politically willing to pursue such a construction, existing international law contains no rule that would prohibit it. The framework described here should therefore be understood as an exercise in doctrinal mapping rather than political prediction.

The analysis presented in this white paper addresses the legal architecture of treaty-based state formation within the contemporary international legal order. It does not claim that the creation of such a state would be politically easy, diplomatically uncontested, or economically successful. Questions of institutional viability, long-term governance quality, economic sustainability, and geopolitical alignment lie beyond the strictly doctrinal scope of this analysis. The purpose of the study has been to examine whether the law of nations contains within it the conceptual tools necessary for such a construction to be attempted.

Model Founding Treaty: The Treaty of Ducie

IMPORTANT DISCLAIMER: The Treaty of Ducie set out in this Annex is a model founding treaty prepared for entirely hypothetical, educational, and illustrative purposes. It does not reflect the position of any government, ministry, or official authority. It does not constitute a legal instrument of any kind and has no binding force whatsoever. It is published to demonstrate the form, content, and doctrinal architecture that a genuine Founding Treaty of the kind described in this study might take. The United Kingdom, the Pitcairn Islands, and all other named entities are referenced solely as illustrative parties in a hypothetical construct. Nothing in this Annex constitutes an offer, invitation, or solicitation directed at any government or person.

TREATY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE DUCIE FREE STATE CONCERNING THE ESTABLISHMENT OF THE DUCIE FREE STATE, THE SOVEREIGN LEASE OF JURISDICTIONAL AUTHORITY, THE CONSTITUTION OF A CONDOMINIUM GOVERNANCE ARRANGEMENT, AND THE PROVISION OF DEFENCE, POLICING, AND JUDICIAL ADMINISTRATION SERVICES

Concluded at London on ___ [day] of ___ [month] ___ [year]

PREAMBLE

The United Kingdom of Great Britain and Northern Ireland (hereinafter “the United Kingdom”), acting through its duly authorised representatives and in accordance with the constitutional requirements of United Kingdom law, and

The Ducie Free State (hereinafter “the Free State”), acting through its duly authorised founding representatives and with the full and informed consent of its founding community,

Together referred to as “the Parties”;

RECALLING that Ducie Island is an uninhabited coral atoll forming part of the British Overseas Territory of the Pitcairn Islands group, situated at approximately 24 degrees 40 minutes South latitude and 124 degrees 47 minutes West longitude, in the South Pacific Ocean, with about 0.7 square kilometres of land around a central lagoon, of which the United Kingdom holds clear, undisputed, and internationally recognised territorial title;

ACKNOWLEDGING that the United Kingdom’s dominium over Ducie Island derives from lawful acquisition, is free of competing territorial claims by any other state, and is registered in all relevant international instruments;

RECOGNISING that the territory of Ducie Island is, at the date of this Treaty, uninhabited and free of any pre-existing permanent population, governmental order, or constitutional tradition; that the inhabitants of Pitcairn Island have, pursuant to the constitution and laws of the Pitcairn Islands, voted in favour of this Treaty through a duly conducted referendum; that the Island Council of the Pitcairn Islands has adopted a resolution approving and consenting to this Treaty in accordance with its constitutional powers; and that the Parliament of the United Kingdom of Great Britain and Northern Ireland has enacted primary legislation authorising His Majesty’s Government to conclude and give effect to this Treaty;

AFFIRMING that the grant by the United Kingdom of plenary jurisdictional authority over Ducie Island to the Free State represents a free, informed, and fully consensual exercise of United Kingdom governmental authority, entered into for the mutual benefit of both Parties, for the benefit of the inhabitants of the Pitcairn Islands, and in furtherance of the principles of peaceful international cooperation enshrined in the Charter of the United Nations;

RECOGNISING FURTHER that, pursuant to the constitutional processes of the Provisional Founding Authority (*auctoritas fundatrix provisoria*) constituted by the United Kingdom Parliament under the Ducie Free State (Provisional Authority) Act, a founding citizenry (*cives fundatores*) has been formally registered, comprising persons who have voluntarily assumed the status of nationals of the Ducie Free State and have committed to treating the Leased Territory as their primary domicile, thereby constituting the permanent population of the Free State for the purposes of Article 1 of the

Montevideo Convention on the Rights and Duties of States (1933); and that all acts performed by the Provisional Founding Authority in the negotiation and conclusion of this Treaty are, from the moment of the Treaty's entry into force, attributed to and adopted by the Ducie Free State as acts of the fully constituted state;

AFFIRMING FURTHER that this Treaty does not constitute and shall not be construed as a cession of territory, a secession from the United Kingdom, or a diminishment of the United Kingdom's sovereignty; that the United Kingdom's *dominium* over the Leased Territory remains unaltered throughout the full term of this Treaty; and that the act of entering into this Treaty is, on the United Kingdom's part, a deployment and leveraging of governmental authority rather than a surrender of it: the capacity to grant an exclusive long-term leasehold of governmental authority over defined territory is itself an attribute of sovereignty, available only to a state whose title over that territory is clear, undisputed, and legally unimpeachable;

DESIRING to establish a new independent state *de novo* upon the territory of Ducie Island, with full international legal personality, the capacity to enter into relations with other states, and all the rights and obligations attaching to statehood under public international law;

COMMITTED to the principles of the Charter of the United Nations, the Vienna Convention on the Law of Treaties (1969), the Universal Declaration of Human Rights (1948), and all applicable norms of customary international law;

COMMITTED FURTHER to the highest achievable standards of environmental protection, ecological sustainability, and respect for the natural heritage of the South Pacific region;

RESOLVED that the new state shall be governed accountably, transparently, and in full conformity with the rule of law from its very first moment of existence;

HAVE AGREED as follows:

Part I. The Sovereign Lease of Jurisdictional Authority

Article 1. The Leased Territory

1.1 The United Kingdom hereby grants to the Free State, with effect from the entry into force of this Treaty, an **exclusive** sovereign lease of plenary jurisdictional authority (*plenam jurisdictionem*) over the entirety of Ducie Island, comprising the land territory, internal waters, territorial sea, contiguous zone, exclusive economic zone, and continental shelf appurtenant

thereto (hereinafter “the Leased Territory”), as defined by the geodetic survey set out in Schedule 1 to this Treaty.

1.2 The boundaries of the Leased Territory are defined with precision in Schedule 1. In the event of any dispute concerning the boundaries, the Parties shall seek resolution through the dispute resolution mechanism provided in Article 23.

1.3 Notwithstanding the grant of plenary jurisdictional authority in Article 1.1, the exclusive economic zone (hereinafter “the EEZ”) appurtenant to Ducie Island shall either (a) be retained by the United Kingdom and excluded from the Leased Territory, or (b) be included within the Leased Territory and simultaneously leased back by the Free State to the United Kingdom on a concurrent basis for the full term of this Treaty. The Parties shall elect between these two options in Schedule 2. In either case, the United Kingdom shall exercise all rights pertaining to the EEZ throughout the term of this Treaty, including without limitation the right to regulate and licence commercial fishing, offshore petroleum exploration and extraction, and offshore mineral exploration and extraction within the EEZ.

1.4 The Free State hereby irrevocably waives, for the full term of this Treaty, any right it may otherwise possess to engage in, or to licence any third party to engage in: (a) commercial fishing within the EEZ; (b) offshore petroleum exploration or extraction within the EEZ; or (c) offshore mineral exploration or extraction within the EEZ. The Free State further waives any right to engage in, or to licence, any onshore or near-shore petroleum or mineral exploration or extraction within the Leased Territory itself. Should the United Kingdom elect to undertake any such onshore or near-shore activity, it shall do so only pursuant to a written agreement with the Free State, conducted in a demonstrably ecologically responsible manner that minimises disruption to the inhabitants and the natural environment of the Leased Territory, and the United Kingdom shall provide the Free State and its inhabitants with substantial advance consultation, fair compensation, and remuneration proportionate to any loss of quiet enjoyment.

Article 2. The Plenary Jurisdiction of the Free State

2.1 With effect from the entry into force of this Treaty, the Free State shall exercise plenary governmental authority over the Leased Territory, including without limitation: the power to legislate; the power to tax and levy duties; the power to issue and register vessels under its flag; the power to issue passports and travel documents; the power to regulate immigra-

tion and naturalisation; the power to conclude treaties and international agreements; the power to establish and maintain diplomatic missions; the power to represent itself in all international organisations; and the power to exercise all other attributes of statehood consistent with the provisions of this Treaty.

2.2 The Free State shall adopt and maintain a national flag, a coat of arms, and other national symbols, which shall be registered with the Secretariat of the United Nations and communicated to all states with which the Free State maintains or intends to maintain diplomatic relations.

2.3 The exercise of plenary jurisdiction by the Free State shall be consistent at all times with the provisions of this Treaty, the Constitution of the Free State, and the applicable norms of public international law.

Article 3. Consideration and Financial Obligations

3.1 In consideration of the grant of plenary jurisdictional authority pursuant to Article 1, and as rent payments for the 999-year sovereign lease, the Free State shall make the following financial payments to the designated recipients:

3.2 Payments to the United Kingdom: the Free State shall pay to the Consolidated Fund of the United Kingdom (a) a lump sum payment of [amount] to be specified in Schedule 2, payable in full within thirty (30) days of the entry into force of this Treaty; and (b) recurring annual payments of [amount] to be specified in Schedule 2, payable on the first day of each calendar year throughout the term of this Treaty, subject to adjustment in accordance with the methodology set out in Schedule 2.

3.3 Payments in respect of the Pitcairn Islands: the Free State shall pay to the Pitcairn Island Development Fund, established pursuant to Article 12.2, (a) a lump sum contribution of [amount] to be specified in Schedule 2, payable within sixty (60) days of the entry into force of this Treaty; and (b) recurring annual contributions of [amount] to be specified in Schedule 2, payable on the first day of each calendar year throughout the term of this Treaty, subject to adjustment in accordance with the methodology set out in Schedule 2.

3.4 The Parties acknowledge and agree that the consideration provided under this Article does not constitute and shall not be construed as the purchase of sovereignty or the commodification of governmental authority. The consideration represents compensation for the United Kingdom's foregone alternative uses of the Leased Territory, the opportunity costs associated with the grant of plenary jurisdictional authority, and the on-

going obligations assumed by the United Kingdom under this Treaty. The payment of rent by the Free State to the United Kingdom throughout the term of this Treaty is further acknowledgement of the United Kingdom's continuing *dominium*: the relationship is that of a landlord state granting an exclusive leasehold to a tenant state, and the regular and punctual payment of rent is the Free State's ongoing affirmation of that relationship.

3.5 A payment under this Article not made within ninety (90) days of its due date shall bear interest at the rate specified in Schedule 2 until paid.

3.6 Before the entry into force of this Treaty, the founding principals shall fund, with an independent trustee named in Schedule 2, a rent reserve equal to three (3) years of the recurring payments under Article 3.2(b), which the Free State shall maintain at that level from its public revenue; the trustee shall pay from the reserve any payment unpaid after the period in Article 3.5 on the written demand of the United Kingdom. The Free State allocates the rent reserve to the satisfaction of any award under Article 23 concerning payments under this Article and expressly consents to measures of execution against the reserve, and against no other property of the Free State, for that purpose.

3.7 If a natural disaster or pandemic, determined as provided in Schedule 2 by reference to an objective parametric measure, occurs, the Free State may defer payments falling due within the following two (2) years; deferred payments are capitalised with interest and paid on the schedule set out in Schedule 2.

3.8 Nothing in this Treaty entitles the United Kingdom to collect, administer, or supervise the revenue, customs, or budget of the Free State, and no failure to make any payment under this Article affects the Free State's status as an independent state, the recognition extended in Article 4, or the boundaries of the Leased Territory.

Part II. The Constitution of the Free State and the Grant of Legal Personality

Article 4. Recognition of the Ducie Free State

4.1 The United Kingdom hereby formally, unequivocally, irrevocably, and unconditionally recognises the Ducie Free State as an independent state with full international legal personality, distinct and separate from the United Kingdom and from all other existing states, with the capacity to bear international rights and obligations and to enter into relations with other states.

4.2 The United Kingdom's recognition pursuant to Article 4.1 is the foundational act of recognition upon which the Free State's international legal personality is based. It takes effect simultaneously with the entry into force of this Treaty.

4.3 The United Kingdom commits to supporting the Free State's applications for membership in the United Nations and in such other international organisations as the Free State may seek to join, and to voting in favour of such applications in all relevant international forums, subject to the constitutional requirements of United Kingdom law.

4.4 The recognition extended in Article 4.1 is not affected by any breach or alleged breach of this Treaty by either Party, by the severance or suspension of diplomatic relations, or by any change of government in either Party.

Article 5. Constitution and the Rule of Law

5.1 The Free State shall adopt, promulgate, and maintain a written constitution that: guarantees the fundamental rights and freedoms of all persons within the Leased Territory in accordance with international human rights standards; provides for an independent judiciary; establishes a democratically accountable government; and enshrines the rule of law as a foundational principle of the Free State's constitutional order.

5.2 The constitution of the Free State shall not contain any provision that is inconsistent with the terms of this Treaty or with the applicable norms of public international law.

Article 6. Head of State and Commonwealth Membership

6.1 The Free State shall have as its Head of State the reigning British Monarch for the time being, represented within the Leased Territory by a Governor-General appointed in accordance with the constitutional conventions applicable in the Commonwealth realms, with the advice of the Government of the Free State.

6.2 The Free State hereby declares its intention to apply for membership in the Commonwealth of Nations and commits to abiding by the values, principles, and commitments set out in the Commonwealth Charter (2013) and any successor instrument. The United Kingdom undertakes to support the Free State's application for Commonwealth membership and to use its best endeavours to facilitate the Free State's admission.

6.3 The Free State shall seek access to the Judicial Committee of the Privy Council in London as the final court of appeal in civil and criminal

matters, pursuant to such constitutional and legislative requirements as are necessary for the Privy Council to exercise jurisdiction, and the United Kingdom undertakes to use its best endeavours to support the Free State in obtaining and maintaining such access.

6.4 The provisions of this Article shall not prejudice the Free State's exercise of plenary jurisdiction within the Leased Territory or its constitutional independence, and the appointment of the Governor-General and the access to the Privy Council shall be governed by the Free State's own constitutional instruments, enacted in accordance with Commonwealth constitutional conventions.

Part III. Defence, Policing, Judicial Administration, and Service Contracts

Article 7. Defence Services Agreement

7.1 The Free State shall maintain no armed forces of any kind. The Free State shall not join any military alliance or enter into any treaty of mutual defence.

7.2 The United Kingdom shall, pursuant to a separate Defence Services Agreement (hereinafter "DSA") concluded contemporaneously with this Treaty and incorporated by reference, provide all defence and security services required for the protection of the Leased Territory, including: naval and aerial patrols of the Leased Territory and its exclusive economic zone; maintenance of a maritime and aerial exclusion zone where reasonably necessary for the defence of the Leased Territory; and such other defence services as the Parties may from time to time agree.

7.3 The Free State shall bear the full cost of all defence services provided pursuant to this Article, on a cost-recovery basis, as specified in Schedule 5 to this Treaty. The DSA shall be reviewed at twenty-year intervals, and may be renegotiated by mutual agreement.

7.4 In the event of an armed attack upon the Leased Territory, the United Kingdom shall take all measures consistent with the Charter of the United Nations necessary for the defence of the Leased Territory and the Free State's institutions.

Article 8. Policing Services Agreement

8.1 Pursuant to a separate Policing Services Agreement (hereinafter "PSA") concluded contemporaneously with this Treaty, the United Kingdom shall provide all policing services required for the maintenance of public order,

the investigation of crime, and the enforcement of the laws of the Free State within the Leased Territory.

8.2 The United Kingdom's policing personnel operating within the Leased Territory shall be subject to the jurisdiction of the courts of the Free State in the exercise of their policing functions, save in respect of matters governed by the Status of Forces provisions of the PSA.

8.3 The Free State shall bear the full cost of all policing services provided pursuant to this Article, on a cost-recovery basis, as specified in Schedule 5. The PSA shall include provisions for the progressive transfer of policing functions to a domestic police force of the Free State over such timeline as the Parties may agree.

Article 9. Judicial Administration Agreement

9.1 Pursuant to a separate Judicial Administration Agreement (hereinafter "JAA") concluded contemporaneously with this Treaty, the United Kingdom shall provide all services necessary for the administration of the criminal courts of the Free State, including the provision of judicially qualified personnel to serve as judges of the courts of the Free State.

9.2 All judges of the courts of the Free State, whether appointed from the United Kingdom judiciary or otherwise, shall be independent of all executive authority in both the United Kingdom and the Free State, and shall apply the law of the Free State in all matters before them.

9.3 The Free State shall bear the full cost of all judicial administration services provided pursuant to this Article, on a cost-recovery basis, as specified in Schedule 5. The JAA shall include provisions for the progressive training and appointment of judges qualified under the laws of the Free State.

Article 10. Review, Independence Benchmarks, and Sunset Provisions

10.1 The DSA, PSA, and JAA shall each be reviewed at intervals not exceeding twenty years from the entry into force of this Treaty. Reviews shall be conducted by a Joint Review Commission comprising representatives of both Parties and an independent technical adviser nominated by the Permanent Court of Arbitration.

10.2 All services provided under the DSA, PSA, and JAA shall be provided on a cost-recovery basis only. The United Kingdom shall be entitled to no profit from the provision of these services.

10.3 The Parties hereby establish the following **Independence Benchmarks** (*indicia independentiae*), the achievement of which shall trigger the progressive reduction or termination of the relevant service agreement:

- (a) *Defence*: upon the establishment by the Free State of a fully operational Coast Guard and Maritime Patrol Service with the capacity to perform routine territorial monitoring independently of United Kingdom naval support, the DSA shall be renegotiated to reflect the reduced scope of United Kingdom defence provision, with the revised DSA taking effect no later than twelve months after the achievement of this benchmark;
- (b) *Policing*: upon the establishment, certification, and full deployment of a Free State Police Service of no fewer than [number] officers trained to the standard of the College of Policing (United Kingdom) or equivalent, with the capacity to maintain public order and investigate crime independently of United Kingdom policing personnel, the PSA shall terminate and all policing functions shall transfer fully to the Free State Police Service; and
- (c) *Judicial Administration*: upon the appointment of a full complement of judicially qualified persons holding Free State judicial appointments and admitted to the Free State Bar, with the capacity to staff all courts of the Free State at all levels without United Kingdom judicial personnel, the JAA shall terminate and all judicial administration functions shall transfer fully to the Free State judiciary.

10.4 The Free State undertakes to pursue the achievement of the Independence Benchmarks set out in Article 10.3 diligently and in good faith, and shall report annually to the Joint Review Commission on progress towards each benchmark. Neither Party shall impede or delay the achievement of these benchmarks.

10.5 The achievement of all three Independence Benchmarks shall be recorded by the Joint Review Commission in a formal Declaration of Full Institutional Independence, which shall be registered with the United Nations Secretariat pursuant to Article 102 of the United Nations Charter, and shall constitute definitive evidence of the Free State's full institutional sovereignty for all international legal purposes.

Part IV. The Condominium Governance Arrangement

Article 11. The Joint Governance Council

11.1 There is hereby established a Joint Governance Council (hereinafter “the JGC”) comprising: two representatives appointed by the United Kingdom; two representatives appointed by the Government of the Free State; and one independent Chairperson nominated by the Permanent Court of Arbitration, appointed by the Parties jointly, and serving for a renewable term of five years.

11.2 The JGC shall have jurisdiction to: resolve disputes between the Parties concerning the interpretation or application of this Treaty; review compliance with the environmental obligations set out in Article 13; and approve any amendment to the geodetic survey contained in Schedule 1.

11.3 The JGC shall meet at least twice annually and on such other occasions as either Party may request. Its decisions shall be taken by consensus where possible and by majority vote where consensus cannot be achieved, with the Chairperson having a casting vote in the event of a tie.

11.4 The costs of the JGC, including the remuneration of the independent Chairperson and the administrative costs of the Secretariat, shall be borne equally by the Parties.

Part V. Rights of the Inhabitants of the Pitcairn Islands**Article 12. Pitcairn Islands Protections and the Ducie Free State Development Fund**

12.1 The Free State acknowledges the historical and geographical relationship between Ducie Island and the community of Pitcairn Island, the inhabited principal island of the Pitcairn Islands group. In recognition of this relationship, the Free State hereby undertakes the following obligations in favour of the inhabitants of Pitcairn Island and their descendants:

12.2 The Ducie Free State Development Fund (hereinafter “the Development Fund”) is hereby established as a legally distinct fund administered jointly by the Government of the Free State and the Administration of the Pitcairn Islands, for the purpose of promoting the economic development, infrastructure, education, healthcare, and social welfare of the Pitcairn Islands community. The Free State shall make the contributions to the Development Fund specified in Article 3.3.

12.3 Inhabitants of Pitcairn Island and their direct descendants shall have the right to enter, reside in, and work within the Leased Territory on the same terms as nationals of the Free State, subject to the laws and regulations of the Free State relating to public order and national security. This right is unlimited and unfettered and shall not be subject to any quota,

licence, or prior approval requirement. Citizens of the United Kingdom of Great Britain and Northern Ireland shall equally have the unrestricted right to enter, reside in, and work within the Leased Territory on the same terms as nationals of the Free State, subject only to the laws and regulations of the Free State relating to public order and national security.

12.4 In the filling of all public service and employment positions within the Leased Territory, the Free State shall apply the following order of preference, subject in each case to the merit-based requirements applicable to the relevant position: (a) first priority: qualified inhabitants of Pitcairn Island and their direct descendants; (b) second priority: qualified citizens of the United Kingdom of Great Britain and Northern Ireland; (c) third priority: qualified citizens of Commonwealth member states; (d) all other qualified applicants thereafter.

12.5 The Free State shall consult the Administration of the Pitcairn Islands on any proposed legislative or regulatory change within the Leased Territory that is likely to have a material effect on the rights or welfare of the inhabitants of Pitcairn Island.

12.6 The Administration of the Pitcairn Islands shall, through its representative to the JGC, have an advisory role in the JGC's proceedings on matters affecting the interests of the Pitcairn Islands community.

Part VI. Environmental Protection and Ecological Governance

Article 13. Environmental Obligations

13.1 The Free State commits to maintaining the highest achievable standards of environmental protection in the Leased Territory, consistent with or exceeding all environmental standards previously applicable to Ducie Island as part of the British Overseas Territory of the Pitcairn Islands.

13.2 The Free State shall, within five (5) years of the entry into force of this Treaty, seek inscription of the Leased Territory as a UNESCO World Heritage Site and shall take all measures necessary to maintain any such inscription in good standing.

13.3 The Free State commits to the following specific environmental targets: (a) achieving carbon neutrality within the Leased Territory within ten (10) years of the entry into force of this Treaty and thereafter striving to achieve carbon negativity; (b) prohibiting any development within the Leased Territory that would materially damage the coral reef ecosystem, the seabird breeding colonies, or the terrestrial ecosystems of Ducie Island; (c) prohibiting the introduction of non-native species into the terrestrial en-

vironment of the Leased Territory; (d) designating the entire land territory of the Leased Territory as a nature reserve within which development is subject to prior environmental impact assessment.

13.4 All physical development within the Leased Territory shall be designed and constructed to the highest available standards of ecological sustainability, employing renewable energy sources wherever technically feasible, minimising the consumption of non-renewable resources, and achieving the lowest practicable environmental footprint.

13.5 The Free State shall accede to the Convention on Biological Diversity (1992), the Ramsar Convention on Wetlands (1971), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973), and such other international environmental conventions as are applicable to the Leased Territory.

Part VII. Neutrality, Demilitarisation, and Treaty Succession

Article 14. Permanent Neutrality and Demilitarisation

14.1 The Free State is hereby constituted as a permanently neutral and demilitarised state. The Free State shall not maintain any armed forces, military installations, or weapons of any kind within the Leased Territory. This commitment is permanent and may not be amended by any subsequent treaty or constitutional instrument.

14.2 The Free State shall not enter into any military alliance, treaty of collective self-defence, or agreement for the basing of foreign military forces within the Leased Territory, other than pursuant to the DSA concluded with the United Kingdom under Article 7.

14.3 The Free State shall pursue a foreign policy of active neutrality, contributing constructively to international peace and security through participation in international legal mechanisms, the promotion of the peaceful settlement of disputes, and the development of international law.

Article 15. Treaty Succession

15.1 The Free State shall, upon the entry into force of this Treaty, accede to or succeed to all treaties and international agreements previously applicable to the Leased Territory as a part of the British Overseas Territory of the Pitcairn Islands, as set out in Schedule 3, except to the extent that any such treaty is inconsistent with the terms of this Treaty or with the Free State's status as an independent state.

15.2 The treaty succession provisions of this Article shall be implemented in accordance with the Vienna Convention on Succession of States in respect of Treaties (1978).

15.3 The rights and obligations of the Parties under this Treaty attach to the Leased Territory and bind any successor of either Party. If the United Kingdom's interest as owner of the Leased Territory passes to a successor state, the payments under Article 3.2 are payable to that successor, and if it passes to more than one, in the shares specified in Schedule 2.

Part VIII. State Property, Currency, and Financial Arrangements

Article 16. State Property and Assets

16.1 All property and assets located within the Leased Territory that are owned by the United Kingdom Government, the Administration of the Pitcairn Islands, or any Crown body as at the date of entry into force of this Treaty shall be transferred to the Free State on the terms set out in Schedule 4, in exchange for the payments specified in Schedule 2.

16.2 The Free State shall be responsible for all costs of maintaining, repairing, and developing infrastructure within the Leased Territory from the date of entry into force of this Treaty.

Article 17. Currency and Financial Systems

17.1 The Free State shall adopt such currency arrangements as it may determine consistent with its constitutional instruments, including the adoption of an existing currency as legal tender, the creation of a monetary union arrangement, or the establishment of its own currency, subject to any applicable international monetary arrangements.

17.2 The Free State shall establish, within three (3) years of the entry into force of this Treaty, a central banking authority or equivalent monetary authority responsible for the regulation of the monetary system of the Free State.

Part IX. Transparency, Registration, and Final Provisions

Article 18. Article 102 UN Charter Registration

18.1 The Parties shall jointly register this Treaty with the Secretariat of the United Nations pursuant to Article 102 of the United Nations Charter within thirty (30) days of its entry into force.

18.2 The Parties agree that this Treaty shall be made available to the public in full and without redaction immediately upon registration pursuant

to Article 18.1. Transparency in the terms of this Treaty is a foundational commitment of both Parties.

Article 19. Transparency and Beneficial Ownership

19.1 The Free State commits to maintaining a publicly accessible register of the beneficial ownership of all legal entities incorporated within the Leased Territory and of all persons holding public office within the Free State.

19.2 The Free State shall not permit the use of its corporate or financial legal framework for the purposes of money laundering, tax evasion, sanctions evasion, or any other unlawful activity. The Free State commits to acceding to all relevant international anti-money-laundering and counter-terrorism-financing conventions.

Article 20. Amendment

20.1 This Treaty may be amended only by the mutual written agreement of both Parties, expressed through instruments of ratification concluded in accordance with the constitutional requirements of each Party.

20.2 Any amendment to the provisions of this Treaty relating to the geodetic definition of the Leased Territory, the duration of the Treaty, or the Free State's status as an independent state shall be subject to approval by the JGC and shall require the approval of the Parliaments of both Parties.

Article 21. Duration and Determination

21.1 This Treaty shall remain in force for a term of nine hundred and ninety-nine (999) years from its entry into force.

21.2 This Treaty may not be terminated unilaterally by either Party. It may be terminated prior to the expiration of the 999-year term only by the mutual written agreement of both Parties and in accordance with the procedure set out in Article 20.

21.3 No breach of this Treaty, including any failure to make a payment under Article 3, entitles the United Kingdom to resume governmental authority over the Leased Territory or to re-enter it; the remedies for any such breach are those provided in Articles 3 and 23 and under international law.

21.4 Not later than fifty (50) years before the expiry of the term in Article 21.1, the Parties shall enter into negotiations in good faith on the renewal of this Treaty, the purchase by the Ducie Free State of the United Kingdom's title to the Leased Territory, or such other arrangements as they may agree. The expiry of the term does not of itself affect the status of the Ducie Free

State as an independent state, and any arrangements concluded under this Article shall respect the freely expressed wishes of its people.

Article 22. Governing Law, Official Language, and Interpretation

22.1 This Treaty is governed by and shall be interpreted in accordance with public international law, including the Vienna Convention on the Law of Treaties (1969) and applicable principles of customary international law.

22.2 The official language of this Treaty is English. In the event of any conflict between different language versions, the English text shall prevail.

Article 23. Dispute Resolution

23.1 Any dispute between the Parties concerning the interpretation or application of this Treaty shall in the first instance be submitted to the Joint Governance Council for resolution through diplomatic channels.

23.2 If a dispute is not resolved through the JGC within ninety (90) days of its submission, either Party may submit the dispute to binding arbitration by the Permanent Court of Arbitration, with the seat of arbitration in The Hague, in accordance with the Permanent Court of Arbitration Arbitration Rules 2012, with the Secretary-General of the Permanent Court of Arbitration as appointing authority.

23.3 The arbitral tribunal's award shall be final and binding upon both Parties, which shall carry it out without delay and in good faith. This Article applies from the signature of this Treaty and survives any allegation that this Treaty has been breached, suspended, or terminated. Neither Party shall use or threaten force in connection with any dispute under this Treaty.

23.4 Nothing in this Article precludes either Party from seeking interim measures of protection from a competent international court or tribunal pending the resolution of a dispute.

Article 24. Entry Into Force

24.1 This Treaty shall enter into force upon the exchange of instruments of ratification by both Parties, in accordance with their respective constitutional requirements.

24.2 The DSA, PSA, and JAA referred to in Articles 7, 8, and 9 respectively shall enter into force simultaneously with this Treaty.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

Signed in duplicate at London on the ____ day of ____ ____.

For the United Kingdom of Great Britain and Northern Ireland:

 Secretary of State for Foreign, Commonwealth and Development Affairs
For the Ducie Free State:

 Founding President, Ducie Free State
Noted and Consented to by the Governor of the Pitcairn Islands:

 Governor of the Pitcairn Islands (Wellington, New Zealand)

IMPORTANT DISCLAIMER: The Treaty of Ducie set out in this Annex is a model treaty prepared for entirely hypothetical, educational, and illustrative purposes. It does not reflect the position of any government, ministry, or official authority. It does not constitute a legal instrument of any kind and has no binding force whatsoever.

Schedule 1. Geodetic Definition of the Leased Territory

Ducie Island, also known as Ducie Atoll, is located at approximately 24 degrees 40 minutes South latitude, 124 degrees 47 minutes West longitude, in the South Pacific Ocean. It forms part of the British Overseas Territory of the Pitcairn Islands. It has about 0.7 square kilometres of land around a central lagoon. The Leased Territory comprises the entirety of the land territory of Ducie Island together with all appurtenant maritime zones as defined in accordance with the United Nations Convention on the Law of the Sea (1982). A full geodetic survey shall be conducted by a jointly appointed firm of qualified surveyors and shall be appended to this Schedule upon completion.

Schedule 2. Financial Consideration and Payment Terms

To be determined by the Parties through good faith negotiation prior to the entry into force of this Treaty, having regard to: the market value of the jurisdictional rights granted; the economic and strategic benefits to be received by the Free State; the ongoing costs and obligations assumed by the United Kingdom; and the contributions to be made to the Pitcairn Island Development Fund. The quantum and structure of payments shall be reviewed at twenty-year intervals in accordance with Article 10.

Schedule 3. Treaty Succession List

To be determined by the Parties prior to the entry into force of this Treaty, identifying all treaties and international agreements previously applicable to Ducie Island in its capacity as part of the British Overseas Territory of the Pitcairn Islands, and specifying for each: whether the Free State shall succeed to the treaty, accede to it, or be exempt from its application.

Schedule 4. State Property and Assets Inventory

To be determined by the Parties prior to the entry into force of this Treaty, identifying all property and assets located within the Leased Territory and specifying the terms of their transfer to or use by the Free State.

Schedule 5. Service Agreement Cost Recovery Rates

To be determined by the Parties prior to the entry into force of this Treaty, setting out the methodology for calculating and adjusting the cost recovery rates applicable to the DSA, PSA, and JAA, and the mechanism for the annual certification of costs by an independent auditor.

Authoritative Doctrinal Foundations: Nine Principal Authorities

This Annex synthesises the nine foundational authorities upon which the analysis in this study principally rests. These works are routinely cited in judicial decisions, arbitral awards, academic literature, and governmental legal advice. Collectively, they represent the mainstream legal grammar of statehood, recognition, territorial title, and effectiveness.

James Crawford: *The Creation of States in International Law* (OUP, 2nd edn, 2006)

Often regarded as the definitive modern treatment of the subject, Crawford's work provides the doctrinal backbone for the Startup States model, particularly its emphasis on treaties, continuity of obligations, recognition practice, and the avoidance of legal indeterminacy. Crawford famously observes that "statehood is a matter of fact and law", and that no single criterion is determinative in isolation. His comprehensive treatment of the Montevideo criteria, the declaratory and constitutive theories of recognition, and the role of *jus cogens* norms in new state formation are directly apposite throughout.

Sir Ian Brownlie (ed. James Crawford): *Principles of Public International Law* (OUP, 9th edn, 2019)

Brownlie's work is authoritative because it distils judicial decisions, state practice, and treaty law into careful doctrinal propositions. Courts and legal advisers rely upon it not for speculation but for statements of where the law stands. Brownlie emphasises that "the existence of a state is a question of fact", while also recognising that law supplies the criteria by which those facts are assessed.

Malcolm N. Shaw: International Law (CUP, 9th edn, 2021)

Shaw's work is particularly valued for its systematic treatment of case law and for its careful exposition of judicial reasoning. Shaw's analysis of statehood and recognition stresses that international law does not prescribe a mechanical process for creating states but does impose constraints and evidentiary expectations. His work supports the proposition that intentional compliance with orthodox criteria materially improves the legal position of aspiring states.

Lassa Oppenheim: International Law: A Treatise (8th edn, ed. Hersch Lauterpacht, 1955)

Oppenheim's foundational work retains influence for its clear statement of first principles. He famously described states as "the normal subjects of international law" and emphasised that recognition is the means by which states enter into the society of states. This conceptualisation provides historical depth to the modern framework.

Thomas D. Grant: Recognition of States: Law and Practice in Debate and Evolution (Praeger, 1999)

Grant demonstrates that recognition is expressed through conduct, including treaties, diplomatic relations, and organisational membership. His analysis directly supports the treaty-centred approach of the Startup States model, whilst also cautioning against treating recognition as a purely formal act divorced from political and legal context.

Nina Caspersen: Unrecognised States (Polity, 2012)

Caspersen's empirical case studies of entities that exercise *de facto* control without general recognition provide a cautionary backdrop. Her work supports the Startup States model's emphasis on legal and diplomatic integration rather than functional autonomy alone. The costs of remaining outside formal recognition frameworks are documented in meticulous detail.

Jure Vidmar: Democratic Statehood in International Law (Hart, 2013)

Vidmar's analysis clarifies the limited and conditional role of democracy in contemporary state creation. This supports the Startup States position that democratic governance, while normatively attractive, does not substitute for legality, consent, and recognition, and must be embedded within a lawful process of state formation rather than asserted as an independent basis for sovereignty.

Mikulas Fabry: Recognizing States: International Society and the Establishment of New States Since 1776 (OUP, 2010)

Fabry's sociological and legal analysis of recognition situates statehood within the norms and expectations of international society. His work reinforces the view that legitimacy emerges through conformity with recognised processes, not through innovation detached from legal and diplomatic consensus.

Milena Sterio: *The Right to Self-Determination under International Law* (Routledge, 2013)

Sterio's work exposes the asymmetries of power that shape recognition outcomes in secessionist contexts. It supports the Startup States argument that alignment with existing states through consensual arrangements is strategically and legally superior to adversarial bids for recognition that depend upon great-power patronage.

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