

A MONOGRAPH · SECOND EDITION

No Treaty, No Country

*The Creation of States by Agreement
and the Case for Private Initiative*

Article 1. Constitution of the new state. On the Effective Date, the territory described in Annex 1 is constituted as an independent state, with a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. This Article performs the constitutive act. Article 2. Recognition. The Grantor State recognises the new state with effect from the Effective Date. That recognition is unconditional and irrevocable. Article 3. Land and prior interests. Title to the land remains vested in the Grantor State as owner, without prejudice to the governmental authority of the new state, which holds the land as lessee and pays the rent reserved. Article 12. Disputes. Any dispute concerning the interpretation, application, validity, suspension, or termination of this Treaty shall be referred to arbitration, and pending resolution, no party shall resort to force. Article 12A. Permanence. Articles 1, 2, and 3 shall not be subject to amendment, withdrawal, or suspension. No breach of any of the provisions of this Treaty shall affect the existence of the new state or its frontier. Article 12B. Signature. The Parties attach to the territory and bind any state that accedes to the Treaty. Two originals, each text being equally authentic.



Julien Andrew Starr

STARTUP STATES SOCIETY · GENEVA

NO TREATY, NO COUNTRY

A MONOGRAPH

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*The Creation of States by Agreement
and the Case for Private Initiative*



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STARTUP STATES SOCIETY

Geneva

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Research current to October 2026.

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Abstract

Can a treaty bring a country into being? This monograph answers that question, asks whether a private actor may lawfully set such a process in motion, and sets out what a contemporary project would need to do. It defends three findings. First, an existing state, or states acting together, may by international agreement constitute a new polity, and on occasion a new state, out of territory under their authority. The record shows this grant mechanism at work from the Napoleonic settlements and the Congress of Vienna to the Cyprus settlement of 1960, producing protected polities more often than independent states, and it shows the United Nations General Assembly resolving in 1949 that Libya “shall be constituted an independent and sovereign State”, under a procedure the Allies had accepted by treaty. Second, no identified case shows a state granting its own territory, by constitutive instrument, at the initiative of a private actor. Private power has come close, most of all in the Congo Free State, but in the closest cases states recognised what private power had built; in none did a state grant territory it held. Third, no rule of international law treats the private origin of a proposal as a ground of invalidity for the state act that follows it, and recognition of any resulting state remains a separate act that other states may extend or withhold for reasons of their own.

The whole argument turns on parent state permission. A new country formed with the consent of the state from whose territory it emerges begins from the cleanest foundation available; one formed without it must spend its existence defending the manner of its birth. Montenegro, whose parent state authorised the procedure by which it became independent in 2006, and Kosovo, whose parent state has never consented, show the difference.

To organise the evidence, the monograph replaces numerical scoring with a ladder of constitutive power. At the top stand instruments that conjured a

polity with no prior existence or sense of itself as a country, such as Vatican City, the Free City of Cracow, Eastern Rumelia, Libya, and the Republic of Cyprus. Below them stand instruments that codified an existing community as a state, transformed a dependent polity into an independent one, restored full capacity to a state that already existed, or recognised a state established by other means. Whether the result was independent, whether it governed itself in fact, and whether it endured are treated as separate questions.

The practical proposal, a design built from these findings rather than proved by them, is a model resting on the separation of dominium, ownership of the land, from imperium, governmental authority over it. A private consortium approaches a stable, democratic member state of the United Nations about territory it owns outright, which is uninhabited and subject to no competing claim. The state designates the territory a special administrative region, leases it to the consortium, and allows a population to form under its own law; if it later chooses, it grants the region independence by treaty, after referendums, while keeping title to the land as landlord. Territorial authority passes, but title to the land is never sold or given away, and nothing is seized. Where the state's constitution allows, the whole transaction may be concluded in a single treaty. The monograph states the limits of what it establishes: legal availability is not practical probability, and the absence of a precedent is evidence of novelty, not of prohibition.

The monograph also asks what happens if the bargain fails. Drawing on the law of treaties, state responsibility, and state succession, it concludes that a grant of independence, once performed, cannot lawfully be revoked; that the new state's existence and frontier survive breach, derecognition, and the succession or transformation of either party; and that the remedies for breach lie in arbitration and in the breadth of the new state's international recognition.

Synopsis for Practitioners

This monograph asks whether a new country can be created lawfully by agreement with an existing one, and what that would take. It is written for a mixed readership: founders, investors, and consortia giving serious thought to such a project, and the international lawyers, diplomats, and government officials who would have to evaluate one. The argument is made at the depth the second group requires, because a proposal that cannot survive their scrutiny is not worth making to anyone.

Three findings carry the monograph. Treaties can create countries: Vatican City was created by a treaty between Italy and the Holy See in 1929, the Free City of Cracow by the great powers in 1815, and the Republic of Cyprus by the Zurich and London agreements of 1959 and 1960. No identified case shows a private actor persuading a state to grant its own territory in this way; private companies and individuals have governed territory, and some created entities that states later recognised, but none was granted territory by treaty. And even a flawless transaction would not guarantee recognition, because recognition is a political choice that each state makes for itself.

International law contains no rule forbidding a private actor from proposing such a transaction. That is not the same as a right to have it accepted. The decisive requirement is parent state permission: a project needs an existing government willing to take part, and no drafting, however careful, can make a government sign a treaty it does not want to sign.

The model this monograph develops begins with the cleanest possible conception. A privately led consortium approaches a stable, democratic, fully independent member state of the United Nations about territory the state owns free and clear: uninhabited, unused, and preferably remote, with title the state can demonstrate and no dispute with any other state, indigenous people, or

claimant. The state designates the territory a special administrative region, whose administrative boundary would become its international frontier if it later became independent. It leases the land to the consortium for a long term at a continuing rent, and a provisional authority governs the region under the state's law. The consortium brings in residents, who over time become the region's electorate. If the state then chooses, and after whatever national and local referendums its constitution requires, it grants the region independence by treaty. Title to the land remains with the state throughout: the new country governs the territory as tenant, and the state remains its landlord. Governmental authority passes to the new country; ownership of the land does not, and nothing is taken.

Where the state's constitution and law allow, the designation, the lease, and the grant of independence may be concluded together in a single treaty, which in many cases would be the more expedient course. Where procedure requires separate steps, the model follows the sequence above. In either case the purpose is stated openly from the first conversation: to start a new country, lawfully, with the consent of the state from which it emerges.

A new country formed in this way is most exposed in its first months, when its parent may be the only state that recognises it. The monograph therefore asks what happens if the bargain fails. Once independence has been granted, the parent state cannot lawfully take it back: recognition of a state is irrevocable while the state meets the criteria, the treaty that created it cannot be denounced, its frontier is permanent, and a breach of the lease leads to arbitration and damages, not to the loss of statehood. Unpaid rent becomes a debt that accrues interest, which is why the rent is best secured, by a reserve and a limited consent to execution, before independence, while the tenant is still a company. The same is true if either state later dissolves, unites with another, or changes its government. What the law cannot compel is continuing cooperation, which is why a new country must seek recognition and membership of the United Nations at once.

In one sentence: the law leaves the door ajar, history shows no one has yet walked through it, and parent state permission is the key.

Note to the Second Edition

The first edition asked whether a treaty can create a country and whether a private actor may set such a process in motion. This edition adds a question any careful reader of the first would ask: what happens if the bargain fails? Section XIX examines a Grantor State's repudiation of the lease before independence, its withdrawal from the treaty before entry into force, a purported withdrawal of recognition afterwards, breach and the severance of relations, default on the rent, and the succession or transformation of either state, by revolution, dissolution, or union. Appendix C now carries the clauses that analysis supports, and short pointers in Sections I, XVIII, XX, and XXI connect it to the rest of the argument. The text has otherwise been corrected and refined throughout, and the monograph has been newly typeset.

Disclaimer and Note on the Historical Record

This monograph is a work of independent research on the history and practice of the creation of states. It does not constitute legal advice, a legal opinion, or a recommendation to undertake any transaction, and it should not be relied upon in place of advice from a lawyer admitted in the relevant jurisdictions. Anyone contemplating an actual project should obtain independent, jurisdiction-specific advice before taking any step described here. Nothing in this monograph is an offer, solicitation, or inducement to participate in any venture, real or hypothetical. The two hypothetical instrument suites concern a real territory, chosen for reasons stated in Section XX, and a fictional one; neither reflects any proposal made to any government.

The historical record examined here includes some of the darkest episodes in the history of territorial rule: the Congo Free State, whose regime of forced labour and atrocity caused death and suffering on a vast scale; colonial settlement schemes, including those of the American Colonization Society, which displaced and subordinated the peoples whose land they occupied; chartered companies that governed conquered populations for profit; settlements imposed by conquering powers on peoples who had no voice in them; and agreements concluded by the Fascist government of Benito Mussolini. These episodes are examined because the legal mechanisms they display, and the harms they caused, are part of the evidence any honest account must confront. Their inclusion implies no endorsement of any of them, and nothing in this monograph advocates their revival in any form. The model the monograph proposes is defined in opposition to them: it requires the free consent of a democratic state, territory that no people calls home and no one else claims, and a new country governed in the interest of those who choose to live in it.

Research current to October 2026.

SECTION I

Executive Summary

The creation of a new state is ordinarily associated with revolution, secession, decolonisation, or the dissolution of an existing political order. The historical record discloses a further and less familiar mechanism: the establishment of a state by international agreement among entities that already possess international legal personality. This monograph examines that mechanism in its strongest form, separates it from the far more numerous uses of the treaty form with which it is often conflated, and identifies a gap in the record that bears on the feasibility of entrepreneurial state formation.

International law does not require every new state to arise from the fragmentation, revolution, or dissolution of an existing one. Existing states can, by agreement, constitute a new one.

§I.1 The thesis

This monograph defends three findings and draws one practical conclusion from them. The first is that an existing state, or states acting together, may by international agreement constitute a new polity, and on occasion a new state, out of territory under their authority. The record shows this grant mechanism at work from the Napoleonic settlements to the Cyprus settlement of 1960, often exercised by states acting together and often producing protected rather than independent polities, and a related practice, the elevation of a dependent polity to statehood by agreement, continuing well after 1945. The second is

that no identified case shows a state granting its own territory, by constitutive instrument, at the initiative of a private actor. Private power has come close. The International Association of the Congo, the Brooke Raj in Sarawak, and the American Colonization Society each produced, or helped to produce, an entity that states came to recognise; in none of them did a state grant territory it held. The third is that no rule of international law treats the private origin of a proposal as a ground of invalidity for the state act that follows it, and that recognition of any resulting state remains a separate act, which other states may extend or withhold for reasons of their own. The practical proposal, which is a design built from these findings rather than a further finding, is a two-stage path. The first stage is a lease or concession under the Grantor State's own law, which must be worth having if the second never comes. The second, which a Grantor State may grant but a project may never assume, is a constitutive treaty. Where a Grantor State is willing from the outset and its law allows, the two stages may be concluded in a single treaty (§I.6); the staged path exists for the more common case in which it is not.

The three findings are kept apart throughout, because collapsing them is the most common error in discussion of this subject. A reader may accept the first and reject the idea of private initiation as imprudent; nothing in the argument depends on sharing the author's view on that question. What the argument does maintain is narrower: nothing in the contemporary legal order renders private initiation, as such, unlawful. A contemporary project will be won or lost in the space between the first finding and the third: between a mechanism states have used and the political choices, of a Grantor State and of the states asked to recognise the result, that the law leaves free. The absence of precedent recorded in the second finding is not itself the obstacle.

None of this is assembled from novel doctrine. Every treaty, case, and rule relied upon already belongs to the recognised canon of public international law. What follows is a synthesis of established materials applied to a question they were not originally organised to answer.

§I.2 The evidence, arranged by strength

The monograph arranges its evidence on a ladder of constitutive power, set out in Section III, which asks a single question of each instrument: how much work did it do in bringing the polity into being? At the top of the ladder stand treaties that conjured a polity with no prior existence as a state and no prior sense

of itself as one. The Lateran Treaty of 1929 created Vatican City, a territorial state distinct from the Holy See whose personality it presupposed.¹ The Treaty of Peace with Italy of 1947 declared that “there is hereby constituted the Free Territory of Trieste” and terminated Italian authority over it, although the intended regime never operated.² The Congress of Vienna declared Cracow “a free, independent, and strictly neutral city”.³ The Congress of Berlin invented Eastern Rumelia, a province with a new name and no prior identity. The Zurich and London agreements of 1959 and 1960 created a Republic of Cyprus that neither of the island’s communities had sought. Each of these instruments did more than recognise; it brought something into existence.

Below the top rung stand instruments that codified an existing community as a state (Fiume in 1920, Greece in 1830, Albania in 1913), instruments that transformed a dependent polity into an independent one (Iceland in 1918, Singapore and the Maldives in 1965), and instruments that restored full capacity to a state that already existed (Austria in 1955, Brunei in 1984). At the foot of the ladder stand treaties that did no more than recognise a state established by other means, such as the Treaty of Paris of 1783. Whether a polity produced at any rung was fully independent, whether it governed itself in fact, and whether it lasted are treated as separate questions. Several of the clearest instances of conjuring produced protected or supervised polities, and the monograph keeps them as evidence of the power of the instrument while stating what they lacked.

The record also contains a closely related form. In 1949 the United Nations General Assembly resolved that Libya “shall be constituted an independent and sovereign State”, acting under a procedure to which the four Allied powers had bound themselves in the Treaty of Peace with Italy. Libya had never before existed as a unified state. The case shows that an international instrument can conjure a state even where the operative act is a resolution, provided the resolution draws its force from agreement.

One case deserves to be named directly, since many readers will think of it first. Israel was not constituted by treaty. General Assembly resolution 181 of 1947 was a recommendation that was never implemented and, unlike the resolution on Libya, drew no binding force from any treaty, and Israel’s statehood arose from a declaration of independence in May 1948 followed by recognition.⁴ Israel therefore belongs with the United States and Panama, whose independence preceded the instruments that later acknowledged it.

§I.3 The objections that matter most

The reader chiefly addressed here is contemplating not the transformation of an inhabited territory with an existing political life but the constitution of a new state on land that is uninhabited or minimally administered, obtained by the consent of the state that holds it and by no claim that the land belongs to no one. For that reader, two objections are sharper than any other.

The first is territorial availability. Almost all habitable land falls within the recognised title of an existing state. The few residual gaps, *Bir Tawil* among them, are examined in Section XI and found to be poor foundations: a territory that belongs to no state offers no state to grant it.⁵ Any new state must therefore be carved from an existing state's territory with that state's consent. This is not an obstacle peculiar to a contemporary project; it describes how the mechanism has always worked, since every conjured polity in the record was formed from territory some other authority held immediately beforehand.

The second objection, and the more searching, is motive: why would any state give up governmental authority over part of its territory to a project organised by private actors, when the historical cases arose from crises (the Roman Question, the peace settlements after two world wars, the collapse of Ottoman power) that a commercial proposal does not replicate? Part of the answer lies in the difference between a lease of jurisdiction and a transfer of authority. Guantánamo Bay, the former Panama Canal Zone, and comparable arrangements show that states often grant extensive jurisdiction without giving up title, and none of those arrangements became a state as a result.⁶ Part lies in the separation of title from authority, which the 2025 treaty between the United Kingdom and Mauritius over the Chagos Archipelago, signed but at the research cut-off unratified, illustrates: authority can pass while use is retained, for a price, for ninety-nine years. Section XVIII develops the Grantor State's rationale in full.

Three further objections carry less weight, not because they are unimportant but because the argument does not turn on them. That the method could be built to favour its own conclusion is answered by a ladder that places many famous cases on its lower rungs and by a definition and independent tests that exclude the Congo Free State, *Hatay*, and the mandates from the category they are often said to exemplify. That any new state must reckon with the consent of a resident population is correct, and Section XVI addresses it; the difficulty is least acute for territory that is uninhabited. And that a mechanism's legal

availability says nothing about whether any state would agree to use it is true; only the former is claimed.

§I.4 The empty intersection, and the standard worth meeting

The remaining objection, precedent, produces the monograph's central finding. States have the demonstrated capacity to constitute new states by agreement. Private and corporate actors have the demonstrated capacity to exercise extraordinary territorial authority, from the Brooke dynasty's century of rule in Sarawak to Leopold II's Congo Free State.⁷ What the record does not disclose is the combination of the two in the specific form this monograph calls a grant: a state disposing, by constitutive instrument, of territory under its own title because a private actor proposed it. Contemporary self-declared projects such as Liberland and Sealand do not close that gap.⁸ The absence establishes that the combination is unprecedented on the evidence identified. It does not, by itself, establish either a prohibition or an authorisation, and that point is applied as a standing rule of method rather than a one-time caveat.

A normative thread runs alongside the historical one. Several of the strongest precedents arose from settlements no one would now call exemplary. Using a messy case to show that a mechanism exists is a descriptive exercise; recommending a standard for a planned project is a prescriptive one, judged by different criteria. The standard proposed here for any contemporary attempt is a clean conception: uncoerced state consent, territory that is uninhabited or whose population gives genuine consent, a transparent constitutive instrument, and independent satisfaction of the ordinary requirements of statehood. The model set out in §I.6 and Section XVIII adopts the stricter branch of that standard: territory with no inhabitants, no customary or seasonal use, and no one else's claim. The Congo Free State shows what an unclean conception produces, and Liberland and Sealand show what an attempt without a treaty and without state consent produces.⁹ The monograph advocates none of them. It advocates an arrangement that fills the gaps each of them left open: a new country that begins, from its first day, with the consent of an existing state, on land no people calls home, under an instrument anyone may read.

The resulting proposition is narrower than the claim that entrepreneurs can create countries. Private actors may serve as the initiators, financiers, and institutional architects of a consensual process without purporting to exercise authority that only a state possesses. The constitutive act remains the act of

the states party to it. Section XX tests that proposition against two worked hypothetical instrument suites: one in which the United Kingdom, a permanent member of the Security Council, grants independence to Ducie Island in the Pitcairn group, and one in which a fictional Pacific state, the Republic of the Southern Reaches, grants independence to a fictional Republic of Tern.

§I.5 Parent state permission

The whole of the argument turns on a single condition, which this monograph calls parent state permission: the consent of the existing state from whose territory a new country would emerge. Every conjured polity in the record was created with the agreement of the authority that held the territory, and every modern private project that proceeded without such agreement, from Sealand to Minerva to Liberland, was ended or contained by the nearest state. The private ventures of earlier centuries that succeeded without a grant, Liberia and Sarawak among them, did so on land then treated as open to acquisition, a route the closing of terra nullius has shut (§XI.2). Without parent state permission there is no Startup State, or at least none established cleanly.

Two republics of the former Yugoslavia show the difference. Montenegro became independent in 2006 by a procedure its parent state had written into the constitutional charter of their union three years earlier; Serbia accepted the result within days, and Montenegro was admitted to the United Nations within weeks. Kosovo declared independence in 2008 without its parent state's consent, and its status remains contested nearly two decades later. Whether Kosovo required Serbia's permission is a question on which states and scholars disagree, and this monograph takes no side in it. The point is narrower: where parent state permission can be obtained, obtaining it forecloses the category of objection that has followed Kosovo ever since. §XVII.6 develops the comparison, and sets beside it the procedures by which the United Kingdom and Canada have structured the same question for Scotland and Quebec.

§I.6 The model in outline

The model this monograph proposes separates two things the law has long distinguished: dominium, ownership of the land, and imperium, governmental authority over it. A privately led consortium approaches a stable, democratic, and fully independent member state of the United Nations about territory that state owns outright: uninhabited and unused, preferably remote, with title the state can demonstrate, and subject to no dispute with any other state,

indigenous people, or claimant. The state designates the territory a special administrative region under its own law. That step matters beyond domestic convenience. Under the principle of *uti possidetis juris*, the administrative boundaries of a territory that becomes independent become its international frontiers, and the International Court of Justice has described the principle as a general one, connected with the obtaining of independence wherever it occurs, whose purpose is to prevent new states being endangered by disputes over their boundaries.¹⁰ A region with a defined administrative boundary arrives at independence with its frontier already settled.

The state then leases the land to the consortium for a long term at a continuing rent, and a provisional authority governs the region under the state's law. The consortium brings in residents, who over time become the region's electorate. If the state later chooses, and after whatever national referendum and regional referendum its constitution and the parties' agreement require, it grants the region independence by treaty. The provisional authority becomes the government of a new state, which holds *imperium* over the territory while the parent state keeps *dominium*, title to the land, as landlord. No land is ceded as property, because title never changes hands; and there is no secession, because independence is granted rather than taken. The parties may agree that, for a fixed initial period, the parent state and the new state hold authority over the territory jointly as a condominium before the new state's authority becomes exclusive. The parent state retains every capacity it possessed; what changes is the territory over which its governmental authority is exercised. It exercises those capacities rather than ceding them, and a state that brings another into being demonstrates, as no other act can, that it holds them.

Where the parent state's constitution and law allow, the designation, the lease, and the grant of independence may be concluded together in a single treaty, which in many cases would be the more expedient course. Where procedure requires separate steps, the staged sequence applies. In either case the purpose is stated openly from the first conversation. The model exists to start new countries, and it says so; its claim is only that they can be started lawfully, with the consent of the state from which they emerge, and without harm to anyone. Section XVIII sets the model out in full.

A design is tested by its failure as much as by its success. Section XIX asks what happens if either party breaks the bargain: if the Grantor State repudiates the lease before independence, withdraws from the treaty before it takes effect,

or purports to withdraw its recognition afterwards, and if either state is later transformed by revolution, dissolution, or union. The short answer is that a grant of independence, once performed, cannot lawfully be undone by the state that made it; that the frontier and the new state's existence survive breach, derecognition, and the succession of either party; and that what the law cannot compel, continuing cooperation, the new state must secure by the breadth of its relations with other states.

SECTION II

The Question Presented

Put plainly, the question is whether a treaty can create a country. That formulation is not wrong, but it cannot bear the weight the subject requires, since a treaty is involved in the history of most states in one way or another, and involvement is not constitution. A more exact formulation requires separating several things that are commonly treated as one.

Treating a treaty of recognition as though it were a treaty of creation is the most common analytical error in loose treatments of this subject.

§II.1 Treaty, recognition, and creation

A treaty, for present purposes, is an international agreement concluded between states in written form and governed by international law, whatever its designation.¹¹ That definition, adopted by the Vienna Convention on the Law of Treaties in 1969, postdates most of the instruments examined here, several by more than a century. It is used as an analytical baseline that codifies much of the earlier customary practice, not as a rule binding on instruments concluded before 1969, and the same caution applies to every other modern doctrinal reference point, the law of coercion among them, used to characterise earlier practice.

The first distinction is between a treaty that constitutes a state and a treaty that recognises, confirms, or regulates a status that already exists. The United States did not become a state by virtue of the Treaty of Paris of 1783; its inde-

pendence had been declared, fought for, and in substance established before the treaty was concluded. The American case also shows how separate a state's existence can be from the political act of recognising it. France's decision to recognise and ally with the United States in 1778, years before Britain conceded anything, was a political wager on the outcome, not a legal judgment about it. The Dutch Republic fought Spain for eighty years before Spain's recognition came at the Peace of Münster in 1648. Haiti, having secured its independence by force in 1804, paid France an indemnity from 1825, later reduced, for the recognition its victory alone had not purchased, and the financing of that indemnity burdened the country for more than a century. Panama's arrangements with the United States followed its own declaration of independence (§XIII.10 examines how that declaration came about, and why the case weighs against the model rather than for it), and the same is true of the states that emerged from the dissolution of the Soviet Union. These cases belong to the record, but they answer a different question.

§II.2 The grant

The mechanism this monograph examines is the grant: the constitution of a new state out of territory held, immediately before the instrument takes effect, under the title or authority of a state, or of states acting together, party to it. Two other treaty-based routes to statehood fall outside this definition rather than failing some later test. The first is union, in which existing states merge into a composite state, as England and Scotland did in 1707 and Tanganyika and Zanzibar did in 1964; the new state is formed from the parties themselves rather than granted by one of them. The second is recognition, in which a treaty acknowledges a state already established by other means. The grant is narrower than either, and it is the only form open to a private initiative, since a private actor holds no title of its own to contribute.

The historical grantor was not always a single state. At Vienna and Berlin the great powers acted collectively, disposing of territory that one of them held or had conquered, and in 1947 the Allied and Associated Powers acted with Italy. What unites the cases is that an authority competent to dispose of the territory did so by international instrument, and that the instrument, not a prior revolution or declaration, brought the new polity into being.

§II.3 The empty intersection

The claim this monograph makes about private initiative is exact, and its exactness matters. The claim is not that private actors and treaties have never met; they have met often, and the Congo Free State is the plainest instance. It is that no identified case combines a grant, as defined above, with private initiation: no state has concluded a constitutive instrument disposing of territory under its own title because a private actor proposed it.

The question is therefore never whether a private actor can perform the constitutive act. No one contends that it can; treaty-making capacity belongs to states. The question is whether a constitutive act validly performed by a consenting state is rendered defective, or loses its ordinary effect, because the proposal that led to it originated with a private actor. Nothing in the record suggests that it is, and Section XVII meets the objection in its strongest form.

§II.4 Terms

Several terms are used throughout. The Grantor State is the state whose territory a project would occupy: first as lessor under Stage One, and then, if it so chooses, as the party that performs the constitutive act under Stage Two. The Startup State is the new state that Stage Two would bring into being. Unless the context indicates otherwise, “state” means an independent state, and excludes, whatever language an instrument may use, a protectorate, mandate, condominium, associated state, client state, puppet regime, or bantustan. Parent state permission means the consent of the state from whose territory a new state would emerge, given through that state’s own constitutional procedures. The Grantor State and the parent state are the same state: the first term describes its role as a party to the transaction, the second its relation to the territory and to the new state. Dominion means ownership of land as property; imperium means governmental authority over territory. The distinction descends from Roman law and runs through the modern law of territory, and the model in Section XVIII rests on it.

Taken together, these distinctions yield the question the argument addresses:

Under what conditions may an international agreement operate constitutively, rather than in a declaratory or administrative capacity, to bring a new state into being, and may private actors lawfully serve as the initiating and organising

force behind such a process without themselves purporting to exercise authority that only a state possesses?

The first half of the question is one of historical and doctrinal record, and the answer is that the mechanism exists across a gradient of strength, though its strongest form is rare. The second half is a question of legal structure and design, to which the record supplies evidence but not a direct answer, since the combination has never been tested. The absence of precedent counsels caution; it does not, without more, resolve the question of legal availability. For the same reason, the argument does not invoke the residual-freedom reasoning associated with the *Lotus* case to claim that private actors may do whatever international law does not forbid. That reasoning has been treated with caution since it was decided, and the argument does not need it.¹²

SECTION III

Method: The Ladder of Constitutive Power

The record contains political and territorial arrangements of very different kinds: independent states, protected polities, free cities, internationalised territories, condominiums, mandates, federations, and private territorial regimes. Some were fully independent; some possessed only qualified international personality; some were intended to become states but never did; and some were already states whose existence a treaty later confirmed. Without a disciplined method, these categories collapse into a catalogue of arrangements that share little beyond an association with an international instrument. This section sets out the method by which the cases that follow are identified, classified, and compared.

The purpose is not to maximise the number of treaty-created states, but to show how much work each instrument did, and to keep that question apart from what the resulting polity later became.

The method is an analytical construct developed for this study. It is not proposed as a rule of international law, nor attributed to any court or settled body of scholarship. It rests on a threshold, a ladder, and three further variables that are assessed separately.

§III.1 The threshold: an international instrument

A case enters the analysis only if an international instrument was concluded, or adopted, by entities with capacity under international law to make it, and was capable in principle of performing a constitutive function. A unilateral grant, colonial ordinance, domestic statute, or private contract does not satisfy the threshold, however consequential its political effects; a case that fails it is outside the field of inquiry rather than a weak instance within it. Two extensions are stated here because the record requires them. First, a resolution of the United Nations General Assembly satisfies the threshold where states have bound themselves by treaty to accept and give effect to it, as the Allied powers did for the former Italian colonies in the Treaty of Peace with Italy; the resolution then operates with the force the treaty lends it. Second, an instrument whose second party is brought into existence by the instrument itself satisfies the threshold under the sequencing doctrine set out in §III.4.

§III.2 The ladder

The ladder asks one question of each instrument: how much of the polity's existence as a state did the instrument itself supply? It has five rungs.

Conjured. The instrument brought into being a polity that had no prior existence as a state and no settled sense of itself as a distinct country. Institutions, population, and a historic name may have existed beforehand; what did not exist was the polity as a political unit. Vatican City, the Free Territory of Trieste, the Free City of Cracow, the Duchy of Warsaw, Eastern Rumelia, the Republic of Cyprus, and Libya stand on this rung.

Codified. The instrument gave the form of a state to a community whose separate political identity already existed, and often had been asserted by declaration or revolt, but which had never taken the form of a state in its own right. Fiume in 1920, Greece in 1830, the Principality of Samos in 1832, the Cretan State in 1898, and Albania in 1913 stand here.

Transformed. The instrument raised a dependent polity with its own institutions to full independence. Iceland in 1918 and Singapore in 1965 stand here, and the Maldives in 1965 on the reasoning given in Section X.

Restored. The instrument returned full external capacity to an entity that had remained a state throughout a period of protection, or revived, after a brief interruption, a polity of the same kind that had existed before it. Austria in 1955, Morocco and Tunisia in 1956, Brunei in 1984, and on some readings the Maldives stand here.

Recognised. The instrument acknowledged a state established by other means: the United States in 1783, Belgium in 1839, Serbia, Montenegro, and Romania in 1878.

The rungs are a gradient, not a set of watertight boxes, and several cases sit on a boundary. The Duchy of Warsaw was a new political unit, but Polish national consciousness long predated it; Fiume's separate identity was real, but its council sought union with Italy. Where a case sits on a boundary, the section examining it says so and gives the reason for the placement. The ladder's value lies less in the placement of any single case than in what the placements show together: that the power to conjure a polity by treaty is real, that it has been exercised again and again across two centuries, and that it is only one of several things a treaty can do in the life of a state.

The language of conjuring needs one clarification, because §XIV.5 adopts a qualified declaratory view of statehood, and a reader may ask how an instrument can conjure a state if statehood depends on facts rather than on anyone's agreement. The ladder measures what an instrument did between its parties and in the history of the polity: whether the parties, by agreement, brought into being a political unit that had not existed and settled its status as among themselves. It does not claim that the instrument made the polity a state as against the rest of the world. That depends on whether the result met the criteria of statehood in fact, which the independence and operation variables below assess separately. A conjuring instrument is therefore constitutive *inter partes* and in the order of

events; whether its product was a state *erga omnes* is a further question, and the record shows both answers.

The strength of the constitutive language in the instrument is relevant to placement but not decisive. Following the ordinary method of interpretation in Article 31 of the Vienna Convention, the terms of an instrument are read in their context and in the light of its object and purpose.¹³ Express constitutive language (“there is hereby constituted”, “thus creating”, “shall be constituted”) is powerful evidence; its absence is not fatal, and its presence alone cannot substitute for the legal position of the territory immediately beforehand, the institutional arrangements the instrument established, and the conduct of the parties. The same combined reading is applied to every case, including those placed low on the ladder.

§III.3 Three variables kept separate

Three further questions are asked of every case, and none of them affects its place on the ladder.

Independence. Did the resulting polity possess the attributes of an independent state: a permanent population, a defined territory, a government, and the capacity to enter into relations with other states?¹⁴

“The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.”

Convention on the Rights and Duties of States (Montevideo Convention), art 1

The Montevideo criteria are used as a workable framework rather than a complete theory, following the standard modern treatment in James Crawford’s account of statehood, which treats them as indicative of the relevant factors rather than as a closed test.¹⁵ Independence is assessed through three tests. The first asks whether the entity had already established statehood before the instrument, such that the instrument did no more than recognise it; a prior declaration is relevant evidence but not conclusive, and the inquiry looks at the entity’s actual government, territorial control, and treatment by other states. The second asks whether the entity’s creation depended on coercion in the sense the law of treaties recognises: coercion of a state’s representative, or of the state itself by the unlawful threat or use of force, rather than a lay sense keyed to the character of a government or the relative bargaining strength of the parties.¹⁶ The third asks whether another state or authority retained legally controlling

powers inconsistent with independence, whatever label the arrangement carried. A polity that fails one of these tests may still stand high on the ladder: the Ionian Islands were conjured by treaty and were, at the same time, a British protectorate. The ladder records the first fact and the independence variable the second.

Operation. Did the polity establish governmental institutions and exercise effective authority? A treaty may constitute an entity that never operates, as Trieste shows, or produce a polity that operates for a period and is then extinguished.

Durability. Did the polity survive, and if not, what ended it? Section XV takes up this question across the whole record.

Creation, operation, and survival are therefore three separate historical variables. The method does not permit a failure on one to erase the evidence a case supplies on another. Trieste never governed itself, but its constituting instrument is among the clearest in the record; Cracow was extinguished in 1846, but for three decades it existed as a free city with its own institutions, however constrained.

§III.4 The sequencing doctrine

A constitutive instrument faces a problem of sequence that no other treaty faces: the entity it creates cannot be party to it at signature, because it does not yet exist. Practice has resolved the problem in one of two ways. In the first, the Grantor State concludes the instrument with representatives of the territory who lack international capacity at signature, and the instrument takes effect as a treaty between two states on the date it brings the second into being. The Independence of Singapore Agreement of 1965, signed on behalf of what was then a constituent state of Malaysia and effective on Singapore's separation, is the clearest example, and the Danish-Icelandic Act of Union of 1918 follows the same pattern. In the second, the Grantor State acts alone in the constitutive provision and the new state confirms the instrument once its government exists, as both hypothetical instrument suites in this monograph provide. In either form the constitutive act is the Grantor State's, performed through an international instrument whose second party is completed by the act itself. The second form needs a word of caution, because it lies close to the unilateral grant that §III.1 excludes. What separates it is that the constitutive provision is framed from the outset as an international instrument, deposited, registered under Article 102

of the Charter, and confirmed by the new state as a treaty binding both, rather than as an act complete in the Grantor State's domestic law. No historical case follows the second form exactly; the monograph offers it as a design, supported by the first form's record, not as a pattern the record already contains. What falls outside the mechanism is independence effected by the departing state's domestic legislation with no constitutive instrument at all, as with Botswana in 1966 and Western Samoa in 1962. There the Grantor State's act is complete in its own law, and any later treaty regulates rather than constitutes.

The doctrine also explains the conjured cases in which the new polity was never a party at all. Cracow did not sign the Final Act of Vienna, Eastern Rumelia did not sign the Treaty of Berlin, and the Free Territory of Trieste did not sign the Treaty of Peace with Italy. The principle that a treaty neither binds nor benefits a third state without its consent is real, but it answers a different question.¹⁷ It protects an existing state from obligations it has not accepted; it does not prevent competent parties from bringing a new entity into existence where none yet exists to be asked.

§III.5 Boundaries and limits

The cases were identified by working through the standard modern survey of state creation in Crawford's *The Creation of States in International Law*, the treaty collections of Hertslet and the United Nations Treaty Series, the literature on free cities, internationalised territories, protectorates, and chartered companies, and the literature on micronations and private jurisdictions. A finding that no case exists is a finding about that search. It can be displaced by a case the search missed, and §XXI.4 lists that as a condition of the thesis's defeat.

The method does not capture the non-treaty routes by which states have come into existence. Revolution, unilateral secession, decolonisation by declaration, and dissolution produce statehood by mechanisms the ladder was not built to measure, and a case falling outside the threshold is not thereby found deficient as an instance of statehood by one of those routes. It does not study federalism or union as a subject in its own right, though Section XIV explains why unions fall outside the grant. It examines private and corporate territorial power as a control group, in Section XIII. And it does not resolve the political question of recognition: an instrument at the top of the ladder carries no

guarantee that other states will extend the practical incidents of statehood to what it creates.

One further boundary is stated now. Self-determination constrains what a treaty between states may lawfully do to a population, and almost every conjured case in the record involved a resident population whose position the instrument did not resolve. The ladder asks whether an instrument constituted a polity; it does not, by itself, ask whether the instrument was lawful as against the people living on the territory, and the two questions can diverge. Section XVI takes up the second question. The point matters to the contemporary reader: the strongest account of a privately initiated project is one built on territory that is uninhabited, because such a project raises the self-determination question with the least force, and the historical cases, nearly all of which involved a settled population, are weaker analogues on this point than on the constitutive question itself.

§III.6 The existing scholarship

This monograph builds on four bodies of scholarship, and departs from each in ways worth stating at the outset.

James Crawford's *The Creation of States in International Law* remains the standard modern treatment of statehood.¹⁸ Its use of the Montevideo criteria as indicative rather than exhaustive is followed here. Crawford rejects the classical declaratory and constitutive theories of recognition in their pure forms, and this monograph adopts a version of his qualified position, developed in Section XIV: recognition does not itself create a state as a matter of law, but its presence or absence has practical consequences the law of statehood does not capture in full. Crawford's survey is organised around self-determination and the legality-based criteria that emerged after 1945; the creation of states by grant, which he treats in his discussion of free cities, internationalised territories, and Vatican City, receives brief treatment there. The ladder is offered as a more granular framework for that category, not as a correction of Crawford's account of it.

David Raič's *Statehood and the Law of Self-Determination* supplies the second body of work.¹⁹ Raič shows that self-determination has operated since 1945 as an independent constraint on statehood, capable of denying recognition to entities that satisfy the Montevideo criteria and of supporting entities that do not yet satisfy them. This monograph's insistence that a treaty's validity between states and a population's self-determination are separate questions

follows Raič. Its treatment of a population that migrates to a territory rather than one already resident on it, in Section XVI, extends that framework to a situation Raič's study, concerned with secession and decolonisation, does not examine, and the extension is identified as such.

Michael Strauss's *Territorial Leasing in Diplomacy and International Law* supplies the third and most practical body of work.²⁰ Strauss argues that a territorial lease reallocates the exercise of governmental rights without altering underlying title, and that this reallocation can resolve disputes because it allows two states to disagree about ultimate title while agreeing about practical control. That argument is the doctrinal foundation for Stage One. Strauss's cases concern leases between states; the application of his framework to a concession granted by a state to a private project is an extension of his work, and Section XII states the difference.

A fourth body of work argues, from different directions, against treating the consent of the parties as sufficient to settle a question of statehood. Jure Vidmar contends that the Montevideo criteria have lost much of their explanatory force in contemporary practice, and that the international community now imposes further requirements, including a democratic dimension to how independence is decided, before an entity's statehood is treated as settled.²¹ On that view a bilateral grant, however clean, would not end the inquiry. Matthew Craven's work on state succession and decolonisation cautions against treating any constitutive mechanism as a neutral technical device abstracted from the power relations between the parties.²² Brad Roth, by contrast, defends a pluralist order centred on the consent of states and sceptical of importing community-level legitimacy conditions into the law of statehood.²³ The monograph's reliance on the consent of states as the operative criterion sits closer to Roth than to Vidmar. A critic influenced by Vidmar or Craven would press the recognition question harder than a declaratory theory anticipates, and Roth's framework is not the only serious position available.

No existing work known to the author combines these strands into a single account of treaty-constituted statehood joined to a practical model for private initiation. That combination is this monograph's contribution.

SECTION IV

Vatican City and the Lateran Treaty of 1929

Vatican City is the strongest surviving case in the record in which an international agreement expressly established a territorial entity that has since operated continuously as a state. Its importance does not lie in any claim that the Lateran settlement is a template for contemporary state formation, nor in any claim that the Holy See first acquired international personality in 1929. The Holy See conducted international relations, concluded agreements, and maintained diplomatic ties throughout the fifty-nine years between the loss of the Papal States in 1870 and the Lateran settlement, notwithstanding its lack of territory during that period.²⁴ What the treaty did was narrower and more precise: it created a new territorial entity, placed it under the authority of the Supreme Pontiff, defined its boundaries, and provided the conditions under which it could operate independently of Italy.

Institutional continuity does not defeat juridical novelty. Vatican City, the territorial state, did not exist before 1929; that the Holy See did is a separate question.

§IV.1 The position before 1929

The Papal States ceased to exist as a territorial polity with the annexation of Rome by the Kingdom of Italy in 1870. Italy's Law of Guarantees of 1871 attempted a unilateral domestic settlement, offering the Pope immunities and honours within Italian law, but the Holy See declined it, on the ground that the Roman Question required a consensual international settlement rather than legislation Italy could alter or repeal at will. During the stalemate that followed, the Holy See continued to be treated as a subject of international law, capable of concluding agreements and of sending and receiving diplomatic representatives. Scholars have described that position as *sui generis*, combining the practical incidents of international personality with the absence of territory.²⁵

The entity under examination is therefore not the Holy See, whose standing predates 1929 and is not in question, but Vatican City, the territorial state. Conflating the two would either overstate the case, by claiming that the treaty created a personality that already existed, or understate it, by treating the Holy See's prior standing as disqualifying the creation of a territorial state that did not exist before the treaty.

The case is *sui generis* in a further sense that should be stated. The Catholic Church, and the papacy at its head, predate by many centuries the modern ideas of the nation and the territorial state against which this monograph measures every other case. The Holy See's international standing does not rest on territory, population, or national identity, and the purpose of Vatican City is to guarantee the independence of a religious institution with a worldwide membership, not to give political form to a people. Nothing in the Lateran settlement is therefore offered as a template for a secular project, and the case is relied upon for one proposition only: that an instrument between two subjects of international law can bring a territorial state into being.

The settlement's other party must also be named without euphemism. The Lateran Treaty was concluded by the Fascist government of Benito Mussolini,

which used the reconciliation with the Church to strengthen its domestic standing. The monograph examines the treaty because of the legal mechanism it displays. It does not endorse, excuse, or hold up as a model any aspect of the Fascist regime or its diplomacy.²⁶

§IV.2 The instrument

The Lateran settlement comprised three instruments concluded on 11 February 1929 and ratified on 7 June 1929: a Treaty of Conciliation, a Financial Convention compensating the Holy See for the loss of the Papal States, and a Concordat governing the Church's position within Italian law.²⁷ The Treaty of Conciliation is the operative instrument. Its first article records Italy's reaffirmation of Catholicism as the religion of the state under the Statuto of 1848; its second records Italy's recognition of the Holy See's authority in international matters as an attribute inherent in its nature.²⁸ The third supplies the constitutive language:²⁹

"Italy recognizes the full ownership, exclusive dominion, and sovereign authority and jurisdiction of the Holy See over the Vatican as at present constituted, together with all its appurtenances and endowments, thus creating the Vatican City, for the special purposes and under the conditions hereinafter referred to."

Lateran Treaty (Treaty of Conciliation), art 3 (translation reproduced in 23 AJIL Supp 187 (1929))

Article 24 records that the Holy See will take no part in temporal rivalries between other states unless the parties to a dispute make a unanimous appeal to its mission of peace, and that Vatican City shall in every event be considered neutral and inviolable territory.³⁰

Article 3 performs several functions in one sentence. It records Italy's recognition of rights belonging to the Holy See, it withdraws those rights and the territory from Italian authority, and it states that the combined effect is the creation of Vatican City. The constitutive effect is not carried by the words "thus creating" standing alone but by the operation of the article as a whole, read with the boundary annex, the neutrality provision of Article 24, and the treaty's evident purpose of ending by consensual settlement a dispute the Holy See had refused for nearly sixty years to regard as resolved on any other basis.

The most sophisticated objection to this reading holds that Article 3's grammar casts creation as the consequence of an act of recognition, and that an instrument which recognises does not constitute. The objection does not

survive attention to how constitutive treaties are drafted. A constitutive treaty produces its effect through the parties' mutual act, and that act is often expressed as one party's recognition of a status coupled with an express operative consequence. A treaty that recognised a status and no more would say only that it recognises; it would not go on to state that a new territorial entity is thereby created.

§IV.3 The lease-and-cession objection

A sharper version of the objection runs as follows: the Lateran Treaty did not create a new international person at all; it granted territory to an existing person, the Holy See, as a lease or cession vests territory in an existing grantee without altering the grantee's legal character. On this reading, Article 3's reference to creating Vatican City dresses a territorial transaction in constitutive language.

The objection fails on the treaty's text. A lease or cession vests territory in the grantee under the grantee's existing name and personality; it does not name a second, distinct legal subject alongside the grantee. The Lateran Treaty names such a subject. Article 3 vests rights in the Holy See; Article 26 separately records that "Italy, on her part, recognizes the State of the Vatican City under the sovereignty of the Supreme Pontiff", naming a legal subject textually distinct from the Holy See.³¹ Had the treaty intended only to grant territory to the Holy See, Article 26 would have recognised the Holy See's authority over that territory, as Article 2 had already recognised its authority in international matters. It did not. A grant of territory to an existing subject does not require the invention of a second subject to hold it, and that drafting choice is the clearest evidence that the parties understood themselves to be doing more than conveying land to a pre-existing grantee.

§IV.4 Placement and the separate variables

Vatican City stands on the top rung of the ladder: the territorial state did not exist before the treaty of 11 February 1929 entered into force on 7 June 1929, and the treaty brought it into being.

Independence is substantial but carries a qualification of a particular kind. Vatican City has defined territory, a government, and an independent legal order, and Article 4 excludes Italian governmental intervention within it, subject to the arrangement in Article 3 under which St Peter's Square remains open to the public under the supervision of the Italian police.³² The territorial state participates in some arrangements in its own name, most visibly as a member of

the Universal Postal Union since 1929 and of the International Telecommunication Union, memberships attached to its own postal and telecommunications services.³³ But the far larger share of the diplomatic activity associated with “the Vatican” is conducted by the Holy See, a distinct subject whose standing predates 1929, and that activity is not treated here as evidence of Vatican City’s own statehood. The qualification arises instead from published scholarly disagreement about whether the Vatican and Holy See complex fits the category of conventional statehood at all, given that its authority is exercised through the office that heads the Holy See, that its population is defined for the most part by ecclesiastical office rather than birth, and that its purpose is to guarantee the independence of a religious institution. The fullest statement of the doubt is Morss’s study of 2015, which concludes that the grounds commonly cited for statehood are inadequate.³⁴ The weight of scholarly and diplomatic practice treats Vatican City as a state, and this monograph proceeds on that footing, but a contested question is not presented as settled.

On coercion, the settlement was negotiated over an extended period between the Holy See and the Fascist government described in §IV.1. An authoritarian government’s participation in a negotiated settlement is not, on the standard set out in §III.3, evidence that the settlement was coerced. The strongest contrary argument observes that the Holy See negotiated after nearly sixty years of isolation with a government that had eliminated its domestic opposition, and asks whether that asymmetry amounts to coercion. Structural disadvantage of this kind is real, but it is not the legal standard, and for good reason: if weakness in negotiation voided a treaty’s effect, most treaties concluded by weaker states would be equally vulnerable, and the concept of coercion in treaty law would lose its content.

That conclusion does not depend on applying the Vienna Convention retrospectively. The interwar law of treaties had not developed the codified coercion doctrine later set out in Articles 51 and 52, and the question is whether it had developed some broader rule treating bargaining inequality as vitiating consent. The search for one finds nothing. The *Tinoco* arbitration of 1923, sometimes invoked in this context, concerned the capacity of an unrecognised revolutionary government to bind the state by contract, a different question.³⁵ It is cited for a narrower proposition: as a prominent interwar award touching governmental legitimacy and international obligation, its silence on any doctrine of coercion by bargaining inequality is some evidence that none had crystallised by 1929.

On either the contemporaneous standard or the later codified one, institutional weakness is not, without more, coercion.

Operation is unequivocal. Vatican City has governed itself continuously since 1929, through the Second World War, the fall of Fascism, and the transformation of the post-war order. No other conjured polity in the record matches that continuity.

§IV.5 What Vatican City shows

Vatican City shows that a consensual agreement between existing subjects of international law can conjure a territorial state, vest it with independence, and produce a result that endures for nearly a century. It does not show that the mechanism is available to parties lacking the two parties' particular history, and it bears not at all on private initiation, since both parties were existing subjects of international law. Trieste, examined next, tests a different boundary: whether an instrument can succeed at constitution while the polity it constitutes never comes to life.

SECTION V

The Free Territory of Trieste and the Treaty of Peace with Italy of 1947

The Free Territory of Trieste supplies the record's clearest evidence of constitutive capacity and its clearest caution against mistaking that capacity for successful statehood. No instrument in the record uses more explicit constitutive language than Article 21 of the Treaty of Peace with Italy, and no case shows with more force that such language does not, by itself, bring a functioning state into being.

A treaty can succeed completely at constituting a new entity and fail completely at bringing it to life. Trieste is the proof.

§V.1 The position before 1947

Trieste and its hinterland belonged to Austria-Hungary until the end of the First World War and passed to the Kingdom of Italy under the post-war settlement, remaining Italian until 1947.³⁶ The Second World War left the area contested between Italy and Yugoslavia, and the post-war years saw it under Allied military occupation while the peace settlement was negotiated. Unlike in Fiume, no local body in Trieste had declared independence or asserted a claim to separate statehood; immediately before the treaty, the territory was Italian territory under occupation.

§V.2 The instrument

The Treaty of Peace with Italy was signed on 10 February 1947 and entered into force on 15 September 1947.³⁷ Article 21 constitutes the Free Territory in terms that leave no room for a recognitional reading:³⁸

“There is hereby constituted the Free Territory of Trieste, consisting of the area lying between the Adriatic Sea and the boundaries defined in Articles 4 and 22 of the present Treaty. The Free Territory of Trieste is recognized by the Allied and Associated Powers and by Italy, which agree that its integrity and independence shall be assured by the Security Council of the United Nations.”

Treaty of Peace with Italy, art 21(1)

Paragraph 2 terminates Italian authority over the area on the treaty's entry into force, and paragraph 4 adds that the Free Territory “shall not be considered as ceded territory” within the meaning of the treaty's provisions on cession.³⁹ The drafters distinguished a transfer of Italian territory to another state from the constitution of something new, and chose the second characterisation deliberately.

Annex VI, the Permanent Statute, set out the intended constitution: a demilitarised, neutral territory with its own government, an elected legislature, and guarantees of civil liberties, overseen by a Governor appointed by the Security Council whose function was to supervise the Statute's execution rather than to

govern directly.⁴⁰ Pending the Governor's appointment, Annex VII provided that the Allied military commands would continue to administer their zones.⁴¹ On 10 January 1947, a month before the treaty was signed, the Security Council resolved to accept the responsibilities the settlement assigned to it, confirming that the constitutive intent behind Article 21 was shared by the body charged with guaranteeing it.⁴²

The Governor was never appointed. The permanent members could not agree on a candidate, and the Permanent Statute never came into force. The provisional arrangement, intended to last months, persisted for seven years, with Zone A, including the city, under Allied Military Government and Zone B under Yugoslav administration. By the Memorandum of Understanding signed in London on 5 October 1954, Italy and Yugoslavia, with the concurrence of the United Kingdom and the United States, assumed civil administration of the two zones, and the Treaty of Osimo of 1975 formalised the boundary without reference to the Free Territory. The Free Territory of Trieste, as a self-governing entity, never existed in operational fact.

§V.3 Placement and the separate variables

Trieste stands on the top rung: the treaty terminated Italian authority and constituted a new entity in the same article, and nothing comparable existed before. It fails the independence and operation variables. Its only governing authorities throughout were foreign military and civil administrations, and it never held the elections or established the institutions its Statute promised.

Two objections deserve a direct answer. The first concerns independence by design. The Statute placed a Security Council Governor over the Free Territory, and a critic may ask whether that supervisory role was itself a legally controlling power of the kind that excludes Danzig from independence. The answer turns on the text: the Governor's powers were supervisory, directed at the Statute's execution and the protection of basic rights, while legislative and executive authority was vested in elected local institutions. What defeated independence in fact was the Statute's non-implementation, not a controlling power written into it. The distinction is fine, and it is stated rather than pressed: Trieste is relied on here for one proposition only, that an instrument can constitute an entity, and not for the proposition that the entity would have been independent.

The second concerns coercion. The Treaty of Peace was imposed on a defeated Italy; Italy's delegates signed under protest, and Italy had no real choice. The law of treaties has never treated a peace settlement following a lawful use of force as vitiated by coercion. The Vienna Convention's rule on coercion of a state applies to the threat or use of force in violation of the principles of the Charter, and Article 75 preserves any obligation that may arise for an aggressor state in consequence of measures taken under the Charter with reference to its aggression.⁴³ The Treaty of Peace was the settlement of a war Italy had joined as an Axis power; it is the paradigm of an instrument the coercion doctrine was framed to leave standing. A contemporary project, which involves no war and no defeated party, gains nothing from the case on this point and loses nothing by it.

§V.4 What Trieste shows

Trieste demonstrates that a treaty can itself be the juridical event that terminates one state's authority over a territory and constitutes a new entity in its place, in language leaving less room for argument than any other instrument in the record. It establishes this independently of Vatican City, since the two cases share no drafters, circumstances, or historical moment beyond the treaty form itself, which is why they are stronger read together. It does not establish that the entity will govern itself or outlast the consensus required to install its institutions. Trieste is therefore not counted as a successful instance of statehood; it is counted as proof of constitutive capacity.

SECTION VI

The Free State of Fiume and the Treaty of Rapallo of 1920

Fiume is the hardest of the three twentieth-century cases examined in Sections IV to VI, and it earns its place for that reason. Unlike Trieste, Fiume operated: it held elections and functioned as a government for about a year before a coup and, later, annexation. Unlike Vatican City, its novelty is contested, since a local council asserted in 1918 that Fiume “is now an independent state”. The case therefore tests the prior-statehood question with the same rigour applied everywhere else, and it sits on the second rung of the ladder rather than the first.

Fiume tests the method's discipline. A method that bends its rules for a difficult case is not a method at all.

§VI.1 The position before 1920

Fiume, known locally as Rijeka, had held a distinctive status within the Kingdom of Hungary since 1779, when a royal diploma designated it a *corpus separatum* attached to the Hungarian crown, with a measure of local autonomy its political class invoked often after the First World War.⁴⁴ As Austria-Hungary dissolved, the city's Italian National Council proclaimed on 30 October 1918 its right of self-determination and its union with Italy, placing that decision "under the protection of America, mother of Liberty".⁴⁵ Writing to the United States government in December 1918, the Council's president went further:⁴⁶

"Fiume was in the past a free town and is now an independent state and, therefore, has to protest against such an act which is considered as a breach of its sovereign powers."

The President of the Italian National Council of Fiume (Grossich) to the Acting Secretary of State, No. 314, confirming the telegram of 19 December 1918

That sentence is the strongest evidence that Fiume asserted statehood before any treaty addressed its status, and it deserves weight. Three features of the record nonetheless qualify it. First, the Council's own aim was union with Italy, not independence; the claim to statehood was invoked in self-defence, to resist foreign interference.⁴⁷ Second, the Council's authority was disputed from the outset: a rival National Council of Slovenes, Croats and Serbs, constituted in Fiume-Sušak on 29 October 1918, pressed a competing claim on behalf of the incoming Yugoslav state.⁴⁸ Third, whatever order existed was overtaken in September 1919, when Gabriele D'Annunzio seized the city with irregular forces in defiance of the Italian government, proclaimed the Italian Regency of Carnaro, and held Fiume until Italian forces expelled him in late December 1920, weeks after the Treaty of Rapallo was concluded.

These facts mean that the 1918 declaration never matured into an internationally effective government exercising undisputed authority over defined territory. What existed across the two years before Rapallo was a contested

claim, a rival counter-claim, and an irregular occupation the claimant council did not control.

§VI.2 The instrument

The Treaty of Rapallo was concluded between the Kingdom of Italy and the Kingdom of Serbs, Croats and Slovenes on 12 November 1920, above all to settle the two states' competing claims along the eastern Adriatic.⁴⁹ Its fourth article provided:

“[The High Contracting Parties] recognise the complete freedom and independence of the State of Fiume and oblige to respect it in perpetuity.”

Treaty of Rapallo, art 4, in the English translation reproduced in secondary accounts

The verb is recognitional, and a critic may ask whether Rapallo did no more than confirm a status Fiume already claimed. The answer lies in §VI.1: because no internationally effective Fiuman state existed, an instrument using recognitional language could perform a constitutive function, as the Article 31 method anticipates. Rapallo ended the contest over the city's status, extinguished the competing claims of both councils as a matter of international settlement, and vested authority in an entity that then had to be built. A memorandum submitted to the Paris Peace Conference in 1946, and reproduced in the State Department's published series, later described the treaty as having “recognised the independent state of Fiume, which was effectively organised on democratic lines with a Constitution adopted by a Constituent Assembly freely elected by the people”.⁵⁰ That document argued a position on Fiume's future and is cited as evidence of how the settlement was later characterised, not as a neutral account.

Fiume was not a party to Rapallo, and the principle that a treaty cannot bind a third state without its consent is real.⁵¹ It has no purchase here, for the reason given in §III.4: the principle protects an existing state from obligations it has not accepted, and the argument is that Rapallo constituted Fiume because no internationally effective Fiuman government existed to be bound.

§VI.3 Placement and the separate variables

Fiume sits on the second rung. A separate political identity, rooted in the *corpus separatum* and asserted in 1918, existed before the treaty; the state did not. The treaty codified that identity as a state.

Independence and operation were both achieved for a period. A Constituent Assembly was elected in April 1921, Riccardo Zanella became president, and the government exercised authority for about a year, a record Trieste cannot match. Two qualifications apply. The joint administration of the port contemplated by the settlement was never established.⁵² And the elected government could not survive a coup in March 1922, carried out with Fascist backing, which forced Zanella from office and left the state's institutions hollowed out until its formal extinction by the Treaty of Rome of 27 January 1924.⁵³ Whether the Constituent Assembly completed a constitution before the coup is a point the sources treat inconsistently, and the claim in the 1946 memorandum is not relied upon without independent confirmation.

On coercion, the Treaty of Rapallo was negotiated between two governments with no suggestion of duress. Force entered the story afterwards and against a third party: the expulsion of D'Annunzio's irregulars enforced the settlement against an occupier holding the city in defiance of both governments that concluded it. That distinction, between force used to procure consent and force used afterwards to make an instrument effective against a non-party, is within the coercion doctrine's own terms.

§VI.4 What Fiume shows

Fiume confirms that the prior-statehood test is a real test with a real answer, and not a formality that excludes any case with an inconvenient declaration in its history. It also completes the twentieth-century set: Vatican City shows the mechanism succeeding and enduring; Trieste shows it succeeding at constitution while failing at operation; Fiume shows it succeeding at both for a period before internal collapse and, in 1924, extinction by the same two states that had created it. Section XV takes up what that ending shows about durability.

SECTION VII

Politics Conjured by the Powers, 1800 to 1919

Sections IV to VI draw their cases from a single generation, 1920 to 1947. That concentration invites the objection that the mechanism is an artefact of one turbulent period of European diplomacy. This section answers it by reaching back to the Napoleonic settlements and the Congress of Vienna, where the powers conjured polities by treaty with a frequency the twentieth century never matched. Most of these polities were protected or supervised rather than fully independent, and that fact is recorded under the independence variable. What they establish, taken together, is that bringing a polity into existence by international instrument was an ordinary tool of nineteenth-century statecraft. Many of these settlements were imposed by conquering powers on peoples who had no voice in them, and several served partitions and annexations that did lasting harm. They are examined for the legal technique they display, not as models; the model this monograph proposes requires what they lacked, the free consent of the state concerned and of anyone who lives on the land.

Great-power protection and great-power creation are different relationships. The first is a limit on what a polity may do; the second is the reason it exists at all.

§VII.1 The Septinsular Republic (1800)

The Ionian Islands, long Venetian, passed to revolutionary France in 1797 before a joint Russo-Ottoman force expelled the French garrisons in 1799. By the Treaty of Constantinople of 21 March 1800 (Old Style), Russia and the Ottoman Empire established the Republic of the Seven United Islands, an aristocratic federal republic, with a constitution issued the same year.⁵⁴ The islanders had petitioned for full independence; what the treaty created fell short of it. The Republic paid the Porte a tribute of 75,000 piastres every three years and stood under the Sultan's suzerainty, while functioning in practice under Russian protection and garrison.⁵⁵ It was extinguished without its consent in 1807, when Russia ceded the islands to France at Tilsit.

The Septinsular Republic stands on the top rung: no Ionian polity existed before the treaty, and the treaty created one where the islands had been undifferentiated Venetian, then French, possessions. It fails the independence variable by design, since suzerainty and tribute are incidents of dependence written into the constituting instrument itself. It is the first instance in the record of a pattern that recurs throughout the century: a polity conjured by treaty and simultaneously placed under the protection of the powers that conjured it.

§VII.2 The Treaties of Tilsit (1807): the Duchy of Warsaw and the Free City of Danzig

The Treaties of Tilsit, concluded by France with Russia on 7 July and with Prussia on 9 July 1807, produced two polities by treaty.⁵⁶ By Article XV of the Franco-Prussian treaty, the Polish provinces Prussia had acquired in the partitions were to be “possessed with right of property and sovereignty by his Majesty the King of Saxony, under the title of Dukedom of Warsaw”, and governed under a constitution. By Article XIX, “the city of Dantzic, with a territory of two miles circumference, shall be restored to its former independence, under the protection of his Majesty the King of Prussia and the King of Saxony”.

The Duchy of Warsaw sits on the boundary between the first two rungs. It was a new political unit with a new name and new frontiers, created where no state had stood since the third partition of 1795; but the Polish national community whose statehood the partitions had extinguished was vivid, and much of the Duchy's early administration was Polish. Its independence was nominal: its ruler was the King of Saxony, its constitution was dictated by Napoleon, and it functioned as a French client until its occupation in 1813 and division at Vienna. The Free City of Danzig of 1807 is placed on the second rung: the treaty itself speaks of restoring a former independence, reflecting the city's long history of autonomy within the Polish-Lithuanian Commonwealth, and the new free city was a French-garrisoned protectorate until 1814.

Tilsit matters for the argument less as a pair of successful states than as a demonstration of how routine the conjuring power had become. Napoleon and his treaty partners created, redrew, and extinguished polities by instrument as a matter of settlement, and the law of the period treated those instruments as effective.

§VII.3 The United States of the Ionian Islands (1815)

After a second period of French rule and progressive British occupation between 1809 and 1814, the islands were constituted afresh by treaty at Paris on 5 November 1815, in language more emphatic than the Septinsular settlement had used:⁵⁷

“...the said States shall form a single, free, and independent State, under the denomination of the United States of the Ionian Islands... placed under the immediate and exclusive Protection of His said Britannic Majesty.”

Treaty respecting the Ionian Islands, Paris, 5 November 1815, art I

The phrase “single, free, and independent State” is harder to read as recognitional than Rapallo's language for Fiume, and the Ionian polity stands on the top rung. It does not fall on the restored rung by the reasoning applied to Frankfurt in §VII.5, because the 1815 treaty did not revive the Septinsular Republic: it created a differently constituted state, under a different protector and a different constitution, and the Septinsular polity had itself existed for only seven years. Its independence was hollow. The Constitutional Charter of 1817 vested executive authority in a Lord High Commissioner appointed by the British Crown, with power to convene, prorogue, and dissolve the legislature,

to initiate legislation, and to veto measures; British forces garrisoned the islands throughout.⁵⁸ The islands were ceded to Greece in 1864.

§VII.4 The Free City of Cracow (1815 to 1846)

Cracow, formerly part of the Duchy of Warsaw, was constituted a free polity by an additional treaty among Austria, Prussia, and Russia of 3 May 1815, incorporated into the Final Act of the Congress of Vienna:⁵⁹

“The town of Cracow, with its territory, is declared to be for ever a free, independent, and strictly neutral city, under the protection of Austria, Russia, and Prussia.”

Final Act of the Congress of Vienna, art VI

By Article IX the three courts undertook “to respect, and to cause to be always respected, the neutrality of the free town of Cracow and its territory”.⁶⁰ No free city of Cracow had existed before; the instrument created one, and it stands on the top rung.

The independence variable requires care. Cracow received a constitution in 1815, revised in 1818, under which a Senate and an Assembly of Representatives were chosen in the city, and for its first years it governed its own affairs with considerable latitude. The protection written into Article VI was not, however, a guarantee held in reserve. Representatives of the three powers sat in the city as residents and exercised growing supervision; after the Polish rising of 1830 and 1831, the powers imposed a more restrictive constitution in 1833, reducing the number and competence of the city’s elected bodies; Austrian troops occupied the city from 1836 to 1841, and Austrian police replaced the local force.⁶¹ Following the Cracow rising of February 1846, a nationalist insurrection that began in the city itself, Austria annexed Cracow in November 1846 with the agreement of Russia and Prussia, acting on an understanding the three courts had reached in secret in 1835. Britain and France, as parties to the Final Act, protested and did nothing further.

Cracow therefore shows the conjuring power with great clarity and the protection relationship at its most corrosive. Its independence, real at first, was subordinated step by step to the protecting powers, and its extinction was not the breach of one guarantor acting alone but the collective decision of all three. Section XV draws the lesson for durability.

§VII.5 Frankfurt, the Hanseatic cities, and Luxembourg (1815)

The Final Act of Vienna did more than create Cracow. It declared the town of Frankfurt, with its territory, free, and made it a member of the German Confederation.⁶² Frankfurt had been a Free Imperial City of the Holy Roman Empire until 1806 and was then absorbed into the Napoleonic principality of Karl von Dalberg, which became the Grand Duchy of Frankfurt in 1810; the Final Act restored a status it had held for centuries, and Frankfurt stands on the restored rung. Its independence within the Confederation was real but bounded by the Confederation's own constitution, and it ended with Prussian annexation in 1866. Hamburg, Bremen, and Lübeck, likewise former imperial cities, entered the Confederation as free cities and in that capacity concluded treaties in their own names, including a treaty of commerce with the United States in 1827. They too stand on the restored rung.

The contrast with Cracow is instructive and answers an obvious question. The same instrument declared Cracow and Frankfurt free in similar language. Cracow is placed higher because no Cracovian polity had existed before 1815, whereas Frankfurt and the Hanseatic cities resumed a status with deep historical roots. The ladder measures what the instrument supplied, and the Final Act supplied more to Cracow than to Frankfurt. The same criterion explains why Danzig in 1807 sits higher on the ladder than Frankfurt in 1815, although both instruments speak of restoration. Frankfurt and the Hanseatic cities had been immediate estates of the Empire, self-governing polities of the kind the Final Act revived, and their absorption had lasted less than a decade. Danzig had been an autonomous city under the Polish Crown, never a free state in its own right; the 1807 treaty's reference to its "former independence" described an autonomy, and the treaty gave that community the form of a state for the first time.

The Final Act also created the Grand Duchy of Luxembourg, elevating part of the former Duchy of Luxembourg into a grand duchy held by the King of the Netherlands in personal union and admitted as a member of the German Confederation.⁶³ A Luxembourg polity, and a Luxembourgish community, had existed for centuries as a province of successive dynasties; the grand duchy as a distinct state had not. Luxembourg stands on the codified rung for 1815, and its later history shows the gradient in motion: the Treaty of London of 11 May 1867 declared the grand duchy a perpetually neutral state under the collective guarantee of the powers, and the personal union with the Netherlands ended

in 1890.⁶⁴ What began as a dynastic holding was, by stages and by treaty, made into a state that endures today.

§VII.6 The Free City of Danzig (1919)

The Treaty of Versailles returned to the device Tilsit had used. By Article 102, “the Principal Allied and Associated Powers undertake to establish the town of Danzig, together with the rest of the territory described in Article 100, as a Free City”, placed under the protection of the League of Nations.⁶⁵ A constitution was to be drawn up by the city’s representatives in agreement with a League High Commissioner, who would also decide disputes between the Free City and Poland (Article 103). Article 104(6) required a treaty between Poland and the Free City providing that “the Polish Government shall undertake the conduct of the foreign relations of the Free City of Danzig as well as the diplomatic protection of citizens of that city when abroad”, and the Paris Convention of 9 November 1920 gave effect to that requirement.⁶⁶ Danzig was included within the Polish customs frontier.

Danzig stands on the second rung: the city had been a free city in 1807 and had a long history of autonomy before that, and the 1919 settlement codified its separate status once again. Its independence was qualified by design, and the qualification must be located with care. The League High Commissioner guaranteed the constitution and arbitrated disputes; it was Poland that conducted Danzig’s foreign relations. A polity whose external relations are conducted by another state as a matter of treaty obligation lacks the capacity for relations with other states that independence requires, whatever the extent of its internal self-government. Danzig had elections, a legislature, courts, and from 1923 its own currency, and it governed itself to a greater degree than Trieste ever did; it was not an independent state. Germany annexed it in September 1939.

§VII.7 What this section establishes

Between 1800 and 1919 the powers conjured, codified, or restored at least ten polities, one of them twice, by international instrument: the Septinsular Republic, the Duchy of Warsaw, the Free City of Danzig twice, the Ionian Islands, Cracow, Frankfurt, Hamburg, Bremen, Lübeck, and Luxembourg. Nearly all were protected, supervised, or constrained, and most were extinguished by the same powers that had created them. Those facts belong to the independence and durability variables. On the question the ladder asks, the section’s finding is unambiguous: the instrument that brings a polity into existence was a familiar

feature of European practice long before 1929, and the interwar cases continue a tradition rather than begin one.

SECTION VIII

The Eastern Question: Politics Made from Ottoman Territory, 1830 to 1914

The retreat of Ottoman authority in south-eastern Europe produced the richest single seam of treaty-made politics in the record. Over eight decades the powers, sometimes with the Porte's consent and sometimes over its objection, gave the form of a state or an autonomous principality to communities that had existed for centuries without one, and in one case invented a province that had not existed at all. These cases sit for the most part on the second rung of the ladder, and several produced tributary or autonomous politics rather than independent ones. Their value for the argument lies in the variety of instruments they display and in the language those instruments used. The powers acted in their own strategic interest, often over the objections of the peoples concerned, and the settlements they imposed are cited as evidence of legal technique, not as examples to follow.

The Eastern Question made the constitutive instrument a working tool of European diplomacy: principalities were declared, provinces were named, and borders were drawn by conference.

§VIII.1 Greece (1830 and 1832)

The Greek revolution began in 1821, and by the late 1820s a provisional Greek government, under constitutions adopted from 1822 and, from 1828, under the government of Ioannis Kapodistrias, exercised authority over parts of the

Peloponnese, the islands, and central Greece. By the Protocol of London of 3 February 1830, Britain, France, and Russia declared:⁶⁷

“Greece shall form an independent State, and shall enjoy all the rights, political, administrative, and commercial, attached to complete independence.”

Protocol of the Conference of London, 3 February 1830, art 1

The Protocol fixed a monarchical and hereditary form of government within defined frontiers and designated a prince to rule. When that prince declined, the Treaty of London of 7 May 1832 established the Kingdom of Greece under Otto of Bavaria, and the Porte accepted the settlement and an enlarged frontier by the Treaty of Constantinople of July 1832.

Greece sits on the codified rung, close to the boundary with recognition. A Greek national community, a revolutionary government, and a decade of armed struggle preceded the Protocol, and a critic could argue that the powers recognised a state the revolution had made. The better reading is that the revolutionary government, though effective in parts of the country and treated as a belligerent, had not established itself as an internationally effective state when the powers intervened; the Protocol fixed the state's existence, its form of government, its ruler, and its frontiers, none of which the revolution had settled. The powers did more than acknowledge a result. They determined what the result would be.

§VIII.2 The Principality of Samos (1832)

Samos joined the Greek revolution and governed itself for most of the 1820s, but the powers excluded it from the new Greek state. In its place they agreed, at the London conference of 1832, on an autonomous principality under Ottoman suzerainty, and the Sultan issued an Organic Statute to give it effect.⁶⁸ From 1834 until 1912 Samos was governed by a Christian prince of Greek descent nominated by the Porte, with its own senate, assembly, and flag, paying an annual tribute. Its assembly declared union with Greece in November 1912, and the union took effect in 1913.

Samos sits on the codified rung. The Samian community and its revolutionary self-government preceded the arrangement; the principality as a polity did not. The instrument is composite: a concert of the powers, given effect by an Ottoman statute issued under their guarantee. That composite form is a recurring feature of the Eastern Question and meets the threshold, since the operative decision was taken by international agreement and the Sultan's act

implemented it. On independence Samos fails: it was a tributary principality, and it never claimed to be more.

§VIII.3 Bulgaria and Eastern Rumelia (1878)

The Treaty of Berlin of 13 July 1878 revised the Russian-imposed Treaty of San Stefano and produced two polities from Ottoman territory:⁶⁹

“Bulgaria is constituted an autonomous and tributary Principality under the suzerainty of His Imperial Majesty the Sultan; it will have a Christian Government and a national militia.”

Treaty of Berlin, art I

“A province is formed south of the Balkans which will take the name of ‘Eastern Roumelia,’ and will remain under the direct political and military authority of His Imperial Majesty the Sultan, under conditions of administrative autonomy. It shall have a Christian Governor-General.”

Treaty of Berlin, art XIII

The governor-general was to be appointed by the Porte with the assent of the powers, and an international commission drafted Eastern Rumelia’s Organic Statute, adopted in April 1879.

The two polities sit on different rungs, and the difference is the ladder’s clearest illustration. Bulgaria was codified: a Bulgarian national movement, a Bulgarian church, and a Bulgarian revolt preceded the treaty, and the treaty gave that community the form of a principality. Eastern Rumelia was conjured: the name was invented at the conference table, the frontiers were drawn to divide the Bulgarian population, since the powers feared that a large Bulgaria would become a Russian client, and no community had ever thought of itself as Rumeliot. The treaty did not recognise a province; it formed one, and said so.

Neither polity was independent in 1878. Eastern Rumelia’s history also shows the limits of what a conjured polity can do against the wishes of its population. In September 1885 a bloodless coup in Plovdiv proclaimed union with Bulgaria, and by the Tophane agreement of 1886 the Porte accepted the arrangement by appointing Bulgaria’s prince as governor-general of the province. Bulgaria declared full independence in 1908, by its own act rather than by treaty. A treaty can bring a polity into existence, but it cannot give that polity’s people a loyalty they do not hold, a point Section XVI returns to.

§VIII.4 The Cretan State (1898)

After the Cretan revolt of 1897 and the Greco-Turkish war that followed, Britain, France, Italy, and Russia occupied Crete and resolved that it would become an autonomous state under Ottoman suzerainty, administered by a High Commissioner of their choosing. Prince George of Greece took office in December 1898, a constitution was adopted in 1899, and the Cretan State had its own assembly, gendarmerie, currency, and bank.⁷⁰ Cretan deputies proclaimed union with Greece in 1908; the powers withdrew their forces in 1909 and lowered their flags in February 1913; and by Article 4 of the Treaty of London of 30 May 1913 the Sultan ceded Crete to the allied Balkan states, clearing the way for union.

The Cretan State meets the threshold in a weaker form than the other cases in this section. It was created by concerted decision of the occupying powers rather than by a treaty with the Porte, which never gave formal consent to the arrangement, although it retained nominal suzerainty within it. The case is placed on the codified rung, with that qualification stated: a Cretan community with a long history of revolt preceded it, and the powers gave that community the institutions of an autonomous state. Its independence was limited by suzerainty in form and by the powers' supervision in fact.

§VIII.5 Albania (1912 to 1914)

On 28 November 1912, during the First Balkan War, an assembly at Vlorë under Ismail Qemali declared Albania independent and formed a provisional government. The declaration did not produce an effective state. Serbian, Montenegrin, and Greek forces occupied most of the territory Albanians regarded as theirs, and the provisional government controlled little beyond Vlorë. By Article 3 of the Treaty of London of 30 May 1913, the belligerents entrusted the settlement of Albania's frontiers and of all other questions concerning Albania to the great powers.⁷¹ The powers' Conference of Ambassadors then decided, on 29 July 1913:

"Albania is constituted as an autonomous, sovereign and hereditary principality ... under the guarantee of the six Great Powers. The prince will be appointed by the six Great Powers."

Decision of the Conference of Ambassadors, London, 29 July 1913, art 1

An International Commission of Control was established to administer the country until its institutions were in place, and the Protocol of Florence of December 1913 fixed its southern frontier. Prince Wilhelm of Wied arrived in March 1914 and left in September, as the country fragmented and the First World War began.

Albania is the Fiume of the Balkans, and it is analysed in the same way. The Vlorë declaration is real evidence of a prior claim, and the Albanian national movement that stood behind it was real. But a declaration unaccompanied by effective government over the claimed territory is not prior statehood, and the provisional government never achieved that. The powers' decision, adopted under authority the belligerents conferred on them by treaty, used the language of constitution, determined the form of state, the method of choosing its ruler, and its frontiers, and created the administration that was to govern it. Albania therefore sits on the codified rung. Its independence was qualified by the powers' guarantee and the Commission's authority, and its operation in 1914 was brief and incomplete. The Albanian state that emerged after the war, admitted to the League of Nations in December 1920, traced its international existence to the 1913 decision, and the Conference of Ambassadors reaffirmed that decision in November 1921.

§VIII.6 What the Eastern Question establishes

The Eastern Question cases add three things to the argument. First, they show the constitutive power exercised across a wider range of instruments than the interwar treaties alone suggest: bilateral treaties, multilateral congress treaties, protocols of the powers, decisions of a conference of ambassadors acting under treaty authority, and Ottoman statutes issued under international guarantee. Second, they supply the clearest example in the record of a polity conjured from nothing, Eastern Rumelia, alongside several communities codified as states for the first time. Third, they show that the polities so created were in most cases dependent at first, and that several became independent later, some by further treaty and some by their own act. The mechanism is not confined to a single moment, a single type of instrument, or a single outcome.

SECTION IX

After 1945: Libya and Somalia by Resolution, Cyprus by Treaty

A common assumption holds that the post-1945 order ended the practice of conjuring polities by international instrument, leaving only decolonisation by the departing power's own act. The record does not support that assumption. Within fifteen years of the Charter, the General Assembly constituted Libya as an independent state and set the term at whose end Somalia would become independent, acting under a procedure to which the Allies had bound themselves by treaty, and Greece, Turkey, and the United Kingdom created a Republic of Cyprus that neither of the island's communities had sought. Each case places the mechanism within the modern legal order.

The Charter did not end the conjuring power. It moved part of it to New York.

§IX.1 Libya (1949 to 1951)

By Article 23 of the Treaty of Peace with Italy, Italy renounced all right and title to its African possessions, Libya, Eritrea, and Italian Somaliland, whose final disposal was to be settled by France, the Soviet Union, the United Kingdom, and the United States. Annex XI provided that if the four powers could not agree within a year of the treaty's entry into force, the matter would be referred to the General Assembly for a recommendation, and that the four powers "agree to accept the recommendation and to take appropriate measures for giving effect to it".⁷³ They did not agree, and the question passed to the Assembly.

By resolution 289 (IV) of 21 November 1949, adopted, in its own words, “in accordance with Annex XI, paragraph 3, of the Treaty of Peace with Italy, 1947, whereby the Powers concerned have agreed to accept the recommendation of the General Assembly”, the Assembly recommended:⁷⁴

“That Libya, comprising Cyrenaica, Tripolitania and the Fezzan, shall be constituted an independent and sovereign State;

That this independence shall become effective as soon as possible and in any case not later than 1 January 1952;

That a constitution for Libya, including the form of the government, shall be determined by representatives of the inhabitants of Cyrenaica, Tripolitania and the Fezzan meeting and consulting together in a National Assembly.”

UNGA Res 289 (IV), part A, paras 1 to 3

A United Nations Commissioner, Adrian Pelt, assisted by a council of representatives of states and of the three territories, guided the process. The National Assembly adopted a federal constitution on 7 October 1951, and the United Kingdom of Libya became independent under King Idris on 24 December 1951. A Soviet veto delayed its admission to the United Nations until 14 December 1955.

Libya stands on the top rung. The three territories had separate histories and had never formed a single state. Italy had joined them administratively as a colony named Libya in 1934, and Cyrenaica had been proclaimed an emirate under British administration in 1949, but no Libyan state existed and no Libyan national movement had achieved one. The resolution did more than recognise: it decided that a state would be constituted, named its component territories, fixed a deadline for its independence, and prescribed the procedure by which its constitution would be made. Its force derived from Annex XI, under which the four powers had bound themselves in advance to accept and implement the Assembly’s recommendation. The instrument was a resolution; the obligation behind it was a treaty. That combination satisfies the threshold set out in §III.1.

Libya also shows the post-1945 mechanism working through the population rather than around it. The resolution required that the constitution be determined by the inhabitants’ representatives, and the United Nations supervised the process. A conjured state could be built, in 1951, only with the participation of the people who would live in it, and that requirement has hardened since. Libya’s later history, under the monarchy, the revolution of 1969, and the

fragmentation after 2011, belongs to the durability variable and does not affect its placement.

§IX.2 Somalia (1949 to 1960)

The same resolution disposed of Italian Somaliland:⁷⁵

“That Italian Somaliland shall be an independent sovereign State;

That this independence shall become effective at the end of ten years from the date of the approval of a Trusteeship Agreement by the General Assembly.”

UNGA Res 289 (IV), part B, paras 1 and 2

The resolution placed the territory under international trusteeship in the interval, with Italy as the administering authority assisted by an advisory council, and a trusteeship agreement approved in 1950 gave the recommendation effect. Independence came on 1 July 1960, when the trust territory united with the former British Somaliland, independent five days earlier, to form the Somali Republic.

Somalia is placed on the codified rung. A Somali national identity and a Somali political movement long preceded the resolution; the state did not. The resolution determined that a state would exist, set the ten-year term at whose end it would do so, and placed the intervening decade under international supervision directed towards that end; independence came on 1 July 1960, some months before the term expired. The case shares its legal basis with Libya and supports the same conclusion: after 1945, an international instrument, drawing force from treaty, could still determine that a state would come into being and when.

Two further General Assembly acts of the period deserve mention and are not relied on as evidence of successful constitution. Resolution 390 A (V) of 1950 constituted Eritrea as an autonomous unit federated with Ethiopia, a dependent entity conjured by resolution that Ethiopia annexed in 1962. Resolution 181 (II) of 1947 proposed that Jerusalem be constituted as a corpus separatum under international administration, a Trieste that was never even provisionally installed. Both confirm that the Assembly understood itself to be capable of constituting territorial entities, whatever became of the entities it proposed.

§IX.3 Cyprus (1959 to 1960)

Cyprus had been under British administration since 1878 and a Crown colony since 1925. Its Greek Cypriot majority sought enosis, union with Greece, and fought for it from 1955; its Turkish Cypriot minority came to demand taksim, partition. Neither community sought an independent Cypriot state. The Republic of Cyprus was the invention of a compromise among outside powers. At Zurich on 11 February 1959, Greece and Turkey agreed the basic structure of a new republic and the texts of two treaties; at Lancaster House on 19 February 1959, the United Kingdom and the leaders of the two communities accepted the settlement. On 16 August 1960 the Treaty of Establishment, the Treaty of Guarantee, and the Treaty of Alliance were signed at Nicosia, and the Republic came into being.⁷⁶

The Treaty of Establishment defined the new state's territory in its first article:⁷⁷

"The territory of the Republic of Cyprus shall comprise the Island of Cyprus, together with the islands lying off its coast, with the exception of the two areas defined in Annex A to this Treaty, which areas shall remain under the sovereignty of the United Kingdom. These areas are in this Treaty and its Annexes referred to as the Akrotiri Sovereign Base Area and the Dhekelia Sovereign Base Area."

Treaty concerning the Establishment of the Republic of Cyprus, art 1

The Treaty of Guarantee then fixed the terms of the Republic's existence:

"The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution. It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever."

Treaty of Guarantee, art 1

By Article II, Greece, Turkey, and the United Kingdom, "taking note of the undertakings of the Republic of Cyprus set out in Article I", undertook to "recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and also the state of affairs established by the Basic Articles of its Constitution", and to prohibit activity directed at union or partition. Article IV provided that in the event of a breach the three would consult, and that "in so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action

with the sole aim of re-establishing the state of affairs created by the present Treaty". The constitution's basic articles, taken from the Zurich agreement, could not be amended.

Cyprus might be placed among the recognition cases, on the ground that two communal political projects preceded the settlement. That reasoning does not hold. A colony satisfies the novelty inquiry, and the communal projects sought union and partition, not a Cypriot state. Cyprus is better placed on the top rung: the Zurich and London agreements conjured a state that no one on the island had asked for, and the Republic's name, constitution, institutions, and frontiers were all supplied by the settlement. It is the clearest post-1945 instance of conjuring by treaty in the record.

The independence variable is where Cyprus is qualified. A treaty that prohibits union and partition, entrenches a constitution against amendment, and reserves to three outside states a right of unilateral action to restore the settlement places legally controlling powers in other hands. The Republic was admitted to the United Nations in September 1960 and has been treated as a state ever since, and the qualification is not a denial of statehood; it is a statement that the conjured state's independence was bounded by the instrument that created it. Operation and durability tell the rest: the constitution broke down in 1963, Turkey intervened in 1974 invoking Article IV, and a Turkish Cypriot administration in the north declared itself a state in 1983 and remains recognised only by Turkey. The Republic endures, has been a member of the European Union since 2004, and has not exercised authority over the north since 1974.

Cyprus therefore teaches two things at once. It shows that a treaty can conjure a state in the post-1945 order, with the participation of the states concerned and the acquiescence of the population's leaders. And it shows, as Eastern Rumelia showed in 1885, that a polity conjured against the settled wishes of its people carries a structural fragility no drafting can remove. A contemporary project on uninhabited territory avoids that fragility by construction, because the population that forms there chooses the polity before it arrives.

§IX.4 What the post-1945 cases establish

Libya, Somalia, and Cyprus answer the objection that the conjuring power belongs only to an older order of great-power settlement. Each was brought into being after the Charter, by instruments to which existing states were party or by which they were bound, and each was admitted to the United Nations.

Libya adds a doctrinal point of particular value to a contemporary project: an international instrument can constitute a state on territory whose populations had never formed one, provided the process draws its authority from the agreement of the states concerned and gives the inhabitants a real voice in the constitution that results.

SECTION X

Transformation and Restoration: Iceland, Singapore, the Maldives, Brunei, and Austria

The five principal cases in this section sit on the lower rungs of the ladder. In each, an international agreement raised an existing polity to full independence, or returned full capacity to a state that already existed, rather than bringing a new polity into being. They carry less weight than the conjured cases on the question the ladder asks, and more certainty on the questions of independence and operation, since all five produced states that exist today. They also answer the objection that treaty practice of this kind ended before 1945: four of the five fall after it. The section closes with two staged processes still under way, in Bougainville and New Caledonia, which show the procedures of the lower rungs operating in real time.

Transformation cases carry less argumentative weight than creation cases, and more evidentiary certainty. Both things are true at once.

§X.1 Iceland (1918)

Iceland had been under the Danish crown since the late Middle Ages and was governed as a dependency; a constitution of 1874 conferred limited legislative competence, and home rule followed in 1904, but foreign affairs and defence remained Danish. The Danish-Icelandic Act of Union, approved by 92.6 per cent of voters in an Icelandic referendum and passed by both parliaments, entered into force on 1 December 1918.⁷⁸ Its first article declared Denmark

and Iceland “free and sovereign states” united under a common king, and by Article 19 Denmark undertook to notify foreign states that it had recognised Iceland as an independent state and that Iceland declared itself permanently neutral. Under Article 7 Denmark conducted Iceland’s foreign affairs on its behalf, and Article 18 allowed either party, after the end of 1940, to request revision and, failing agreement within three years, to terminate the union by a qualified parliamentary vote confirmed by referendum.

Iceland sits on the transformed rung. An Icelandic polity with its own parliament and administration preceded the Act; independent statehood did not. The Act was agreed between the Danish state and the representatives of a territory that, at the moment of agreement, had no separate international capacity, and it took effect as an arrangement between two states on the date it made Iceland one. It is therefore an instance of the sequencing doctrine set out in §III.4.

Independence was substantial and carried one qualification: the shared monarch and the delegation of foreign representation to Denmark. The delegation was made under the Act’s own terms and was terminable. The manner of its ending needs to be stated with care. After Germany occupied Denmark in April 1940, the revision procedure in Article 18 could not operate as intended. The Althing resolved on 17 May 1941 that Iceland was entitled to terminate the union, relying on Denmark’s inability to perform its obligations. A referendum in May 1944, in which turnout and the majority for abolition both exceeded the thresholds Article 18 required, preceded the proclamation of the Republic on 17 June 1944. Iceland met the Act’s voting requirements but not its negotiation procedure, and relied in part on changed circumstances. Its independence under the Act was real; its exit from the Act was lawful on the better view, but not by the letter of Article 18 alone.

§X.2 Singapore (1965)

Singapore joined the Federation of Malaysia as a constituent state on 16 September 1963; Malaysia, not Singapore, held international personality. The Independence of Singapore Agreement was concluded between the Government of Malaysia and the Government of Singapore on 7 August 1965 and registered with the United Nations.⁷⁹ Article II provides:

“Singapore shall cease to be a State of Malaysia on the 9th day of August, 1965, (hereinafter referred to as ‘Singapore Day’) and shall become an independent

and sovereign state separate from and independent of Malaysia and recognised as such by the Government of Malaysia.”

Independence of Singapore Agreement 1965, art II

The annexed amending legislation provided that the Yang di-Pertuan Agong’s authority in respect of Singapore “shall be relinquished” and vest in the Government of Singapore, and the annexed proclamation stated the same.⁸⁰

Singapore sits on the transformed rung, and its instrument is the clearest in the record of the sequencing doctrine at work: signed by a constituent state that lacked international capacity, the agreement took effect as a treaty between two states on the day it made Singapore one. The political context was one of communal tension and a federal leadership that had concluded union was untenable. That pressure operated on Malaysia’s political judgement rather than through force directed at its representatives or at the state, and does not engage the coercion test. Independence and operation have been complete for six decades.

§X.3 The Maldives (1965)

The Maldivian Islands entered a protection agreement with Britain in 1887, under which the Sultan retained internal government while Britain assumed responsibility for defence and external affairs.⁸¹ The relationship was revised in 1953 and 1960 and ended by an agreement signed at Colombo on 26 July 1965 and registered with the United Nations:⁸²

“The United Kingdom Government confirm their recognition of the State of the Maldivian Islands as a composite sovereign and fully independent State possessing all rights to have direct relations politically and otherwise with all countries and international organisations.”

Agreement between the United Kingdom and the Maldivian Islands (Colombo, 26 July 1965), art 2 (548 UNTS 223)

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The Maldives raises a question the transformation cases cannot avoid. In the *Rights of Nationals of the United States of America in Morocco* case of 1952, the International Court of Justice held that “Morocco, even under the Protectorate, has retained its personality as a State in international law”.⁸⁴ Crawford likewise treats protected states as capable of retaining statehood under protection.⁸⁵ If

the Maldives, a protected state rather than British territory, remained a state throughout, then the 1965 agreement created nothing; it returned full capacity to a state that already existed. The verb in Article 2, “confirm”, points the same way.

The answer is that the ladder places the Maldives on the boundary between the transformed and restored rungs, and the placement depends on a question the record leaves open: whether Maldivian statehood survived seventy-eight years of protection in which Britain alone conducted its external relations. On the Morocco reasoning it did, and the agreement restored rather than transformed. On the contrary view, the Maldives’ external personality was held by Britain throughout, and the agreement supplied it for the first time. The case is not relied upon for more than it can bear. What it shows on either view is that an international agreement fixed the moment at which full external capacity passed to the Maldives, and that the resulting state has exercised that capacity continuously since, including through the change from sultanate to republic by referendum in 1968.

§X.4 Brunei (1979 and 1984) and Austria (1955)

Brunei became a British protected state under an agreement of 1888; British residents exercised advisory control over internal administration from 1906, and Britain retained defence and external affairs after the constitution of 1959 restored internal self-government.⁸⁶ The Treaty of Friendship and Co-operation concluded in January 1979 provided for full independence to take effect on 1 January 1984.⁸⁷ Brunei joined ASEAN in January 1984 and was admitted to the United Nations on 21 September 1984.⁸⁸

Brunei sits on the restored rung. The Sultanate is among the oldest continuous monarchies in Southeast Asia and was once a regional power; the protection relationship limited its external capacity without extinguishing its existence as a state. The 1979 treaty returned that capacity on a date fixed five years in advance. The case matters here because it shows the lower rungs of the ladder at work in the late twentieth century and because it illustrates, by contrast, how much more the conjuring instruments did.

The same reasoning places Morocco and Tunisia, whose protectorates ended by agreement with France in March 1956, on the restored rung; comparable reasoning places Liechtenstein’s elevation to full independence on joining

the Confederation of the Rhine in 1806, a treaty act transforming an existing imperial principality, on the transformed rung.

The State Treaty for the Re-establishment of an Independent and Democratic Austria, signed in Vienna on 15 May 1955 and in force from 27 July 1955, belongs on the restored rung, and its operative text says why.⁸⁹ The legal ground had been laid twelve years earlier. In the Moscow Declaration of 1 November 1943 the United Kingdom, the Soviet Union, and the United States stated that “[t]hey regard the annexation imposed upon Austria by Germany on March 15th, 1938, as null and void”.⁹⁰ If the Anschluss was void, the Austrian state had been suppressed in fact but not extinguished in law, and what remained after ten years of quadripartite occupation was to lift the restraint rather than to call a new entity into being. Article 1 of the Treaty does that:

“The Allied and Associated Powers recognize that Austria is re-established as a sovereign, independent and democratic State.”

State Treaty for the Re-establishment of an Independent and Democratic Austria, art 1

The two verbs carry the classification. The Powers “recognize” a condition; they do not confer one. Austria is “re-established”, not established. The drafters had a choice of words before them and chose the one that marks continuity, so that the distinction the ladder draws between the restored and the conjured rungs is here drawn by the contracting states themselves. Article 2 then turns from recognition to guarantee: “The Allied and Associated Powers declare that they will respect the independence and territorial integrity of Austria as established under the present Treaty.”⁹¹ Article 4 closes the route by which continuity had once been broken, declaring that “political or economic union between Austria and Germany is prohibited” and binding Austria not to “enter into political or economic union with Germany in any form whatsoever”.⁹²

The Treaty says nothing of neutrality. Permanent neutrality had been the price of Soviet agreement, yet it was placed outside the instrument and adopted instead by the Austrian Nationalrat in the Constitutional Federal Law on Neutrality of 26 October 1955. Under Article I(1) of that law “erklärt Österreich aus freien Stücken seine immerwährende Neutralität”, declaring its perpetual neutrality of its own free will, and Article I(2) excludes membership of military alliances and foreign bases on Austrian soil.⁹³ Because the undertaking rests on Austria’s own constitutional act, not on a treaty obligation owed to the four Powers, it could be presented and received as Austria’s own choice. The model template in Appendix C adopts the same design, recording the new state’s

neutrality as its unilateral undertaking rather than as a term of the constitutive instrument. Admission to the United Nations followed on 14 December 1955, on the recommendation of Security Council resolution 109 and by General Assembly resolution 995 (X).⁹⁴ Brunei in 1984 and Morocco and Tunisia in 1956 recovered full external capacity after protection; Austria recovered it after an annexation that the principal Allies had already declared void. In each case the instrument supplied continuity rather than conjuring a new state.

§X.5 Three contemporary cases outside the threshold: Montenegro, Timor-Leste, and South Sudan

Three post-2000 cases are often cited as evidence that the mechanism remains active, and each falls outside the threshold.

Montenegro's separation from Serbia in 2006 rested on the 2003 Constitutional Charter of the State Union of Serbia and Montenegro, a domestic constitutional instrument of a single state union with one international personality, which permitted either republic to hold an independence referendum after three years. Montenegro's referendum of 21 May 2006 cleared the fifty-five per cent threshold the European Union had set, with 55.5 per cent, and its parliament declared independence on 3 June 2006. Serbia accepted the result and declared itself the union's successor; no treaty constituted Montenegro. Because the parent state had authorised the procedure in advance, Montenegro is the cleanest separation in the record, and §XVII.6 develops the contrast with Kosovo.

Timor-Leste's path in 2002 ran through the agreement of 5 May 1999 between Indonesia and Portugal, which provided for a United Nations-organised consultation on special autonomy within Indonesia and did not itself transfer authority or constitute a state. Following the vote, Indonesia relinquished its claim by domestic act, and the United Nations Transitional Administration in East Timor, established by Security Council resolution 1272, administered the territory until an elected Constituent Assembly adopted a constitution and independence was restored on 20 May 2002. Timor-Leste is best classified as an internationally administered decolonisation that achieved what Trieste did not, rather than as a treaty-constituted state.

South Sudan's independence in 2011 followed the Comprehensive Peace Agreement of 9 January 2005 between the Government of Sudan and the Sudan People's Liberation Movement/Army, an armed movement without treaty-

making capacity. The referendum of January 2011 and the declaration of 9 July 2011 were followed by individual recognitions; no constitutive instrument between states appears in the sequence.

Two earlier decolonisations belong with these as cases outside the threshold. Botswana became independent in 1966 by the Botswana Independence Act, a statute of the United Kingdom Parliament, after a constitutional conference in London. Western Samoa became independent on 1 January 1962 under New Zealand legislation implementing the General Assembly's termination of the trusteeship, and its Treaty of Friendship with New Zealand followed seven months later. In both, the departing state's act was complete in its own law; neither is a defective instance of the grant, and neither is a treaty-constituted state.

§X.6 Staged paths in progress: Bougainville and New Caledonia

Two Pacific processes show the staged model at work and where it stalls. In each, the parent state wrote the procedure for a possible exit into its own constitutional law and has kept the final word.

The Bougainville Peace Agreement, signed at Arawa on 30 August 2001, ended a civil war and rests on three pillars: autonomy, a deferred referendum, and weapons disposal.⁹⁵ Autonomy came first. The referendum was to be held “no earlier than 10 years and, in any case, no later than 15 years after the election of the first autonomous Bougainville Government”, and its choices were to “include a separate independence for Bougainville”.⁹⁶ The Agreement then fixed the hinge of every later step:

“The outcome of the referendum will be subject to ratification (final decision making authority) of the National Parliament.”

Bougainville Peace Agreement (30 August 2001), Introduction and Outline; restated in para 311(a)

Papua New Guinea entrenched these terms in Part XIV of its Constitution, sections 338 to 343, which guarantee the vote and leave its machinery to an organic law.⁹⁷ Section 342 provides that “[t]he National Government and the Bougainville Government shall consult over the results of the Referendum”, after which the responsible Minister tables the results in the National Parliament. The vote took place between 23 November and 7 December 2019. Of 181,067 ballots, 176,928 (97.7 per cent) chose independence, on a turnout near 87 per cent.⁹⁸

The sequel has been slow. The Wabag road map of 2021 envisaged independence “no earlier than 2025 and no later than 2027”, and the Era Kone Covenant, signed in April 2022 and later endorsed by the Joint Supervisory Body, committed the Minister to bring the result to Parliament in 2023.⁹⁹ That year passed without tabling, and Bougainville’s Attorney-General declared the Covenant breached.¹⁰⁰ Talks under a moderator, Sir Jerry Mateparae, produced the Melanesian Agreement of 27 June 2025.¹⁰¹ Bougainville’s leaders named 1 September 2027 for independence.¹⁰² In June 2026 the National Parliament adopted a sessional order requiring three-quarters of all members to ratify, a bar above the two-thirds used for constitutional amendment, which Bougainville’s Vice-President described as a strategy “to poison the waters”.¹⁰³ Bougainville recast its timetable as self-government from 1 September 2027 and independence in 2030.¹⁰⁴ The result was tabled on 27 August 2026, close to seven years after the count. The Minister told the House that “an affirmative decision by the national Parliament would not result in the immediate independence of Bougainville”, and Parliament adjourned without a vote; the two governments are to meet in October.¹⁰⁵

The Nouméa Accord of 5 May 1998 provided for an irreversible transfer of powers over twenty years, followed by a vote on the transfer of the remaining reserved powers, an international status of full responsibility, and the conversion of citizenship into nationality. France entrenched the Accord in Title XIII of its Constitution:

“Après approbation de l’accord lors de la consultation prévue à l’article 76, la loi organique [...] détermine [...] les conditions et les délais dans lesquels les populations intéressées de la Nouvelle-Calédonie seront amenées à se prononcer sur l’accession à la pleine souveraineté.”

Constitution of 4 October 1958, art 77

The three consultations returned “no”: 56.67 per cent in 2018 on a turnout of 81.01 per cent, 53.26 per cent in 2020 on 85.69 per cent, and 96.50 per cent in 2021 on 43.87 per cent, after the independence parties boycotted the third vote.¹⁰⁶ Deadlock and the riots of 2024 led to the Bougival agreement of 12 July 2025, summarised by the French government as follows:

“« L’État de Nouvelle-Calédonie » sera inscrit dans la Constitution française [...] Une nationalité calédonienne, qui permettra aux Calédoniens de bénéficier d’une double nationalité, française et calédonienne.”

Gouvernement de la République française, 12 July 2025

In translation: “The ‘State of New Caledonia’ will be written into the French Constitution [...] A Caledonian nationality, which will allow Caledonians to hold dual nationality, French and Caledonian.”¹⁰⁷ The FLNKS rejected the text within a month of signature, and in December 2025 the Congress of New Caledonia backed an early consultation by nineteen votes to fourteen, with many abstaining.¹⁰⁸ A supplementary Élysée-Oudinot accord followed in January 2026 without the FLNKS. The Senate passed the constitutional bill on 24 February 2026 by 215 votes to 41, but on 2 April 2026 the National Assembly rejected it by 190 votes to 107, and Emmanuel Tjibaou, who moved the motion to reject it, declared: “Today, Bougival is dead.”¹⁰⁹ The provincial elections, postponed three times since 2024, took place on 28 June 2026 on the restricted roll.¹¹⁰

Three further arrangements complete the picture and show that staged paths run in more than one direction. Denmark’s Act on Greenland Self-Government of 2009, adopted after a referendum in Greenland in November 2008, provides in section 21 that a decision on independence is for the people of Greenland, that such a decision is to be followed by negotiations between the Danish Government and Naalakkersuisut, and that any resulting agreement requires the consent of Inatsisartut, endorsement by referendum in Greenland, and the consent of the Folketing.¹¹¹ The parent state has written the path into its own law and kept its own parliament’s consent as the last step. In Tokelau, two referendums on self-government in free association with New Zealand, held under United Nations supervision in February 2006 and October 2007, won 60.1 and 64.4 per cent of the vote but fell short of the two-thirds majority Tokelau had set, and the territory remains a dependency.¹¹² The Cook Islands, in free association with New Zealand since 1965, and Niue, since 1974, show an intermediate endpoint: full internal self-government and a growing international capacity without separate membership of the United Nations.¹¹³ A region that never reaches Stage Two is not thereby left with nothing.

Both cases show parent state permission operating in real time. Port Moresby and Paris each reserved the decisive act to its own legislature: the National Parliament’s ratification in one case, and in the other a constitutional revision that requires the assent of both French chambers and then a three-fifths majority of Parliament in Congress or a national referendum. In Bougainville a supermajority at the ballot box has not yet moved the parent state to act, and in

New Caledonia no majority for independence has emerged while the negotiated alternative has stalled in the French Parliament; both bear out the monograph's warning that Stage Two may never come. The contrast lies in the source of the claim. Bougainvilleans and Kanaks are long-settled peoples whose right of self-determination drives each process. The model advanced here concerns a planned project on uninhabited territory, where no such people exists and the parent state's consent must carry the whole of the legitimating burden.

§X.7 What the transformation and restoration cases establish

The five cases establish that treaty-mediated passage to full independence continued well into the post-1945 order, and they supply the clearest illustrations of the sequencing doctrine. Bougainville and New Caledonia show that the procedures remain in use and remain subject to the parent state's final word. Bougainville and New Caledonia show that the procedures remain in use and remain subject to the parent state's final word. They do not supply further instances of conjuring, and they are not presented as doing so. Their function in the argument is corroborative: the instrument that alters a polity's status is a recurring feature of state practice at every rung of the ladder, and the conjuring instruments examined in Sections IV to IX are its strongest form rather than an isolated curiosity.

Every case in Sections IV to X began with territory that some authority held and could dispose of. The next two sections ask what follows for a contemporary project: whether any land remains outside every state's title, in Section XI, and, since the answer is in practice no, how a state can make its own land available without giving it up, in Section XII.

SECTION XI

Territorial Availability, Bir Tawil, and the Limits of Terra Nullius

Section I stated that virtually all habitable land falls within the recognised title of an existing state, and that the residual exceptions are too few, too inhospitable, or too awkward in law to supply an alternative foundation for the mechanism this monograph examines. The claim requires an example rather than a generality, and the clearest one is a stretch of Nubian desert between Egypt and Sudan known as Bir Tawil.

A territory outside every state's title has no state to grant it. Terra nullius does not solve the problem; it removes the one thing the mechanism requires.

§XI.1 Bir Tawil

The anomaly originates in two British instruments delimiting Egypt and the Anglo-Egyptian Sudan. The Condominium Agreement of 1899 fixed the political boundary along the twenty-second parallel, which placed Bir Tawil in Sudan and the larger and more valuable Hala'ib Triangle in Egypt. An administrative line drawn in 1902 to reflect the grazing patterns of local peoples reversed the allocation.¹¹⁴ Each state now relies on the line that gives it Hala'ib, Egypt on the 1899 line and Sudan on the 1902 line, with the result that neither claims Bir Tawil, since to do so would concede the rival boundary.¹¹⁵ Some 2,060 square kilometres of desert, visited by Ababda and Bishari pastoralists, lie outside either state's asserted title.

The authority most in point on the acquisition of such territory is the award in the *Island of Palmas* case, in which Max Huber held that discovery alone confers at most an inchoate title, which cannot prevail over another state's continuous and peaceful display of authority.¹¹⁶

§XI.2 Why terra nullius cannot supply the mechanism

The difficulty is structural. The grant requires a state that holds title and consents to dispose of it. Bir Tawil offers no such state. Strictly, each state's preferred line assigns Bir Tawil to the other, so the territory is better described as a residual gap between two mutually exclusive claims than as terra nullius in the classical sense.¹¹⁷ The distinction sharpens the conclusion. A private project there would not be pursuing the grant at all; it would be attempting the different and, on the *Palmas* standard, more demanding route of occupation, which lies outside this monograph's scope by definition. Unclaimed territory removes the objection that no state would consent to part with land only by removing the consenting state altogether, and with it the instrument the mechanism requires. Whether occupation of Bir Tawil could in time produce a state by another route is a serious question, but it is not this monograph's question.

Both Egypt and Sudan also have every incentive to prevent any third party converting Bir Tawil's dormant status into an actual presence, since an occupied and recognised Bir Tawil would force the question which boundary is authoritative and reopen the dispute over Hala'ib that both prefer to leave alone. Beyond Bir Tawil, Marie Byrd Land, the one substantial Antarctic sector no state claims, presents a different obstacle: the Antarctic Treaty of 1959 does not extinguish existing claims but freezes the assertion of new ones.¹¹⁸

SECTION XII

The Lease and the Separation of Title from Authority

States routinely grant extensive, long-term jurisdiction over defined territory without giving up title. The practice is old, widespread, and well documented, and none of the arrangements examined in this section produced a new state. What follows shows why, what the practice nonetheless makes possible, and what kind of instrument Stage One would be.

A state may grant everything short of title and still have granted nothing the mechanism requires. The word withheld is the whole of the distinction.

The lease is not a workaround adopted for want of a bolder alternative. It is the mechanism of Stage One, chosen because it lets a Grantor State do more with land it is not using, extract value from it, and attract investment, without giving up anything it has not chosen to give up. A state that grants a lease has not diminished its authority; it has exercised it, as a state exercises rather than surrenders its authority when it concludes any agreement granting another party rights over a defined asset.

§XII.1 Guantánamo Bay

The United States' presence at Guantánamo Bay rests on an agreement with Cuba of 16 and 23 February 1903, confirmed by a lease of 2 July 1903 and continued indefinitely by the Treaty of Relations of 1934.¹¹⁹ Article III could not distinguish the exercise of authority from title more clearly:

“While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas...”

Agreement for the Lease of Coaling and Naval Stations (United States and Cuba), 16/23 February 1903, art III

The instrument's purpose was to preserve Cuban title while transferring its exercise, the opposite of Article 21's termination of Italian authority at Trieste. The United States exercises jurisdiction at Guantánamo more extensive and durable than many transformed polities ever held, and none of it converts the base into a state.

§XII.2 The Panama Canal Zone and Hong Kong's New Territories

The Hay-Bunau-Varilla Treaty of 1903 granted the United States, in the Canal Zone, the rights it “would possess and exercise if it were the sovereign”, a formula that approaches a transfer of title and stops short of it.¹²⁰ For decades

United States officials and courts treated the Zone as American in all but name, and Panama's objection to that practice became a central grievance in its relations with Washington. Panama's title nonetheless survived, and the Torrijos-Carter Treaties of 1977 restored full jurisdiction to Panama by 1999. The Second Convention of Peking of 1898 leased the New Territories to Britain for ninety-nine years, and the scheduled expiry of that lease in 1997 became the proximate cause of the return of all of Hong Kong to China, since the parts ceded in perpetuity were not considered separable from a leasehold due to lapse.¹²¹ Both arrangements illustrate how a jurisdictional grant, however extensive or long-lived, remains distinct from a transfer of title, and how that distinction continues to carry consequences generations after the instrument was signed.

§XII.3 The Chagos Archipelago: the 2019 Opinion and the 2025 treaty

In 1965, before Mauritius became independent, the Chagos Archipelago was detached from Mauritian territory and retained under British administration, in order to enable the construction of a United States military facility on Diego Garcia. In its Advisory Opinion of 25 February 2019, the International Court of Justice held that the detachment had not been based on the free and genuine expression of the will of the people concerned, since the Mauritian Council of Ministers' agreement had been given while Mauritius remained a colony, and that the decolonisation of Mauritius had not been lawfully completed.¹²² The United Kingdom was under an obligation to end its administration of the archipelago as rapidly as possible.¹²³

On 22 May 2025 the United Kingdom and Mauritius signed a treaty under which Mauritius is recognised as holding title to the whole archipelago, while the United Kingdom retains the right to operate the base on Diego Garcia for an initial period of ninety-nine years, extendable by agreement, in return for annual payments averaging about £101 million. Mauritius may resettle Chagossians on the other islands and will establish a marine protected area. The treaty completed the parliamentary scrutiny period in 2025, but its future is uncertain. The implementing Bill stalled at the final stage of consideration of amendments in April 2026, after the President of the United States publicly opposed the transfer, and the United Kingdom government then stated that the deal could not proceed without the support of the United States. At the

research cut-off the treaty had not been ratified, and Mauritius was reported to be exploring legal action over the delay.¹²⁴

The Opinion and the treaty bear on this monograph from two directions. The Opinion reinforces the self-determination limit stated in §III.5: a disposition of territory arranged between states without the free and genuine consent of the people living on it may be unlawful notwithstanding the states' agreement. State consent is necessary; where a population's self-determination is engaged, it is not sufficient. That is why the cleanest hypothetical in this monograph concerns uninhabited land.

The 2025 treaty supplies the most current illustration in the record of the separation of title from use that Stage Two's primary model relies on. Authority passes to one state; the use of part of the territory remains with another for a fixed long term; and the arrangement is paid for each year. The configuration matches Stage Two, in which authority would pass to the new state and ownership would remain with the Grantor State: in each, the state that gives up authority keeps a property-like interest, use in one case and ownership in the other. The legal technique is the same, and a permanent member of the Security Council negotiated, signed, and laid it before its parliament in 2025. Whether the treaty is ratified does not affect that point: what matters here is that two governments found the technique workable and set it down in an instrument, not that this instrument has taken effect.

§XII.4 Land patents, allodial title, and the Crown's practice of granting land for value

The distinction between title and the exercise of authority has an older domestic analogue that supplies historical texture for the kind of transaction a contemporary project would seek. English land law distinguished land held allodially, in the owner's own right and free of any superior claim, from land held by tenure of a superior lord and ultimately of the Crown. After 1066 English land came to be held of the Crown, and even the fee simple remained formally a tenure. The Crown's grant by letters patent was the instrument by which it conveyed interests in land, from modest freeholds to the proprietary charters of the American colonies.

The clearest example of such a grant made for value is the Charter of Pennsylvania. Charles II owed the estate of Admiral Sir William Penn about £16,000; the admiral's son, William Penn, took the debt in land, and the Charter of 4

March 1681 conveyed some 45,000 square miles and made Penn and his heirs “true and absolute Proprietaries”, with power to make laws with the consent of the freemen, appoint officers, and administer justice, subject to the Crown’s retained authority.¹²⁵ Two features are instructive. First, the grant discharged a debt: a monarch granting extensive rights over territory in exchange for value is an older and more mainstream practice than the entrepreneurial framing might suggest. Second, Penn did not treat the Crown’s grant as extinguishing the interests of the existing inhabitants; from 1682 he bought from Lenape leaders, by deed, land the charter had already purported to convey to him.¹²⁶ The tradition of a single great treaty at Shackamaxon rests more on later accounts than on documents, but the deeds are documented, and they show a proprietor satisfying both the Crown’s title and the inhabitants’ occupancy.

None of this resembles the grant examined in Sections IV to IX. Pennsylvania remained a colony; Penn held delegated governmental authority of the kind Section XIII examines for Sarawak and the chartered companies; and the Crown’s title was never extinguished. The example shows only that a monarch granting extensive rights, including governmental rights, over territory to a private grantee in exchange for value, short of giving up its own ultimate title, is an ordinary exercise of state capacity with deep roots. A project seeking a Stage One lease asks less of a Grantor State than the Crown granted a private subject in 1681.

The vocabulary of this subsection has been appropriated by a pseudo-legal theory, associated with the sovereign-citizen movement, which claims that a land patent traceable to an original government grant confers a tax-immune, regulation-free title enforceable against the state. That claim has no support in the law of any jurisdiction examined here and has been rejected by every court to consider it.¹²⁷ Nothing in this monograph relies on it.

§XII.5 What kind of instrument Stage One is

The leases examined in §XII.1 to §XII.3 are agreements between states. The lease that Stage One contemplates is not. A private project cannot be a party to a treaty, for the reasons given in §XVIII.2, and an agreement between a state and a private company is not registrable under Article 102 of the Charter, which applies to treaties and international agreements entered into by members of the United Nations, and a contract with a private party is neither.¹²⁸ Stage One is therefore a domestic-law instrument: a statute or ordinance of the Grantor

State establishing a special administrative region and authorising a lease, and a lease or concession contract executed under that statute.

Three consequences follow, and any project would face them from the outset. First, the analogy with Guantánamo and the Canal Zone is an analogy: those instruments show that states can separate title from the exercise of authority for long terms, and Michael Strauss's work shows why the technique is attractive, but the Stage One instrument borrows the technique rather than the international legal form. Second, a domestic instrument is exposed to the Grantor State's own later legislation. Its durability therefore depends on the protections such instruments have carried in practice: constitutional entrenchment where the Grantor State's law allows it; stabilisation clauses in the concession; and the protection of an investment treaty between the Grantor State and the state of the investor's nationality, with recourse to international arbitration. Third, the continuing rent discussed in §XIII.7 is not only a commercial term. It is the Grantor State's standing reason to keep the arrangement in place, and the history of Sark suggests it is the most reliable protection of all.

§XII.6 Special administrative regions: Hong Kong and Macau

The designation this model borrows has its modern source in two treaties concluded by the People's Republic of China in the 1980s. The Joint Declaration on the Question of Hong Kong, signed with the United Kingdom in Beijing on 19 December 1984, entered into force on 27 May 1985 and was registered with the United Nations Secretariat on 12 June 1985.¹²⁹ In its third paragraph China declared the basic policies it would apply from 1 July 1997:

"Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong."

"The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government."

Joint Declaration on the Question of Hong Kong, paras 3(1) and 3(2)

Paragraph 3(12) provided that the policies, with “the elaboration of them in annex I”, would be stipulated in a Basic Law, “and they will remain unchanged for 50 years”.¹³⁰ The constitutional provision the treaty invoked reads:

“The state may establish special administrative regions when necessary. The systems instituted in special administrative regions shall, in light of specific circumstances, be prescribed by laws enacted by the National People’s Congress.”

Constitution of the People’s Republic of China (1982, as amended 2018), art 31

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The Basic Law of 4 April 1990 gave the commitments domestic form, and its Article 12 fixes the Region’s place in the national order: it “shall be a local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government”.¹³²

The Sino-Portuguese Joint Declaration on Macau, signed on 13 April 1987 and in force from 15 January 1988, reproduced this structure: a Macau Special Administrative Region under Article 31, a high degree of autonomy save in external relations and defence, and policies unchanged for fifty years.¹³³ The transfer took place on 20 December 1999.

The Hong Kong arrangement has not held. On 30 June 2020 the Standing Committee of the National People’s Congress adopted a national security law for the Region, a measure that Article 23 of the Basic Law had assigned to Hong Kong’s own legislature. The United Kingdom Foreign Secretary described the enactment as “a clear and serious breach of the Joint Declaration”.¹³⁴ In November 2020 the disqualification of elected legislators under rules made in Beijing was declared the third breach since 1997.¹³⁵ After a decision of the National People’s Congress on 11 March 2021, the Standing Committee revised Annexes I and II of the Basic Law, cutting directly elected seats in the Legislative Council from 35 of 70 to 20 of 90.¹³⁶ On 13 March 2021 the Foreign Secretary reported “that the UK considers Beijing to be in a state of ongoing non-compliance with the Joint Declaration”.¹³⁷ The six-monthly reports to Parliament have repeated the finding; the report published on 26 March 2026 states that “the UK Government continues to assess that China is in a state of ongoing non-compliance with the Joint Declaration”.¹³⁸

Three lessons follow. The first explains the borrowing. The special administrative region is the most developed modern template for a territory with its own

executive, legislature, courts and final appellate jurisdiction inside a state, and it was created by a registered treaty executed through a constitutional provision and an organic statute. The model borrows the designation and its domestic machinery, a constitutional power and an organic statute, for its first stage, in which the Grantor State designates the land under its own law and leases it to the consortium; unlike Hong Kong's, the model's first stage rests on no treaty (§XII.5).

The second concerns duration. A registered treaty, a constitutional article, a Basic Law and a fifty-year guarantee did not secure the autonomy they described once the granting state chose to reshape it. Autonomy below statehood exists at the continuing will of the state that confers it. This supports both the claim that zones and regions do not endure as states do and the model's choice of statehood, conferred by treaty, as its end point.

The third concerns standing. The Joint Declaration binds the United Kingdom and China. Hong Kong was its object, not a party, and has no capacity to invoke it before any international forum; the United Kingdom's recourse has been declaratory. A treaty between two states about a region gives the region nothing it can enforce. A Startup State left as a region under the Grantor State's law would stand in the same position, which is why the model ends in a treaty to which the new state is a party in its own name.

§XII.7 What the lease establishes, and what it forecloses

States have on many occasions structured long-term territorial arrangements to grant extensive, even complete, practical jurisdiction while withholding title. Guantánamo, the Canal Zone, and the New Territories show the pattern across more than a century and three regions; the Chagos treaty shows a permanent member negotiating, signing, and laying the technique before its parliament in 2025, and its stalled ratification shows the domestic political exposure of arrangements of this kind. These cases foreclose a possibility this monograph never claimed: that a project could reach statehood by securing terms as generous as Guantánamo's and waiting. It cannot. The ultimate authority Article III of the 1903 Cuban agreement withholds is the entire distance Stage Two would have to travel, and no accumulation of jurisdictional concessions closes that distance on its own.

Two further points belong here. First, no case in the record involves an independent state whose entire territory is owned by another state under a

continuing lease. Every leasehold arrangement between states examined here involved a grantee that was already a state with territory of its own. A Startup State governing territory whose land remained in the Grantor State's ownership, as Stage Two's primary model proposes, would be a novel arrangement, and the novelty is stated rather than disguised. Second, the Montevideo Convention is silent on the question the novelty raises. Article 1 requires "a defined territory"; it does not say that the state must own the land within it rather than hold governmental authority over land owned by another, and no authoritative gloss identified in the research for this monograph says so. Practice has assumed ownership because ownership has been the only pattern; assumption is not requirement. The distinction the law already draws, between imperium, authority over territory, and dominium, ownership of land, is what makes the model coherent: embassies, military bases, and foreign-owned estates show every day that one state may own land another state governs.

SECTION XIII

Private Territorial Power and the Empty Intersection

Every case examined so far involved states, or a subject of international law standing in a state's place, as the party performing the constitutive act. This section turns to the opposite pole of the record: private individuals, families, associations, and chartered companies that exercised extraordinary, sometimes near-total, territorial and governmental authority. Every case that follows has been invoked at some point as a precedent for private state formation, and the obligation here is to test that claim rather than assume the answer.

The finding, stated in advance so that the reasoning can be checked against it, is that private actors have on many occasions exercised the substance of territorial authority, and that in one case, the Congo Free State, private initiative produced an entity that states recognised by international instrument. In no case did a state grant territory it held, by constitutive instrument, because a private actor proposed it. The empty intersection defined in §II.3 is empty on the evidence examined; the space around it is crowded.

History has produced politics conjured by treaty, and private actors who ruled territory as states rule it. It has not yet produced a state that granted its own land, by treaty, at a private actor's proposal.

§XIII.1 The Congo Free State: the nearest approach

The Congo Free State is the most important private-power case in the record and the one a critic of this monograph would raise first. It deserves the fullest treatment.

In 1876 Leopold II of Belgium convened the International African Association, a nominally humanitarian and scientific body, and from 1878 he acted through successor vehicles, the Committee for Studies of the Upper Congo and then the International Association of the Congo, which he controlled and financed from his own fortune. Between 1879 and 1884, Henry Morton Stanley and other agents concluded several hundred agreements with local rulers across the Congo basin purporting to transfer to the Association the rulers' authority over their lands. The Association then sought recognition from states. On 22 April 1884 the United States Secretary of State declared that the United States recognised the flag of the Association as that of a friendly government. Germany followed by convention on 8 November 1884, recognising the Association's flag as that of a friendly state, and over the next four months the United Kingdom, Italy, Austria-Hungary, the Netherlands, Spain, France, Russia, Sweden and Norway, Portugal, Denmark, and Belgium concluded conventions or declarations to similar effect, several of them also settling the Association's frontiers.¹³⁹ The Association adhered to the General Act of the Berlin Conference of 26 February 1885, a multilateral instrument on free trade, navigation, and the slave trade in the Congo basin, which did not itself constitute any state.¹⁴⁰ In April 1885 the Belgian parliament authorised Leopold to become head of the new state in personal union with Belgium, and on 1 August 1885 he notified the powers of the existence of the *État Indépendant du Congo*.

On a loose statement of this monograph's thesis, the Congo Free State would be a counterexample: a private actor, international instruments concluded with states, and a recognised state as the result. It is not a counterexample to the thesis as stated in §I.1 and §II.3, and the reasons are precise. First, none

of the states that concluded instruments with the Association held title to the Congo basin or granted any territory. They recognised an entity and a claim; they did not dispose of land under their own title. The territorial basis of the claim came from agreements with local rulers, whose legal effect was contested at the time and is doubtful now. Second, the instruments were recognitional in form and in substance: they acknowledged a flag, a government, and in some cases a frontier. Third, and most revealing, recognition came first and effective government afterwards. In 1884 the Association controlled a chain of stations along the river, not the territory it claimed, and the recognising states extended recognition to an entity whose effective authority lay for the most part in the future. The Congo Free State is therefore the clearest case in the record of premature recognition operating, in practice, with something close to constitutive effect.

The Congo Free State was one of the gravest crimes of the colonial era. Under Leopold's rule the population of the Congo basin was subjected to forced labour in the extraction of rubber and ivory, enforced by hostage-taking, mutilation, and killing, and the regime caused death and suffering on a scale that provoked an international reform campaign and, in 1908, annexation by Belgium as a colony.¹⁴¹¹⁴² Nothing in this monograph treats the Congo Free State as a model, a precedent to be followed, or an experiment to be revived in any form. It is examined because any account of private territorial power must confront its worst instance, and because the legal record it left bears on the thesis.

That record supports two observations, the first narrow and the second decisive. The narrow observation is legal. States in 1884 and 1885 concluded international instruments with an association organised and financed by a private person, treating it as capable of doing so because they were in the act of recognising it as a state; private origin did not prevent the Association from being treated as an international person, and recognition was the act by which states so treated it. The decisive observation is moral and practical. A state conceived without the consent of those who lived there, governed for the profit of its founder, and answerable to no one produced the worst outcome in this monograph's record. The standard of a clean conception proposed in §I.4 is, in large part, the Congo's lesson inverted: consent where the Congo had none, uninhabited land where the Congo had millions of people, and a state governed

for those who choose to live in it where the Congo was governed for one man's profit.

§XIII.2 Sarawak and the Brooke Raj

In 1841 the Sultan of Brunei granted the governorship of Sarawak to the English adventurer James Brooke in return for his help in suppressing a revolt, and Brooke was installed as Rajah.¹⁴³ Brooke and his successors, his nephew Charles and great-nephew Charles Vyner, governed Sarawak as a hereditary dominion for 105 years, with their own currency, postal service, and armed forces. The United States recognised Sarawak's independence in 1850 and Britain in 1864, and in 1888 Sarawak entered a protection agreement with Britain, itself an international instrument, though a protective rather than a constitutive one.¹⁴⁴ The third Rajah ceded Sarawak to the Crown in 1946, over the opposition of much of the population and of his own heir, and it joined Malaysia in 1963.

Sarawak falls outside the threshold at its origin. The grant of 1841 was the Sultan's act alone, closer to a feudal or proprietary grant than to a treaty. Brooke's authority derived from personal rule later regularised by recognition and protection, not from any constitutive instrument. Sarawak shows, over a long period and with real governmental substance, that a private individual can exercise the practical authority of a state, and that other states will recognise the result. It does not show a grant.

§XIII.3 The Cocos (Keeling) Islands and the Clunies-Ross family

The Scottish captain John Clunies-Ross settled the uninhabited Cocos Islands in 1827. The islands were annexed to the British Crown in 1857, and letters patent of Queen Victoria in 1886 granted them to his descendants in perpetuity; the head of the family was styled "king" in local usage.¹⁴⁵ Administration passed to Australia in 1955, and in 1978 the last "king", John Cecil Clunies-Ross, sold the family's remaining interests to the Australian government under considerable pressure. The Cocos Malay population voted to integrate with Australia in a referendum observed by the United Nations in 1984.¹⁴⁶ The family's authority existed throughout by grace of continuing British and then Australian title, and no Cocos polity was ever constituted.

§XIII.4 Rupert's Land and the Hudson's Bay Company

Charles II's charter of 2 May 1670 granted the Hudson's Bay Company "the sole Trade and Commerce" of the Hudson Bay drainage basin, more than three

million square kilometres, together with governmental, judicial, and military powers over the territory named Rupert's Land.¹⁴⁷ The Company administered it for two hundred years, until the Deed of Surrender of 1869, given effect by the Rupert's Land Act 1868 and an Imperial Order in Council, transferred it to Canada in 1870 for money and retained land. A royal charter is a unilateral act of the grantor's domestic prerogative, and the Company's powers, though described in terms approaching plenary authority, were exercised at all times under and subordinate to the Crown.

§XIII.5 The West African settlement societies: Liberia

The closest approach in the record to a private actor initiating a process that produced a durable, recognised state is not a treaty case at all, and is examined for that reason. It is approached with a critical eye: the colonisation schemes described below displaced the peoples whose land they occupied, rested in part on coercion of the very emigrants they claimed to serve, and produced a settler oligarchy that governed Liberia's indigenous majority for more than a century. This monograph does not champion them and does not propose their revival. In 1816 the American Colonization Society was founded to settle free Black Americans and formerly enslaved people in West Africa. Its members were divided about its purpose: some were abolitionists who saw emigration as a path to freedom the United States would not otherwise permit; others wanted free Black Americans removed from the country; and free Black leaders were divided about whether the project served their interests. Participation was framed as voluntary, but many emigrants were freed on condition of leaving, and any account that omits this coercive undertone is incomplete.¹⁴⁸

The Society acquired its first land at Cape Mesurado in 1821 through an agreement with local rulers concluded, by one contemporary account, only after a United States naval officer, Lieutenant Robert Stockton, pressed a ruler to sell land he had refused to part with.¹⁴⁹ The settlement, named Liberia, was governed as a private colony of the Society, without any charter from the United States government, for twenty-six years. State auxiliary societies founded satellite settlements: Kentucky in Africa in 1828, absorbed by about 1847; Mississippi in Africa in 1837, absorbed in 1842; and Maryland in Africa at Cape Palmas in 1834, which declared itself the Republic of Maryland in 1854, adopted its own constitution, and after attacks by Grebo and Kru communities voted to join Liberia in 1857.¹⁵⁰¹⁵¹ The settlements displaced and subordinated

the Grebo, Kru, Vai, and other peoples whose land they occupied, and Liberia's Americo-Liberian minority governed the indigenous majority as a subordinate population for more than a century afterwards. Displacement of an existing population is not an incidental cost a clean conception can absorb; avoiding it, not regretting it afterwards, is the only version of this pathway worth pursuing.

Liberia declared independence on 26 July 1847, when the Society, in financial difficulty, encouraged the colony to govern itself.¹⁵² No state had ever held title over the settlement, and there was no grant. Britain recognised the republic in 1848, France in 1852, and other European states soon after; the United States withheld recognition until 1862, fifteen years later.¹⁵³ The delay had nothing to do with any defect in Liberia's claim. Successive administrations, dependent on the votes of slaveholding states, would not receive a Black envoy in Washington, and recognition came only after the Southern states had left the Union. The gap between Liberia's satisfaction of the ordinary criteria for statehood and its slowest recogniser's reason for withholding recognition is the clearest historical illustration in the record of the third finding: recognition is a political choice, not a certification of legal merit.

The Sierra Leone Company, chartered by British abolitionists in 1791, governed a settlement at Freetown for Black Loyalists and, from 1800, Jamaican Maroons until Parliament transferred it to the Crown in 1808.¹⁵⁴ Libreville, founded in 1849 for Africans freed from an intercepted slave ship, was established by the French navy rather than by a private society, and the contrast shows why Liberia and Freetown matter here: it is their private origin, not their humanitarian purpose, that makes them relevant.¹⁵⁵

§XIII.6 The East India Company

The English East India Company, chartered in 1600, became over two and a half centuries the *de facto* government of most of the Indian subcontinent, a transformation formalised by the Mughal Emperor's grant of the *diwani* of Bengal, Bihar, and Orissa in 1765.¹⁵⁶ The Company maintained its own army, concluded treaties with Indian rulers, and governed under successive Acts of Parliament that subordinated its commerce to state oversight, until the Government of India Act 1858 transferred its governmental powers and territories to the Crown. Saint Helena, held by the Company from the 1650s, passed to the Crown under an Act of 1833 with effect from April 1834, although Crown garrison and administration arrived only in 1836.¹⁵⁷ The Company presents the

most sophisticated version of the entrepreneurial-precedent argument, because it concluded treaties, maintained diplomatic relations, and exercised the practical totality of government over a subcontinent. It still falls outside the grant: its authority derived from the Crown's charter and from grants by Indian rulers to a commercial delegate, its treaties were exercises of delegated authority, and its end came by statute.

§XIII.7 Sark: a grant for rent that lasted four centuries

If the record contains a case of a monarch granting governmental authority over territory to a private individual on terms closer to a lease than to Pennsylvania's proprietary charter, and retaining that private government for centuries, it is Sark. By letters patent of 6 August 1565, Elizabeth I granted the island as a fief to Helier de Carteret, a Jersey seigneur, for an annual rent of one-twentieth of a knight's fee and an obligation to keep forty men armed for its defence.¹⁵⁸ The grant conveyed governmental as well as proprietary authority: the Seigneur held his own court, appointed officers, and governed with limited oversight from Guernsey, a state of affairs that persisted through several changes of family for 443 years.

Sark falls outside the threshold for the same reason as Rupert's Land: the grant was an act of the Crown's prerogative, not an agreement between international persons, and the Seigneur's authority was exercised under the Crown throughout. Sark is part of the Bailiwick of Guernsey, a Crown Dependency. It is not part of the United Kingdom. It has never been, and has never sought to be, an independent state.

What Sark does establish is that a leasehold-style grant of governmental authority to a private grantee, in exchange for a continuing rent rather than a single payment, can remain stable and hold local legitimacy for centuries. Its feudal constitution was not dismantled by the Crown. It was reformed from within by the Reform (Sark) Law 2008, which replaced the hereditary membership of Chief Pleas with an elected assembly after sustained pressure under the European Convention on Human Rights.¹⁵⁹ The Barclay brothers' challenge to that reform failed in the Supreme Court in 2009, which held the reformed arrangements within the margin of appreciation.¹⁶⁰ The rent to the Crown continues. Every other private-power case in this section involved purchase, charter without continuing rent, or absorption into a state's direct administration; Sark alone shows that a continuing rent can make an arrange-

ment durable because it asks the granting Crown to give up so little. Sark does not show that such an arrangement can mature into statehood. It shows that it can last.

§XIII.8 Two anomalies: Cospaia and Hatay

In 1440 Pope Eugene IV, settling a debt to the Medici bank, ceded territory near Sansepolcro to Florence, with the new boundary fixed by reference to a stream called the Rio. Two streams of that name lay some five hundred metres apart, and each side measured from the nearer one, leaving a strip of about three square kilometres, Cospaia, assigned to neither.¹⁶¹ Its inhabitants declared themselves subject to no one, and Cospaia governed itself without formal law or army for nearly four centuries, prospering on untaxed tobacco, until the Papal States and Tuscany partitioned it by an act of submission on 26 June 1826, compensating each inhabitant with a silver coin.¹⁶² No instrument created Cospaia; it arose from an omission in an instrument concerned with something else. It illustrates the difference between an instrument that constitutes an entity and one that fails to dispose of it, and it shows that self-government can endure without any treaty when a territory is left alone. It supplies no evidence on the question this monograph asks.

The Republic of Hatay wears the outward form of the mechanism while failing its substance. The Sanjak of Alexandretta, under the French Mandate for Syria, received an autonomous statute in 1937 after a settlement brokered at the League of Nations, confirmed by a Franco-Turkish treaty the following year.¹⁶³ The Republic of Hatay was proclaimed on 2 September 1938 by an assembly elected after Turkey had arranged for tens of thousands of Turks from outside the territory to register and vote; its president and prime minister were already members of the Turkish parliament. On 29 June 1939 the assembly voted to join Turkey, and annexation followed on 23 July 1939.¹⁶⁴ Syria has never accepted the transfer. France's disposal of mandated territory was itself inconsistent with its obligations as mandatory. Hatay's instruments might clear the threshold, but its creation fails the coercion and external-domination tests on facts starker than any other case in the record. It is what a treaty-constitutive process looks like when every safeguard is needed at once.

§XIII.9 Self-declared entities: Sealand, Rose Island, Minerva, and Liberland

Four modern self-declarations are often raised against this section's finding, and each falls outside the threshold for the same reason: none rests on an instrument concluded with, or on the consent of, the state whose land or waters it occupied.

Sealand was proclaimed in 1967 on HM Fort Roughs, a decommissioned wartime anti-aircraft platform about seven nautical miles off the Suffolk coast, then beyond the three-mile territorial sea. In 1968, after Michael Bates fired warning shots at workmen servicing a navigational buoy near the platform, the court at the Essex Assizes in Chelmsford held that it lacked jurisdiction because the platform lay outside British territorial waters.¹⁶⁵ That ruling establishes only that a criminal court declined jurisdiction over events outside the territorial sea then in force; it does not hold, and could not hold, that Sealand is a state. The United Kingdom extended its territorial sea to twelve nautical miles in 1987, bringing the platform within British waters.¹⁶⁶

The Republic of Rose Island was proclaimed on 1 May 1968 on a platform built by the engineer Giorgio Rosa about eleven kilometres off Rimini, beyond Italian territorial waters. Italian forces occupied it within two months, and the Italian navy blew it up in February 1969, a storm completing its destruction later that month.¹⁶⁷ The Republic of Minerva was declared on 19 January 1972 by a group led by the property developer Michael Oliver on reefs south of Fiji that had been raised above the waterline with dredged sand. Tonga asserted its title by royal proclamation in June 1972, the South Pacific Forum supported Tonga's claim, and Tongan forces removed a second attempt in 1982.¹⁶⁸ Liberland was proclaimed in 2015 on about seven square kilometres of land on the western bank of the Danube between Croatia and Serbia, a residual gap in their boundary dispute; Croatian authorities have prevented settlement, and no state has recognised it. Sealand and Liberland, like Rose Island and Minerva, proceeded without the consent of the nearest state and without any instrument, and neither has obtained recognition from any state.

Rose Island and Minerva deserve particular attention from the reader this monograph addresses, because both were serious, well-financed private projects driven by the same aspiration: a new jurisdiction founded by private initiative. Both built physical territory where none had been, and both were ended within months by the nearest state, which asserted its authority over the site and met no objection from any other state. Neither project sought the consent of the state

whose claim it was most likely to provoke. Their failure illustrates, as well as any case in the record, what a private project must supply and has never supplied: not occupation, not proclamation, not a flag or a currency, but the consent of an existing state expressed in an instrument.

§XIII.10 Further private hands: Singapore, North Borneo, Panama, and Katanga

Four further episodes complete the picture, and each fails the grant for a reason the record has already met. In 1819 Stamford Raffles, acting for the East India Company, concluded agreements with the Sultan and the Temenggong of Johor that allowed the Company to found a settlement at Singapore, and a treaty of 2 August 1824 ceded the island to the Company outright.¹⁶⁹ The North Borneo venture followed the same path at private initiative: Alfred Dent and Baron von Overbeck obtained cessions from the Sultans of Brunei and Sulu in 1877 and 1878, the British North Borneo Company received a royal charter on 1 November 1881, the territory became a British protectorate in 1888 and a Crown colony in 1946, and it joined Malaysia as Sabah in 1963.¹⁷⁰ Both were acquisitions by a company from local rulers, regularised by the company's home state. Neither produced a state, and neither involved a state granting territory it held.

Panama is the nearest modern case of private influence over the birth of a state, and it shows the opposite of parent state permission. Philippe Bunau-Varilla, a French engineer of the earlier canal venture with a financial interest in the New Panama Canal Company, helped to organise the separation of Panama from Colombia. Panama declared independence on 3 November 1903; the United States recognised it on 6 November and accepted Bunau-Varilla's credentials as Panama's minister on 13 November; and five days later he signed the Hay-Bunau-Varilla Treaty granting the United States the Canal Zone.¹⁷¹ The company's assets were sold to the United States. Colombia, the parent state, consented to none of it, and accepted Panama's independence only in the 1920s, after the United States agreed under the Thomson-Urrutia Treaty to pay it \$25 million. Panama became a lasting state, but by separation under a great power's protection, the path this monograph's model defines itself against.

Katanga shows the same combination failing. Its provincial government declared independence from the Congo on 11 July 1960, eleven days after Congolese independence, with the support of the mining company Union Minière

du Haut Katanga and of Belgian officers. No state recognised it. The Security Council, in resolution 169 of 24 November 1961, declared all secessionist activities against the Republic of the Congo contrary to its fundamental law and to the Council's decisions, demanded that those in Katanga cease forthwith, and authorised the use of force where necessary to remove foreign mercenaries; United Nations forces ended the secession in January 1963.¹⁷² A private company's backing, however substantial, supplied nothing the parent state's refusal and the international community's opposition could not remove.

§XIII.11 What this section establishes

Private and corporate actors have, across four centuries, exercised territorial and governmental authority approaching or matching the practical substance of statehood: Brooke's Sarawak for over a century, the Hudson's Bay Company for two, the East India Company over a subcontinent, the seigneurs of Sark for more than four. One private initiative, the International Association of the Congo, produced a state that other states recognised by international instrument. In none of these cases, nor in Singapore, North Borneo, Panama, Katanga, Cospaia, Hatay, or the modern self-declarations, did a state grant territory it held, by constitutive instrument, at a private actor's proposal. Every instance of substantial private territorial power rests on a charter, a proprietary grant, occupation, or recognition; every instance of the grant rests on the act of states. The intersection of the two bodies of practice remains, on the evidence examined, empty. That absence establishes that the combination is untested, not that it is prohibited, and not that it is permitted. None of these enterprises is offered as a model. The chartered companies governed conquered or colonised peoples for profit, and several of the regimes examined here did grave and lasting harm. The model this monograph proposes is defined against that history: it begins where each of these cases failed, with the consent of an existing state and on land where no people's home is taken.

SECTION XIV

Recognition, Union, and Adjacent Mechanisms

From Section II onward, this monograph has drawn a line between instruments that constitute a polity and instruments that recognise, confirm, or reorganise a status established by other means. This section shows that line working across a larger body of cases, explains why unions fall outside the grant, and states which theory of recognition the monograph adopts. Most of the cases below sit on the recognised rung, and those that do not are placed with reasons; each is named so that its classification cannot be mistaken for an oversight.

§XIV.1 Recognition of states established by other means

The United States, whose independence was declared, fought for, and in substance consolidated before the Treaty of Paris of 1783, is the monograph's recurring example of the recognition category.¹⁷³ Belgium's independence, proclaimed in 1830 after revolution against Dutch rule, was confirmed by the Treaty of London of 1839, to which Belgium became a party.¹⁷⁴ Serbia, Montenegro, and Romania, each exercising substantial autonomous or de facto independent government, were recognised as independent by the Treaty of Berlin in 1878.¹⁷⁵ Czechoslovakia and the Kingdom of Serbs, Croats and Slovenes emerged in 1918 through domestic proclamation and the consolidation of national councils before the peace treaties regularised the new order.¹⁷⁶ Estonia, Latvia, and Lithuania declared independence in 1918 and secured recognition through peace treaties with Soviet Russia in 1920.¹⁷⁷ The states that emerged from the dissolution of the Soviet Union in 1991 had asserted their independence or declared "state sovereignty" before Russia, Belarus, and Ukraine founded the Commonwealth of Independent States at Belovezha on 8 December 1991 and eight further republics joined it by the Alma-Ata Protocol of 21 December

1991. In each case the decisive event had occurred before the instrument, which acknowledged it.

The Irish Free State sits on a boundary. The Anglo-Irish Treaty of 6 December 1921 provided for a new dominion, and in that sense did more than recognise; but Dáil Éireann and the republican government it had maintained since 1919 preceded the Treaty and informed the settlement's legitimacy, and dominion status was, in 1922, something less than full independence. The case is placed between the codified and recognised rungs, with its independence qualified.

§XIV.2 Why recognition, though not constitutive, matters

The United States' own recognition history shows why a case outside the constitutive category is not one in which instruments did not matter. The Sultan of Morocco opened his ports to American shipping by decree on 20 December 1777, an act treated by most historians as the first recognition of the new state.¹⁷⁸ France concluded treaties of amity and commerce and of alliance on 6 February 1778, while the war was still in doubt, converting the American cause from a domestic rebellion into an internationally cognisable belligerency.¹⁷⁹ Britain's recognition followed in 1783. A state that exists without recognition exists in fact; whether it can trade, borrow, negotiate, and defend itself on equal terms is a more exposed proposition. Haiti secured its independence by 1804; France withheld recognition until 1825 and extracted an indemnity for it, and the United States withheld recognition until 1862.

Somaliland supplies the clearest contemporary illustration. It has governed itself within the boundaries of the former British Somaliland Protectorate since 1991, with functioning institutions and elections observers have described as credible.¹⁸⁰ Until December 2025 no member of the United Nations recognised it, and the African Union's commitment to the principle that colonial boundaries become international frontiers at independence explains why: recognising Somaliland's separation from Somalia would invite comparable claims across the continent.¹⁸¹ On 26 December 2025 Israel became the first member of the United Nations to recognise Somaliland. The Security Council met in emergency session on 29 December 2025, and many states criticised the decision; at the research cut-off no other member state was reported to have followed.¹⁸² A single recognition does not convert an unrecognised entity into a generally recognised one.

The lesson is not that effective government is worthless in law. It is that effective government and recognition are separate variables, as constitution, operation, and durability are separate variables, and that an entity strong on the first can remain exposed on the second. Somaliland is what an entity looks like when it has done everything the Montevideo criteria ask and still lacks the one thing a constitutive instrument supplies as a matter of course: another state's prior agreement that the result is settled. A constitutive instrument is not the only route to statehood, but it converts a claim into a settled fact between the parties to it in a way that unilateral assertion, however sustained, does not.

§XIV.3 Unions and federations

The Treaty of Union of 1707 created the Kingdom of Great Britain, a state that had not previously existed, by agreement between the Kingdoms of England and Scotland. The Articles of Union of 1964 created the United Republic of Tanganyika and Zanzibar, soon renamed Tanzania, by agreement between two recently independent states. On the language of novelty and constitutive nexus alone, both would stand high on the ladder, and a critic may ask why they do not.

The answer lies in the definition of the grant in §II.2. A union is formed from the parties themselves: each contributes its own territory, population, and personality to a composite state, and the constituents' consent is the consent of the peoples being merged. A grant is formed by one party disposing of territory under its own title to create an entity distinct from itself. The two are different operations, and only the second is available to a private initiative, which has no territory of its own to contribute. Unions are therefore excluded by definition, not because the instruments lacked constitutive force. The United Arab Emirates, formed in December 1971 when the British treaty relationships with the Trucial States ended and six of the emirates, joined by Ras al-Khaimah in 1972, federated under a provisional constitution, is a union of this kind, and its constituent emirates, as British-protected states, would sit on the restored rung in their own right.

§XIV.4 Taiwan and the mechanics of admission

Taiwan is the case many readers reach for when assessing how hard non-recognition can bite, and it needs precise treatment. The government of the Republic of China relocated to Taiwan in 1949 after losing the civil war, and both it and the People's Republic claimed for decades to be the sole legitimate

government of the whole of China. General Assembly resolution 2758 of 25 October 1971 recognised the representatives of the People's Republic as the only lawful representatives of China at the United Nations.¹⁸³ The resolution does not mention Taiwan and does not purport to determine its status, and the People's Republic, Taiwan, and states including the United States and the members of the European Union continue to dispute what, beyond representation, it settled.¹⁸⁴

Taiwan's position is a function of being one side in an unresolved contest over which government represents a single state. Crawford concludes that Taiwan is not a state in international law because its government has not claimed to be the government of a state separate from China.¹⁸⁵ It is therefore not used here to illustrate a state whose satisfaction of the ordinary criteria is undisputed. It is used for a narrower point: a state formed by grant from uninhabited territory would have no rival government contesting its territory, no civil war behind it, and no predecessor whose seat it could be accused of usurping. Taiwan's difficulty is not evidence of what such a state must expect.

The mechanism by which recognition disputes become institutional exclusion applies, however, to every new state. Article 4 of the Charter conditions admission to the United Nations on a decision of the General Assembly upon the recommendation of the Security Council, and Article 27 subjects that recommendation to the veto of each permanent member.¹⁸⁶ A single permanent member can block admission indefinitely, for reasons unrelated to the applicant's own claim, and recognition by individual states often depends on the domestic politics of governments far from the new state itself.

The fault lines along which a veto could fall are visible today, and a new state would have to navigate them from its first day. The clearest precedent concerns Taiwan. In 1996 the People's Republic of China, objecting to Haiti's relations with Taipei, threatened to veto extensions of the United Nations mission in Haiti; the Security Council authorised a smaller force than the Secretary-General had recommended and short renewals, and Canada paid for 700 additional troops at its own expense. In January 1997 China vetoed a military observer mission for Guatemala, another state that recognised Taipei, and relented ten days later; in February 1999 it vetoed the extension of the preventive deployment force in Macedonia, weeks after that state established relations with Taipei.¹⁸⁷ The lesson for a new state is not that Beijing is hostile to new states. It is that a new state needs working relations with Beijing, and

that recognising the Republic of China would put its admission, and perhaps the goodwill of its constituting state, at risk. Other questions are less acute. Recognising Israel, which China and Russia both recognise, would not on any precedent attract a veto. A new state that declined to treat Crimea or the occupied parts of Donbas as Russian could meet resistance from Moscow, though an abstention is at least as likely as a veto, and much would be settled in negotiation away from the Council chamber. A new state that recognised the State of Palestine could in principle meet resistance from Washington, the one permanent member that had not recognised Palestine when the United Kingdom and France did so in September 2025, although the United States, which vetoed a recommendation for Palestine's own admission in April 2024, has never used its veto against another applicant on that ground. A new state that recognised Kosovo could expect opposition from Russia and China.

These are the contours of a landscape, not predictions. A new state could find different permanent members pressing opposite positions on disputes to which it is a stranger, and it would have no principled way to satisfy them all. Declining to take sides in live disputes is therefore close to a structural necessity for a state formed by grant, which is why both hypotheticals in Section XX adopt permanent neutrality, as Cracow and Vatican City did in their constituting instruments and Luxembourg did from the Treaty of London of 1867. The small states admitted since 1990 show that the path is open to entities of any size that avoid those disputes: Liechtenstein in 1990, San Marino in 1992, Andorra and Monaco in 1993, Kiribati, Nauru, and Tonga in 1999, Tuvalu in 2000, and Switzerland in 2002. The Holy See, by contrast, has chosen to remain outside membership: it has held observer status since 1964, and General Assembly resolution 58/314 of 1 July 2004 confirmed its participatory rights as a non-member observer state. Its position shows that admission is a choice as well as a hurdle.¹⁸⁸

§XIV.5 The declaratory and constitutive theories, and which this monograph adopts

The monograph's third finding treats recognition as a separate and discretionary act. That treatment presupposes an answer to a long debate, which is stated here because a reader who holds the opposite view would read the whole thesis in a different light. The constitutive theory, most closely associated with Hersch Lauterpacht, holds that an entity becomes a state in the full legal sense only

when other states recognise it.¹⁸⁹ The declaratory theory holds that an entity is a state if it meets the applicable criteria, and that recognition acknowledges a status already achieved. Article 3 of the Montevideo Convention states the declaratory position: “The political existence of the state is independent of recognition by the other states.”¹⁹⁰

This monograph adopts a qualified declaratory position, for three reasons. First, the constitutive theory struggles with partial recognition: an entity recognised by some states and not others would be a state and not a state at once, depending on the observer. Second, it has no principled answer to how many recognitions suffice, and every threshold proposed in the literature is stipulated rather than derived. Third, it would make the whole inquiry into constitutive instruments pointless, since nothing an instrument achieved would matter until the political question of recognition was answered.

The qualification is Crawford’s: recognition does not create a state, but its presence or absence shapes whether a state can exercise the practical incidents of statehood. A Startup State constituted by a valid instrument and meeting the Montevideo criteria would be a state in law, and would remain as exposed as Somaliland to the discretionary politics of recognition. The declaratory theory tells a project that it does not need other states’ recognition to exist. It does not tell it how to secure the practical benefits of existing, which is a separate and harder problem, and the recognition of the constituting state itself is the first and most valuable of those benefits.

§XIV.6 The recognition category’s weight

The recognition category is not a narrow exception invented to protect the thesis. It is the ordinary way in which most of the world’s states came into being: by revolution, declaration, or negotiated transformation, confirmed afterwards by instrument. Set beside it, the conjuring instruments of Sections IV to IX are rare, and the monograph has never claimed otherwise. What the recognition category does not do is diminish those instruments. It shows how demanding the top rung of the ladder is, and how much it means that the rung is occupied at all.

SECTION XV

Durability Before and After 1945

Several sections deferred a question this one takes up: how do polities made by international instrument end, and has the post-1945 order made them more durable? The question could not be answered until all the cases were on the table. The answer is more instructive than either an advocate or a critic of the thesis might expect.

Conjured polities have ended in two ways: at the hands of the powers that made them, or by the choice of their own people. A contemporary project can plan against the first and must earn its protection from the second.

§XV.1 How polities made by instrument have ended

The pre-1945 record divides into two patterns.

In the first, the polity was ended by the powers that had made or guaranteed it, acting without international consequence, or fell with the order that had created it. Russia ceded the Septinsular Republic to France at Tilsit in 1807. The Duchy of Warsaw and the Napoleonic Free City of Danzig fell with the Napoleonic order and were redistributed at Vienna. Austria annexed Cracow in 1846 with the agreement of Russia and Prussia, the other two protecting powers, while Britain and France, as parties to the Final Act, protested and did nothing. Prussia annexed Frankfurt in 1866. Italy and the Kingdom of Serbs, Croats and Slovenes, the two states that had constituted Fiume at Rapallo, agreed by the Treaty of Rome of 1924 to end it, after a coup had already hollowed out its

government. Germany annexed the Free City of Danzig in 1939. The common feature is that the constituting or guaranteeing states themselves ended what they had made, in a legal order that lacked a general, institutionally backed prohibition on forcible or collusive territorial change. The Kellogg-Briand Pact of 1928 renounced war as an instrument of national policy but created no machinery of enforcement.¹⁹¹

In the second pattern, the polity was ended by its own population's choice to join a larger nation. Eastern Rumelia united with Bulgaria by a coup in Plovdiv in 1885 that the Porte accepted the following year. The Ionian Islands were ceded to Greece in 1864 at the islanders' long-expressed wish. Crete proclaimed union with Greece in 1908, achieved in 1913, and Samos did the same in 1912 and 1913. These endings were not failures of the instrument's legal effect. They were the natural result of conjuring or codifying polities for communities whose loyalty lay elsewhere, and they carry a lesson Section XVI develops: a polity whose people did not choose it will not hold them.

Some polities survived. Vatican City endures. Luxembourg, created as a grand duchy in 1815 and neutralised in 1867, endures as a founding member of the European Communities. Greece and Albania, codified by the powers, became durable states. And the post-1945 cases have endured as states: Libya, admitted to the United Nations in 1955, and Cyprus, admitted in 1960, although the constitutional order of Cyprus broke down in 1963 and the Republic has not governed the north since 1974.

§XV.2 The post-1945 record

If Trieste, which never operated, were the only post-1945 case, the post-1945 sample of operating polities conjured by instrument would be empty. The full record does not support that conclusion. Libya and Cyprus were each conjured after the Charter, and each has existed as a state for more than six decades. Somalia was codified under the same procedure as Libya. The mechanism has therefore been tested against the post-1945 order and has produced durable states.

The tests do not all point one way. Trieste never operated because the permanent members could not agree to install its institutions. Cyprus shows the fragility of a polity conjured against the wishes of its communities, and Libya's later history shows that a conjured state is as exposed to internal collapse as any other. What none of the post-1945 states shows is the pattern that ended

Cracow, Frankfurt, and Danzig: extinction of an operating polity by the states that made it. Two arrangements of the period short of statehood were undone in that way. Trieste, which never operated, was divided between Italian and Yugoslav administration by the London Memorandum of 1954, concluded among states that had made the 1947 treaty, and Eritrea's federation with Ethiopia under General Assembly resolution 390 A was ended by Ethiopia's annexation in 1962. Both confirm the distinction §XV.4 draws: the post-1945 order protects states far more than it protects arrangements below statehood. The Treaty of Guarantee's intervention clause was invoked in 1974 to justify the use of force in Cyprus, and the division that followed is the nearest post-1945 analogue, but the Republic survived as a state, and the Turkish Cypriot administration in the north remains recognised only by Turkey.

§XV.3 What the post-1945 order changed

The specific vulnerability that destroyed Cracow, Frankfurt, Fiume, and Danzig, unilateral or collusive territorial action by a constituting or guaranteeing state, now meets a different legal environment. Article 2(4) of the Charter prohibits the threat or use of force against the territorial integrity or political independence of any state, a prohibition more categorical than anything available in 1846 or 1939, backed by institutions that did not exist in either period.¹⁹² The protection does not depend on membership of the United Nations: the International Court of Justice held in the *Nicaragua* case that the prohibition binds as customary international law independently of the Charter, so that a state not yet admitted is no less protected.¹⁹³ The post-1945 non-recognition of territorial acquisitions made by force reinforces the point.

The change has limits. Article 2(4) restrains what other states may do to a polity's territory; it says nothing about a polity's own government losing the domestic support that sustained it, as Fiume's government lost it in 1922, or about a Grantor State declining to renew arrangements that depended on its continuing goodwill. Nor has Article 2(4) prevented every forcible territorial change since 1945; it has made such changes unlawful rather than unremarked.

§XV.4 States endure; zones do not

The post-1945 order has a feature of great practical importance for anyone deciding whether to build a new country or a new zone within an existing one. States, once established, seldom disappear against their will. Tanisha Fazal's study of "state death" shows that violent extinction of states by conquest or

annexation, common for centuries, became rare after 1945, and Mark Zacher has traced the consolidation over the same period of a norm against the forcible alteration of international boundaries.¹⁹⁴ The clearest test came in August 1990, when Iraq invaded Kuwait and purported to annex it. The Security Council decided within a week “that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void”, and in November 1990 authorised member states to use all necessary means to reverse the invasion, which they did.¹⁹⁵ Many states have ceased to exist since 1945, but almost always by their own choice or by agreed dissolution: Egypt and Syria merged in 1958 and parted in 1961, the two Yemens united in 1990, the German Democratic Republic acceded to the Federal Republic in 1990, and the Soviet Union, Yugoslavia, and Czechoslovakia dissolved. The exceptions are few. They include the conquest of South Vietnam in 1975 and the absorption of Sikkim into India the same year, with the integration of Hyderabad in 1948 a contested further instance, since its claim to independence was itself disputed; none has altered the general pattern.

Subnational jurisdictions enjoy no comparable protection, because they exist at the pleasure of the state that created them and can be ended by that state’s ordinary law. Honduras shows how fast. A constitutional reform of 2013 authorised Zones for Employment and Economic Development with extensive autonomy, and private projects, Próspera the best known, were built under it. In April 2022 the National Congress repealed the enabling law, and in September 2024 the Supreme Court declared the zones unconstitutional; the investors turned to international arbitration, claiming some US\$10.7 billion.¹⁹⁶ Whatever the outcome of that claim, the episode shows the structural difference this section describes, and Hong Kong, examined in §XII.6, shows it at the scale of a great city protected by a registered treaty. A new state, once established, is protected by the prohibition on the use of force and by the territorial-integrity norm; a zone is protected only by the continuing goodwill of the government that created it. That difference is one of the main reasons the model in this monograph aims at statehood rather than at a zone.

§XV.5 Statehood as responsibility

There is a second reason, and it concerns obligation rather than protection. A state that joins the community of nations accepts the burden that membership carries. To be admitted to international organisations and to gain the confi-

dence of other states, it must accede to treaties, submit to international standards on human rights, financial transparency, and the conduct of its officials, report to treaty bodies, answer for what happens within its borders, and defend its own conduct in international forums. It must control its own borders and customs, conduct its own foreign policy, and provide for its own security or arrange it openly with others.

Subnational jurisdictions, special economic zones, and new city initiatives carry much less of that burden. Many contribute more to the national treasury than they take, and nothing here suggests otherwise. But they rely on the national government for defence, foreign relations, immigration, and customs, and when something goes wrong within them they can, and sometimes do, point to the national government as the party answerable to the world. Statehood removes that shelter. A new country cannot hide behind the legal personality of a larger state; it must stand in its own name, before other states and before its own people. That is why the effort to found one, done openly and with the consent of the parent state, is the more responsible undertaking, not the less.

§XV.6 Formal statehood is not immunity, but it is a seat

Greater durability after 1945 is not invulnerability. Small states remain exposed to pressure from the powers whose neighbourhood they occupy, and formal independence does not remove that exposure. Andorra had no personal income tax until 2015, when, after years of pressure through the transparency listings of the OECD and the European Union, it introduced one. Liechtenstein's currency and much of its regulatory alignment depend on arrangements with Switzerland it did not design alone. A Startup State would face the same class of exposure, and there is no reason to expect it to fare better than established microstates have. A new state designed to attract capital would meet that exposure at once. The Financial Action Task Force's public lists of jurisdictions under increased monitoring and the European Union's list of non-cooperative jurisdictions for tax purposes are the instruments through which such pressure is now applied, and a place on either affects access to correspondent banking well before any question of recognition is settled.¹⁹⁷ The model assumes the adoption of the international standards on anti-money-laundering, tax transparency, and the exchange of information from the first day, so that the new state is judged on its conduct rather than on a presumption.

What formal statehood supplies, and what a lease or a subnational arrangement cannot, is standing: a place in the institutions where these pressures are negotiated rather than imposed. A small state can be pressured, but it takes part in the forum doing the pressuring; a subnational jurisdiction, however extensive its self-government, has no comparable standing. Statehood does not remove great-power exposure, but it converts a subject of external decisions into a party to them.

Formal statehood also leaves the design of government open. Andorra's constitution, approved by referendum on 14 March 1993 with 74.2 per cent in favour, replaced the unwritten order of a centuries-old co-principality with a parliamentary system under the two co-princes, and Andorra joined the United Nations the same year. Liechtenstein's referendum of March 2003 moved the other way, approving by 64.3 per cent an initiative that confirmed and extended the Prince's powers, although the Venice Commission of the Council of Europe had concluded that the amendments were difficult to reconcile with European democratic standards. Neither change affected either state's international personality, because the Montevideo criteria ask whether a government exists and exercises effective authority, not how that authority is organised. A Startup State would face the same open choice.

§XV.7 What this section establishes

Polities made by international instrument before 1945 were ended either by the powers that made them, acting in a legal order without an enforceable prohibition on such conduct, or by their own people's choice to join a larger nation. The polities conjured after 1945 that became states, Libya and Cyprus, have endured, and neither has been extinguished by the states that made it; Trieste and the Eritrean federation, which never became states, were undone. The legal vulnerability that destroyed Cracow and Danzig has been narrowed, though not closed. The vulnerability that ended Eastern Rumelia, Crete, and Samos, a population that did not choose the polity it was given, has not been closed by any rule of law, and a contemporary project can close it only by building on territory whose population chooses the polity before settling there.

SECTION XVI

Self-Determination and the Limits of State Consent

Section III reserved the question of self-determination, and the Chagos Opinion in Section XII reinforced why the reservation mattered without discharging it. With every historical case now examined, the question can no longer be deferred. This section states, with as much precision as the doctrine permits, what self-determination requires of the mechanism, and where the doctrine remains unsettled.

State consent answers who may agree to constitute a new state.

Self-determination answers a different question: whether the people living on the territory had a say. An instrument can satisfy the first in full and fail the second.

§XVI.1 Two requirements, not one

The Chagos Opinion established that state consent is a necessary but not sufficient condition for a lawful disposition of territory: the United Kingdom and the colonial government of Mauritius agreed on the detachment of the archipelago, and the Court held the arrangement unlawful because the population's will had not been freely and genuinely expressed.¹⁹⁸ State consent, the central variable of Sections IV to XIV, and self-determination are separate requirements. The historical record adds a practical point to the legal one. Eastern Rumelia, Crete, and Samos were each ended by their own people's choice to join a larger nation, and Cyprus broke down within three years because neither community had sought the state the treaties created. A polity its people did not choose is exposed in law and fragile in practice at once.

§XVI.2 Who counts as a people: the difficulty of sparse and nomadic presence

The doctrine's hardest question is who holds the right. Bir Tawil, described in Section XI as visited by Ababda and Bishari pastoralists, makes the difficulty concrete. The International Court of Justice's Advisory Opinion on Western Sahara supplies the closest authority, and it does not offer a comfortable answer.¹⁹⁹ Examining a territory inhabited at the time of Spanish colonisation by nomadic tribes, socially and politically organised under chiefs competent to represent them, the Court held that it was not *terra nullius*, and it examined the legal ties of allegiance and of rights relating to land that bound those peoples to neighbouring entities.²⁰⁰ Nomadic or sparse habitation does not, on that reasoning, place a territory outside self-determination's reach; what mattered was an organised people with identifiable ties to the land, not fixed settlement. Whether the pastoral presence around a particular territory would amount to a people in that sense is a question of fact this monograph cannot resolve in the abstract. What it can say is that a project treating sparse or nomadic presence

as automatically irrelevant would be assuming an answer the Western Sahara Opinion does not supply.

§XVI.3 What population consent requires where it is engaged

Where self-determination is engaged, the Chagos Opinion supplies the operative standard: a free and genuine expression of the population's will, not a consultation conducted through institutions that do not represent it, and not satisfied by the absence of organised resistance. Libya shows the standard applied in the post-1945 creation of a state: the General Assembly required that the constitution be determined by representatives of the inhabitants, and the United Nations supervised the process. The monograph does not design a consultation mechanism for a contemporary project, which would require an engagement with the law of consultation it has not undertaken. It states the negative proposition that follows from Chagos: an instrument concluded between consenting states, however clean, does not by itself discharge an obligation to secure the free and genuine will of any population whose self-determination is engaged.

§XVI.4 Kosovo and Bangladesh: what unilateral secession shows about the treaty route

Self-determination is a principle people hold with great conviction, and it has been invoked for noble purposes and misused for others. The discussion that follows takes no position on the merits of any claim, including the claims sometimes described as remedial secession, under which a people subjected to grave oppression may be said to acquire a right to separate. Bangladesh and Kosovo are examined only for what they show about the legal and procedural mechanisms by which new states have come into being, and about how those mechanisms fare. A privately initiated project stands in a very different position from either. It arises from no emergency, answers no persecution, and carries none of the urgency that drove the peoples of East Pakistan or Kosovo; it is a deliberate, unhurried proposal, and it must therefore meet a higher standard of consent, not a lower one.

Bangladesh declared independence from Pakistan on 26 March 1971, and nine months of war, foreign intervention, and loss of life on a vast scale followed. Despite that violent and unilateral origin, Bangladesh was admitted to the United Nations on 17 September 1974, once China, which had vetoed its application in 1972 in support of Pakistan, withdrew its objection after

Pakistan's own recognition of Bangladesh in February 1974.²⁰¹ Kosovo declared independence on 17 February 2008 and remains outside the United Nations more than a quarter-century after the conflict that preceded its declaration, recognised by about half of the Organisation's members, a figure itself disputed because several states have announced withdrawals.²⁰²

The comparison shows that the severity of the grievance, the intensity of the conflict, and the passage of time are poor predictors of a claim's success, and that the decisive variable is more often the position of the states, and above all the veto-holding states, whose recognition or obstruction the claim depends on. Bangladesh's success turned on Pakistan's change of position; Kosovo's exclusion turns on the opposition of Serbia and, in the Security Council, of Russia and China.

The International Court of Justice's Kosovo Opinion held only that general international law contains no prohibition on declarations of independence as such. It did not hold that a declaration entitles its author to recognition.²⁰³ A state constituted by grant holds one advantage a unilateral declaration does not: it arrives bearing the consent of the state from which it emerges, which forecloses the category of objection that has kept Kosovo's status contested. That is not a claim that consent guarantees recognition. The bantustans, whose parent state consented and which no other state recognised, show that it does not, for the reasons given in §XVIII.5. It is the narrower claim that the treaty route removes one entire category of objection that a unilateral declaration must attempt to outlast.

§XVI.5 Territory with no one on it yet

The opposite case creates a different difficulty. The Montevideo Convention's first criterion is a permanent population, and territory without one cannot satisfy it until people arrive. A project that waited for an existing population in order to avoid engaging anyone's self-determination would have nothing capable of statehood; a project that installed a population first and then relied on it would need to explain whose consent determined that population's political status.

The authorities supply a distinction, not a solution. Self-determination as Chagos and Western Sahara apply it protects a people's existing status against alteration without its consent. It is a shield against having a status taken away, not, on the reasoning either Opinion adopts, a bar against a population that

accepts a political arrangement as the condition of joining it. A population that migrates to a territory knowing the terms on which it will be governed is not in the position of the Sahrawi tribes; its members are closer to individuals exercising an ordinary choice of jurisdiction. The distinction is an inference from the structure of the decided cases, not a proposition either court stated, and no authority has applied it to facts of this kind.

Two further considerations bear on the point. The first is definitional: common Article 1 of the two International Covenants of 1966 provides that all peoples have the right of self-determination, but neither Covenant defines a people, and the Human Rights Committee has avoided an authoritative definition.²⁰⁴ The concept has always presupposed a group with a settled collective identity and a connection to a territory. A population that arrives under known terms does not, at the moment of arrival, possess that connection; whether and when a self-selected community that has settled, intermarried, and organised its own political life becomes a people in the Article 1 sense is a question of degree that no authority answers. The migration-consent argument does not depend on the population already constituting a people. It depends on the narrower proposition that each member's choice to migrate on known terms is adequate consent to the arrangement the member joins.

The second is the objection that a population introduced by the party that benefits from its presence is colonial implantation under another name. The Falkland Islands dispute is the sharpest illustration. Argentina maintains that the islanders, descended from settlers introduced after Britain's assertion of control in 1833, cannot exercise a self-determination right that defeats Argentina's claim, because their presence is an artefact of a disputed acquisition. The United Kingdom maintains that a population resident for generations, self-governing, and with no other homeland is a people whose wishes carry independent weight; in the islanders' referendum of March 2013, 99.8 per cent of votes cast favoured remaining a British Overseas Territory.²⁰⁵ This monograph does not resolve that dispute.

What the comparison supplies is a structure. This monograph proposes a three-factor framework, a heuristic derived by analogy from state practice rather than a rule of law, for assessing whether a migrant population's presence should be treated as suspect. The first factor is the absence of a prior competing claim: whether the population was introduced onto territory already subject to another state's asserted title or another people's occupation, as Argentina alleges

of the Falklands and as the West African settlement societies did on the land of the Grebo, Kru, and Vai, or onto territory free of any competing claim. The second is temporal depth: the length of residence sufficient to produce settled ties to the land. The third is institutional autonomy: whether the population's institutions are self-directed or remain an extension of the recruiting entity's control. A project failing the first factor faces the full force of the Falklands objection however the other two develop; a project satisfying the first still needs the second and third to mature. The framework is not neutral between the parties to the Falklands dispute, and it should not be presented as neutral. Its first factor adopts a position, argued for here rather than assumed: that a population introduced with the consent of the state holding undisputed title, onto land no other state or people claims, is not implanted in any objectionable sense. The model is built so that it never has to rely on the contested part of that position.

§XVI.6 Applying the framework to the hypotheticals

The Ducie and Tern hypotheticals in Section XX are not instances of decolonisation, and on the first factor they are the structural opposite of the pattern the framework exists to catch. Colonial implantation proceeded by unilateral assertion of control, followed afterwards, if at all, by such consent as a displaced population could offer. Both hypotheticals invert the sequence: the Grantor State's consent, given through its own constitutional procedure, precedes everything; no population is displaced, because both concern territory uninhabited before the transaction begins; and no extraction, forced labour, or subordination of one people to another features in either instrument. On the first factor both clear the test as cleanly as the record allows.

On the second and third, the position is less settled. Neither instrument suite fixes a period of residence before a Stage Two treaty may be concluded, and fixing one in the abstract would be imprudent; §XVIII.10 explains why the intermediate period's value lies in not being rushed. Both constitutions vest authority in institutions elected by and answerable to residents rather than to the originating consortium, but whether those institutions would in practice become independent of the consortium that financed them is a question of implementation no drafting can settle in advance. A critic is entitled to hold both hypotheticals to the second and third factors as a transaction unfolds, not only as it is drafted.

One further point applies to Ducie alone. The Pitcairn Islands are listed by the United Nations as a Non-Self-Governing Territory under Chapter XI of the Charter, and paragraph 6 of General Assembly resolution 1514 (XV) declares that “any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”. The Chagos Opinion applied that principle to hold that the detachment of the archipelago before Mauritius’s independence was unlawful because it was “not based on the free and genuine expression of the will of the people concerned”.²⁰⁶ Separating Ducie from the Pitcairn Islands engages the same principle. The hypothetical answers it in the way the Opinion indicates: through a referendum in which the Pitcairn electorate votes separately and must approve, and through payments to the islanders and their government. A critic may still argue that the people of a non-self-governing territory cannot consent to its division while they remain non-self-governing. The Opinion did not decide that question, and the hypothetical does not claim to settle it. Two answers are available. The first is the Opinion’s own standard, the free and genuine expression of the will of the people concerned, which a separate referendum of the Pitcairn electorate is designed to supply, on an island where no one lives and from which no one would be removed. The second is decolonisation practice. In 1974 the people of the Ellice Islands, then part of the Gilbert and Ellice Islands Colony, voted by 3,799 to 293 to separate from the Gilbert Islands, in a referendum conducted by the administering power while the territory was under the review of the United Nations Special Committee on decolonisation, which sent a Visiting Mission to the colony that year; the separation took effect in October 1975, and the Ellice Islands became independent as Tuvalu on 1 October 1978.²⁰⁷ The division of a non-self-governing territory by the free vote of its people is therefore not unknown to the practice of the United Nations. Territory of a fully independent state, as in the Tern hypothetical and the model in §XVIII.10, does not raise it.

§XVI.7 Self-determination as a peremptory norm

Self-determination is widely treated as a peremptory norm of general international law, and a critic may argue that, if so, no instrument imposing a new political status on territory can ever be valid. §XVII.7 answers that objection. The short answer is that the norm protects the will of an existing people; where

a people exists, it strengthens the requirement of genuine consent, and where no people exists, it has no subject and nothing to void.

§XVI.8 What this section establishes

Self-determination is a requirement separate from state consent, and the two can diverge. Territory that is sparsely or nomadically inhabited cannot be assumed free of self-determination difficulties. Territory with no population at all raises a distinct problem under the Montevideo population criterion, and the migration-based answer to it rests on a defensible but untested extension of Chagos and Western Sahara. A newly arrived population is not yet a people under common Article 1, and the migration-consent argument rests instead on individual consent. The treaty route removes a category of objection that unilateral declarations must outlast, without guaranteeing recognition. And the historical record adds that a polity whose people did not choose it, however lawful its constitution, is fragile. A project that skipped these questions would be proceeding on assumptions neither the record nor the authorities support.

SECTION XVII

The Strongest Case Against the Thesis

This section gathers the most serious objections a hostile reader would raise, states each in its strongest form, and answers it on its merits. An argument that has not faced its best opponent has not earned its conclusion.

A method that only ever defeats weak objections has not been tested. This section exists to find out whether this one survives its strongest.

§XVII.1 Objection: the historical cases prove too little because each is exceptional

Vatican City resolved a unique dispute between the Holy See and Italy. Trieste arose from a peace settlement no ordinary transaction resembles. Cracow, Eastern Rumelia, and the Ionian Islands were products of great-power congresses. Libya and Cyprus were products of decolonisation. Each case, examined alone, looks like an exception, and a sceptic could argue that a collection of exceptions is not a mechanism.

The objection has force, and it proves less than it appears to. Every legal mechanism for creating a state is used exceptionally; a treaty constituting a new state will only ever arise from circumstances significant enough to make existing states consider it. The relevant question is whether the cases share a common juridical structure despite their different circumstances, and the record now shows that they do across two centuries: an instrument concluded or adopted by competent parties, language constituting a polity, and, in most cases, a polity

that then existed. The recurrence of the same juridical structure across more than a dozen exceptional circumstances is evidence of a mechanism operating across different circumstances, not evidence that the mechanism is illusory.

§XVII.2 Objection: the monograph assumes what it needs to prove about private initiation

A critic could press further: the absence of a demonstrated prohibition is not an affirmative demonstration of permission, and the monograph has established what states have done without establishing the principle that would make private initiation legally inert to a subsequent state act.

This is the most serious objection the argument faces. The stronger claim, that private initiation does not taint a subsequent state act, would require a demonstrated rule of general international law, and no such rule is cited because none has been found stated with the necessary generality. The narrower claim, which is the one advanced, rests on more than silence. The Vienna Convention catalogues the grounds on which a state's consent to a treaty may be invalidated: manifest violation of a rule of internal law of fundamental importance, excess of a representative's specific authority, error, fraud, corruption of a representative, coercion of a representative, coercion of the state, and conflict with a peremptory norm.²⁰⁸ That catalogue is the product of decades of codification addressed to the very question of what can taint an otherwise competent state's consent. The provenance of the proposal that preceded negotiation is not among the grounds, and treaty practice has always included proposals originating outside the contracting states, from international organisations, non-governmental bodies, and private parties, without any suggestion that validity depended on tracing the proposal to its source. A state that negotiates and consents exercises its own capacity whoever first suggested the transaction, as a legislature that enacts a bill drafted by an outside interest exercises its own legislative authority. Treating provenance as a further ground of invalidity would require explaining why the Convention's drafters omitted it, and no source examined supplies that explanation.

One ground in the catalogue needs a direct word, because private initiation invites it. Article 50 allows a state to invoke, as invalidating its consent, the corruption of its representative, directly or indirectly, by another negotiating state. A private initiator is not a negotiating state, so Article 50 does not reach it in terms; but domestic and foreign anti-bribery law does, and a transaction

tainted by payments to officials would be vulnerable in every forum that matters. The model in Section XVIII therefore requires that all consideration flow openly to the Grantor State's treasury or to recipients named in the published instruments, under the applicable budgetary law, and never in secret to any official or intermediary.

§XVII.3 Objection: the mechanism is legally extinct, whatever it once was

Self-determination, territorial integrity, and the prohibition on the use of force have hardened since 1945. A critic could argue that these developments have extinguished the mechanism: no state today could conclude a Vatican City-style or Trieste-style instrument without breaching obligations that did not exist, or existed only in embryo, in 1929 or 1947.

The record answers the objection. Libya was constituted by an instrument of the General Assembly, drawing its force from a treaty, in 1949; the Republic of Cyprus was conjured by treaty in 1959 and 1960; Singapore, the Maldives, Austria, and Brunei were transformed or restored by agreement within the post-1945 order. None met an insuperable legal objection on the ground the critic identifies. What the modern order did was condition the mechanism: Libya's constitution had to be made by its inhabitants' representatives, and Chagos shows that state consent alone cannot dispose of a people's territory. Pressing the extinction claim further would require identifying a rule that forecloses the mechanism rather than constraining it, and no such rule appears among the sources examined.

§XVII.4 Objection: the entrepreneurial framing does more work than the evidence supports

Every case in Sections IV to IX was constituted by states acting for reasons of state: resolving a dispute, settling a war, managing the retreat of an empire, arranging a decolonisation. A critic could argue that the monograph's framing invites a reader to imagine an entrepreneur substituting for an emperor or a peace conference, when nothing suggests states are willing to give up authority over territory for commercial reasons.

The monograph accepts most of this objection. It identified motive as one of the two sharpest objections in §I.3 and has not found a single historical instance of a state granting territory for commercial reasons; that is the empty intersection, documented rather than concealed. What it resists is the stronger version: that the absence of a commercial precedent makes the mechanism

unavailable to a commercial proposal as a matter of law. In every case examined, a state's reasons for consenting were a political fact about that transaction, not a legal condition of its effect. No authority examined conditions an instrument's constitutive effect on the constituting state's motives. The entrepreneurial gap is real; it is a political and practical gap, not a demonstrated legal one.

§XVII.5 Objection: a state's own constitution may forbid what its treaty purports to do

Many constitutions restrict or forbid the cession of national territory, and Article 46 of the Vienna Convention allows a state to invoke a manifest violation of a rule of its internal law of fundamental importance to invalidate its consent. An instrument impeccable in international law could be vulnerable on this ground.

The objection is correct as far as it goes. Article 46 is narrow by design, so that treaty partners need not investigate each other's constitutions, but a published constitutional provision forbidding the cession of territory is close to the paradigm case it covers. None of the historical cases turned on this question: Italy's capacity to conclude the Lateran Treaty and the Treaty of Peace, Denmark's capacity to conclude the Act of Union, the United Kingdom's capacity to conclude the Maldivian agreement, and Malaysia's capacity to conclude the Singapore agreement met no serious domestic challenge. A contemporary project does not have that luxury. Whether a particular state's constitution permits the relevant act is a threshold question for the choice of Grantor State, to be answered before negotiation begins, and it is a different question for Stage One and Stage Two: many constitutions that forbid cession permit long leases and special administrative regions.

§XVII.6 Objection: the absence of a prohibition proves too much, as Kosovo shows

The monograph's treatment of private initiation runs from the absence of an identified prohibition to the conclusion that the record does not foreclose the proposition. The Kosovo Opinion shows why that structure needs care. Asked whether Kosovo's declaration of independence of 17 February 2008 violated international law, the Court answered that general international law contains no prohibition on declarations of independence as such, and went no further: it declined to decide whether Kosovo had become a state, whether third states were entitled to recognise it, or whether a right of remedial secession exists.²⁰⁹ Kosovo's contested status shows the gap between absence of prohibition and

presence of entitlement, and it is the gap this monograph has tried to keep open. Reasoning from Kosovo's survival of the Court's scrutiny to the conclusion that unilateral secession is lawful would repeat the error the monograph declined to make when it set aside *Lotus*-style residual freedom in §II.4.

Montenegro is the sharper comparator, and the two cases together are a tale of two republics. The Constitutional Charter of the State Union of Serbia and Montenegro, adopted in February 2003, provided that after three years either member state could initiate proceedings to change its status, including by leaving the union, following a referendum, and that if Montenegro left, Serbia would inherit the union's international personality.²¹⁰ The procedure was agreed in advance by the party whose territory would be affected. When Montenegro's referendum of 21 May 2006 cleared the fifty-five per cent threshold the parties had accepted, its parliament declared independence on 3 June; Serbia's National Assembly acknowledged the outcome on 5 June, recognition followed at once, and Montenegro was admitted to the United Nations on 28 June 2006. Kosovo, by contrast, declared independence without its parent state's consent. Serbia has never accepted it, and nearly two decades later Kosovo remains outside the United Nations.

The difference is not that Montenegro deserved statehood more, and this monograph offers no view on whether Kosovo required Serbia's permission, a question on which states and scholars remain divided. The difference is that Montenegro had parent state permission, obtained through a procedure the parent state itself had authorised, and Kosovo did not. That is the distinction, transposed to secession, on which the whole of this monograph rests: consent obtained in advance and on agreed terms produces a cleaner and more secure result than a unilateral act defended afterwards as not having been prohibited. Where parent state permission can be obtained, the case for obtaining it is overwhelming.

Two constitutional episodes of recent decades show parent state permission operating through the ordinary procedures of an existing state. Neither ended in a new state. Both show how a constitutional order can open, and regulate, a path by which part of its territory might leave it.

In Scotland the permission was given in advance and by agreement. On 15 October 2012 the United Kingdom Government and the Scottish Government signed at Edinburgh an Agreement on a referendum on independence for Scotland.²¹¹ The two governments agreed that the referendum should have

a clear legal base, be legislated for by the Scottish Parliament, and command the confidence of parliaments, governments and people. The final term of that undertaking reads:

“The governments are agreed that the referendum should: ... deliver a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect.”

Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland (Edinburgh, 15 October 2012)

The Agreement took legal effect through the Scotland Act 1998 (Modification of Schedule 5) Order 2013, made under section 30 of the 1998 Act.²¹² The Order inserted paragraph 5A into Schedule 5, providing that the reservation of the Union did not extend to a referendum on independence held on a date shared with no other referendum, no later than 31 December 2014, and on a single ballot paper offering a choice between two responses. The United Kingdom thus lent the Scottish Parliament, for one occasion and on stated terms, a competence it did not otherwise hold. The poll took place on 18 September 2014, and 55.3 per cent of those voting answered No.²¹³

The limits of that permission became clear eight years later. In *Reference by the Lord Advocate* [2022] UKSC 31 the Supreme Court held that a provision of the proposed Scottish Independence Referendum Bill, asking “Should Scotland be an independent country?”, related to reserved matters, namely the Union of the Kingdoms of Scotland and England and the Parliament of the United Kingdom, and so lay outside the legislative competence of the Scottish Parliament.²¹⁴ The 2013 grant had been spent. A second referendum would need a fresh one.

Canada reached a comparable point by a different route. In *Reference re Secession of Quebec* the Supreme Court of Canada held that neither the Constitution of Canada nor international law confers on Quebec a right to leave the federation unilaterally, that is, without negotiation with the other participants in Confederation. It held also that a clear expression of the wish to leave, given by a clear majority on a clear question, would place a reciprocal obligation on all parties to Confederation to negotiate constitutional change.²¹⁵ Parliament gave these holdings statutory form in the Clarity Act, whose preamble records them:

“WHEREAS the Supreme Court of Canada has confirmed that there is no right, under international law or under the Constitution of Canada, for the

National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally”

Clarity Act, SC 2000, c 26, preamble

“WHEREAS the Supreme Court of Canada has determined that the result of a referendum on the secession of a province from Canada must be free of ambiguity both in terms of the question asked and in terms of the support it achieves if that result is to be taken as an expression of the democratic will that would give rise to an obligation to enter into negotiations that might lead to secession”

Clarity Act, SC 2000, c 26, preamble

The Act charges the House of Commons with deciding whether a referendum question is clear and whether a clear majority has expressed itself, and bars any Minister from proposing a constitutional amendment to effect secession until negotiations have addressed matters that include the division of assets and liabilities, borders, the rights of Aboriginal peoples, and the protection of minorities.²¹⁶

The two episodes differ in form and agree in principle. In each, the parent state’s own constitutional order supplied the procedure. In Scotland, permission was given before the vote, by an intergovernmental agreement implemented through a statutory instrument that fixed the date, the ballot and the question’s scope. In Canada, no permission was given in advance; the constitutional order instead supplies a structured duty to negotiate, triggered by a clear result and bounded by the principles the Court identified and the conditions Parliament enacted. Neither procedure produced a new state, and neither is offered here as evidence that one would follow. They show the procedure, not the outcome. A privately initiated project would seek permission through the same channels: the constitutional organs of the parent state, acting under their own law, and on terms that state sets.

§XVII.7 Objection: self-determination, if peremptory, voids the mechanism as a category

Self-determination is widely treated as a peremptory norm. If so, a critic could argue, no instrument determining a territory’s political status can be valid, whatever the consent of the states party to it, and the whole mechanism is void as a category, from Vatican City to any contemporary project.

The objection proves too much. If instrument-made political change were incompatible with self-determination regardless of the affected population's consent, the objection would void Singapore's separation, Iceland's transformation, the Maldives' independence, Libya's constitution by its own National Assembly, and the whole post-1945 practice of decolonisation by negotiated instrument. No tribunal treats that practice as void. What the authorities establish is narrower. Self-determination, on the reasoning of Western Sahara and Chagos, protects a people's existing status against alteration without its consent; it does not forbid a change that the people itself brings about or accepts through its own institutions, which is what occurred in the transformation cases and in Libya, and what did not occur in the Chagos detachment. The norm's peremptory character strengthens the requirement of genuine consent where a people exists; it does not operate where no people's status is engaged. Where no people exists, the norm has no subject and nothing to void. Where the line falls for a population too sparse or transient to constitute a people remains, as Section XVI said, unresolved.

§XVII.8 What this section establishes

The central propositions survive their strongest objections, in the qualified form in which they are stated, though §XVII.4 accepts much of the objection to the entrepreneurial framing. The section does not establish that no stronger objection exists. It establishes the standard by which the monograph asks to be judged: not that no sophisticated reader could disagree with its conclusions, but that such a reader will not find an unacknowledged gap between what the evidence shows and what the monograph claims it shows.

SECTION XVIII

The Legal Architecture of a Privately Initiated Transaction

§XVIII.1 From the record to a design

Sections IV to XVII establish that the constitutive instrument is real, distinguish it from adjacent forms, and locate the empty intersection with precision. That answers the historical question. It does not answer the practical one a reader who has followed the argument is entitled to ask: supposing a private actor wished to initiate such a transaction today, what would have to happen, in what order, and by whom? This section supplies that answer. It adds no historical cases; it consolidates conclusions already reached into a sequential account of the legal acts a contemporary project would need, and states which of those acts a private actor may perform and which only a state can perform.

One caveat governs everything that follows. The finding that no rule of the contemporary legal order prohibits a private actor from initiating this process is not a licence or a safe harbour. It removes one categorical objection and leaves every other requirement intact.

§XVIII.2 The private actor's role, and why the gap exists

Every case examined was constituted by the act of one or more states, or of a state and the Holy See, or of the General Assembly acting under authority states had conferred by treaty. A private actor, whether an individual, a company, or a consortium, is not a subject of international law with treaty-making capacity. The Vienna Convention defines a treaty as an agreement between states and provides that every state possesses capacity to conclude treaties; it extends that capacity to no natural or legal person.²¹⁷ International organisations hold personality only where states have conferred it, and, as Jan Klabbbers's account of the subject shows, personality on the international plane is conferred by the practice and

agreement of states rather than held as of right by any organised entity.²¹⁸ A private actor cannot be party to a constitutive treaty for the same reason it cannot be party to an extradition treaty or a maritime boundary agreement.

The Congo Free State might seem to contradict this. States in 1884 and 1885 concluded conventions with the International Association of the Congo. But they did so as the means by which they recognised the Association as a state; the Association was treated as capable through the act of recognition, not because it held capacity beforehand. The case confirms the rule rather than breaking it, and it shows how the rule can be satisfied: by an entity becoming a state, not by a private actor acting as one.

The question this monograph calls private initiation is therefore never a question about who signs the constitutive instrument. It is a question about causal origin: whether a proposal that originates with, is financed by, and is negotiated on behalf of a private actor taints the consent of the state that, exercising its own capacity, concludes the instrument. §XVII.2 gave the answer: no rule identified makes causal origin a ground of invalidity, and the ordinary grounds apply to a proposal of private origin exactly as to any other.

A sharper form of the objection holds that the international system is constituted by states for states, so that the absence of a privately initiated grant is not a gap in the record but the visible symptom of a structural exclusion. The premise is accepted and the conclusion rejected. The structure excludes a private actor from being a party to the constitutive instrument. It does not exclude a state from concluding that instrument at a private actor's proposal, and a state's exercise of its own capacity does not become less its own because the proposal reaching it came from outside government. The absence of a case is consistent with both explanations, structural exclusion from party status and historical contingency in finding a willing Grantor State, and this monograph's finding claims only the second.

The private actor's role is therefore that of a catalyst, not a party, and it has three parts. First, advocacy within the Grantor State: presenting the proposal to its ministries and legislature and building the political case, which is ordinary lobbying and not an exercise of treaty-making capacity. Second, finance and design: funding the negotiation, the development of the territory, and the governmental and constitutional architecture the new polity would need. Third, after constitution, contracting with the Startup State for land, concessions,

or continuing development rights under that state's own law. None of these requires capacity the private actor does not possess.

§XVIII.3 The Grantor State's rationale at Stage One: leverage, not loss

The motive objection, stated precisely, is not why a state would give up authority over territory, which Stage One never asks, but why a Grantor State would grant an extensive long-term lease over land it continues to hold. A lease, however extensive its term or powers of self-government, is an exercise of the Grantor State's authority over its own territory, not a diminution of it. The Grantor State keeps title, which in the older vocabulary is dominium, and delegates for the term the exercise of governmental authority, imperium.

Once the question is put that way, the answer is not exotic. The land a Stage One lease would occupy is, by the criteria in §XVIII.10, uninhabited and yields no current return: a remote island, a tract too costly to administer or develop through the state's own institutions. The Grantor State's choice is between continuing to receive nothing from an asset it holds and receiving an initial premium, a continuing rent indexed to inflation, and a share of the activity the arrangement generates, in exchange for permitting a use it would never make unaided. The municipal analogy is exact: a municipality that rezones agricultural land does not lose the land; it exercises its regulatory authority to release value the old designation left dormant, and is paid for doing so. A Stage One rent, unlike a revenue share in a special economic zone, is due whether or not any particular venture succeeds; the Grantor State stands as a secured creditor of the arrangement as a whole.

Three further incentives operate alongside the fiscal one. A Grantor State carrying debt has an interest in monetising an unproductive asset rather than selling a productive one, the logic that led Charles II to discharge a debt owed to the Penn family by granting Pennsylvania. A Grantor State may value a transparent, accountable, treaty-bound neighbour on land that would otherwise remain empty and unmonitored. And a Grantor State that permits governance innovation on its periphery, subject to the safeguards this section sets out, earns a reputation for institutional creativity a purely defensive posture cannot supply.

The Grantor State is not asked to give something up. It is asked to choose its neighbour, and to be paid for the choosing.

§XVIII.4 Why a Grantor State might go further

Stage One's rationale does not explain the harder Stage Two decision: why a Grantor State would convert a lease it already profits from into independence. The municipal analogy, pressed a step further, supplies part of the answer. The legal designation itself carries value. Monaco and the French commune of Beausoleil share a border that runs in places along a single street; climate, view, and architecture are the same on both sides, and property values are not. The difference owes much to Monaco's fiscal regime and scarcity, but those in turn exist because one side is an independent state with its own fiscal and constitutional order, whose relations with France are regulated by treaty, and the other is a French commune. A lease, however extensive, cannot create that designation, because a lessee's authority is always a delegation from the grantor. A Grantor State that has leased land at a profit under Stage One and has satisfied itself over years that the arrangement is transparent and well governed therefore faces a further calculation at Stage Two: whether the value the designation would release, for the territory, for its own reputation, and for a durable partnership with a friendly neighbour, exceeds the value of continuing to lease. Nothing here suggests any Grantor State will find that calculation compelling. The point is that a rational one could, on grounds no more exotic than those that justify Stage One.

Under the primary land model in §XVIII.8, the Grantor State would also keep its ownership of the land and its rent after Stage Two, which narrows the calculation: what it gives up is governmental authority, not the asset or the income. The value the new designation releases need not accrue to the new state alone. A rent reviewed at intervals by reference to the value of the land, as commercial ground leases commonly provide, would let the Grantor State share in the value that independence itself creates, so that the Monaco premium, if it arose, would be shared between landlord and tenant rather than captured by one of them.

§XVIII.5 Disclosure, and the neo-colonial objection

A project that seeks Stage One while concealing an intention to seek Stage Two deceives the Grantor State in a way no later term can cure. The model this monograph describes therefore requires that Stage Two be named in the first conversation, as a step the Grantor State may one day choose to take and the project may one day ask it to take. It is disclosed as an option and never asserted

as an entitlement. The Stage One instruments, in this model, say in terms that nothing in them obliges the Grantor State to consider, still less to grant, a constitutive treaty. A project that cannot accept that sentence is not the project this monograph describes.

A second objection holds that the model is neo-colonial in substance whatever its form: the commodification of territory by capital-rich private actors at the expense of an economically weaker state's agency. The history the objection invokes, arrangements in which formal consent concealed an unequal exchange and produced entrenched foreign control, is real, and the Congo Free State is its extreme. The distinction this model draws against that history rests on four conditions, each necessary. The Grantor State must consent freely, with full information and a real capacity to refuse. Any population present must receive genuine consultation and never be displaced; in the model itself, which requires uninhabited land, there is none, and the condition operates as a safeguard against the model's misuse elsewhere. Consideration must be proportionate to the value conveyed, not to what a Grantor State can be persuaded to accept. And the resulting polity must be governed in the interest of those who live in it rather than of its founders. The South African bantustans were denied recognition not because a foreign hand was present at their creation but because they served an unlawful policy and lacked genuine self-government and consent.²¹⁹ A transaction that failed any of the four conditions would not be an imperfect instance of this model; it would be a different transaction, outside what the monograph's findings support.

The bantustans deserve more than a sentence, because in form they are the nearest modern analogue to the grant and the strongest evidence against treating parent state permission as sufficient. By the Status of the Transkei Act 1976, South Africa declared part of its own territory an independent state, and it later did the same for Bophuthatswana, Venda, and Ciskei. The parent state consented; indeed it insisted. The General Assembly nonetheless rejected Transkei's declared independence as invalid on the day it took effect and called on all governments to deny it recognition, and no state other than South Africa and the other bantustans ever recognised any of them. All four were reincorporated into South Africa on 27 April 1994.²²⁰ The reasons are the model's four conditions seen in reverse. The purpose was to entrench apartheid by stripping Black South Africans of their citizenship and assigning them to territories they had not chosen; the populations were never asked; the consideration flowed to

the parent state's policy, not to the people of the territory; and the resulting governments answered to Pretoria. Parent state permission was present and every other condition was absent. The lesson is that permission is necessary and not sufficient, and a model that relied on permission alone would deserve the bantustans' fate. That is why this model requires uninhabited land, a population that arrives by choice and never loses a nationality it held, a government answerable to those who live under it, and a purpose stated openly.

For the same reason, the hypotheticals in Section XX name no real small state as Grantor State; §XX.1 explains that the choice reflects discretion and respect for the sensitivities of governments that have made no such proposal, not any view that small states are unsuited to the model.

§XVIII.6 Domestic constitutional authority

A state's freedom to dispose of territory by treaty is a question of international law; whether its executive or legislature is authorised to exercise that freedom is a question of its own constitution, and Article 46 of the Vienna Convention allows a state to invoke a manifest violation of a fundamental internal rule to invalidate its consent. Any project therefore turns first on the choice of a Grantor State rather than on drafting, and the question must be asked separately for each stage. For Stage One, the question is whether the Grantor State's law permits a long lease of public land, the creation of a special administrative region with its own institutions, and the disapplication of specified laws within it. For Stage Two, the question is whether the constitution permits the transfer of governmental authority over part of the national territory, and by what procedure: constitutional amendment, supermajority, referendum, or some combination. Many constitutions that forbid cession permit long leases, and a project may find that Stage One is available in a state where Stage Two, for now, is not.

Where the Grantor State is a member of the European Union, a further layer applies. Article 4(2) of the Treaty on European Union obliges the Union to respect the essential functions of member states, including ensuring their territorial integrity, and nothing in the founding treaties prohibits a member state from disposing of part of its territory. Since at least 2004, however, the Commission has taken the position that when a territory ceases to be part of a member state, the treaties cease to apply to it, so that the new state becomes, in President Barroso's phrase of 2012, a third country with respect to the Union,

able to join only through the accession procedure of Article 49.²²¹ Greenland's withdrawal from the European Communities by treaty in 1985 shows that a territory can leave by agreement; nothing suggests it can take membership with it. The larger constraint for a project, however, arises earlier. Throughout Stage One the leased territory remains part of a member state, and Union law, including the rules on state aid, the customs union, and free movement, continues to apply within it. A special administrative region within the Union cannot offer regulatory or fiscal terms that Union law forbids the member state itself to offer.

§XVIII.7 The constitutive act and its validity

Once domestic authority is established, the Grantor State's treaty-making capacity performs the constitutive act. What distinguishes a constitutive instrument from an ordinary agreement is not the parties' capacity but the instrument's object: to establish a new polity, to end the Grantor State's governmental authority over the territory, and to vest that authority in the new polity, in terms clear enough to satisfy the Article 31 method of §III.2 without depending on the label the drafters chose. The instrument operates through the sequencing doctrine in §III.4.

A constitutive instrument is subject to the same validity rules as any treaty. Consent must be genuine and not procured by coercion, fraud, or corruption. The instrument must not conflict with a peremptory norm. And it must not constitute or facilitate a use of force contrary to Article 2(4) of the Charter. To these the model adds a rule of practice that follows from §XVII.2: every payment under either stage, whether premium, rent, indemnity, or dividend, is made openly to the Grantor State's treasury or to recipients named in the published instruments, appropriated under the applicable budgetary law, and published. No payment is made to any official or intermediary.

§XVIII.8 The Stage Two land model

At Stage Two, the primary model in this monograph separates two things the law has long kept apart: title to land and authority over it. The constitutive treaty transfers governmental authority, and with it international personality, to the Startup State. Ownership of the land, as a matter of property rather than of public law, may remain with the Grantor State, which then stands to the Startup State as landlord to tenant: the Startup State governs the territory and pays rent for its use for the term the parties agree. States already hold land as

owners within the territory of other states in the ordinary course of diplomatic and commercial life. The treaty signed by the United Kingdom and Mauritius in May 2025 over the Chagos Archipelago, though not yet ratified, shows the same willingness to separate authority from use, in the same configuration: authority passes to Mauritius, while the United Kingdom keeps the use of Diego Garcia for an initial ninety-nine years in return for annual payments. Under the primary model, the Grantor State gives up governmental authority over the territory and keeps both its ownership and its income. No existing state holds the whole of its territory on these terms, and §XII.7 acknowledges the novelty. The alternative model, in which the constitutive treaty transfers ownership together with authority, remains open to a Grantor State that prefers a complete separation, and the model template in Appendix C provides for both; but the alternative asks the Grantor State to give up more, and it is not the natural opening position.

The distinction has an old vocabulary, and the model should be described in it without hesitation. *Dominium* is ownership: the right to hold, use, and dispose of land as property. *Imperium* is governmental authority: the right to make and enforce law over a territory and those within it. Roman law distinguished them, the law of territory has distinguished them ever since, and ordinary practice separates them every day. A state may own land within another state's territory: sending states commonly own their embassy premises, which the Vienna Convention on Diplomatic Relations treats as the receiving state's territory, made inviolable, rather than as the sending state's.²²² A state exercises governmental authority over land it does not own, as every state does over private property within its borders. The model disaggregates the two at the moment of independence. The Grantor State keeps *dominium*; the Startup State receives *imperium*. Because *dominium* never passes, no land is sold or given away, and the Grantor State's balance sheet records a lease, not a loss. Because *imperium* is granted rather than taken, there is no secession: the new state exists because its parent state chose to create it.

The claim that nothing is ceded needs one qualification, which strengthens it. International law does not treat territory as property. In the *Island of Palmas* award, Max Huber defined independence in regard to a portion of the globe as "the right to exercise therein, to the exclusion of any other State, the functions of a State".²²³ On that view, which is the orthodox one, the grant of *imperium* is itself a transfer of territorial authority, and the Startup State's frontier is

an international frontier from the moment the treaty enters into force. The monograph accepts this. What the Grantor State does not cede is ownership: the land remains its property, it continues to draw rent, and the Startup State holds the territory as a state and occupies the land as a tenant. “No cession” is therefore a statement about title and value, not a denial that the international map changes. That is the point of the model, not a weakness in it.

Leveraging, not ceding. The Grantor State retains every capacity it possessed; what changes is the territory over which its governmental authority is exercised. Constituting another state is among the most demanding exercises of those capacities: it requires title, treaty-making power, constitutional procedure, and the confidence to act where most states have not. A comparison with freedom of speech helps, provided its limit is kept in view. A right protects its holder against interference, while a power enables its holder to change legal relations, so the two are not the same kind of thing. What they share is that each is best known by its exercise, and best of all when the exercise is unusual or contested: freedom of speech is shown less by speech no one objects to than by speech others would prefer not to hear, and a state’s capacity to dispose of its territory is shown best when it uses that capacity to found a new state. A state that does so does not diminish itself. It demonstrates, to its own citizens and to the world, that it holds and can use a power most states have never used, and it gains a treaty partner whose existence is owed to its choice.

States beget states. The grant is a state's capacity exercised at its fullest, not surrendered.

Two consequences follow for drafting. The first concerns a transitional period. The parties may prefer that the Grantor State and the Startup State hold authority over the leased territory jointly for an initial period, as a condominium, before the Startup State's authority becomes exclusive. Joint authority over territory has a long history, including the Anglo-Egyptian Sudan from 1899 to 1956 and the Anglo-French New Hebrides from 1906 to 1980.²²⁴ A condominium would give the Grantor State a period of shared oversight and the Startup State a period of support. It carries a cost the monograph's own method makes plain: while it lasts, the Startup State's independence is qualified, as the Ionian Islands' was by the protection written into their constituting treaty, and the independence test in §III.3 is not met until it ends. A condominium in this model is therefore a stage with a fixed end date and defined powers, stated in the constitutive treaty, not an open-ended arrangement; §XVIII.10 treats it as an optional step between the provisional authority and full independence.

The second concerns the lease itself. Once the tenant is a state, the landlord's ordinary remedy for non-payment, re-entry, is no longer available: an attempt to recover governmental control by force would violate the Startup State's territorial integrity under Article 2(4) of the Charter, and a lease that could be forfeited would make the new state's existence conditional on its rent account. The model's constitutive treaty therefore provides that independence is not conditional on the lease; that unpaid rent is a debt, secured by an escrow or guarantee and recoverable through binding arbitration; that the Grantor State's ownership is registered in the Startup State's land registry and protected by its law as private property is protected; and that no breach of the lease, however serious, restores the Grantor State's imperium. After Stage Two, dominium is a property right enforceable against the Startup State, not a residual claim to govern. Section XIX examines the wider question of what happens if either party breaks the bargain, including a purported withdrawal of recognition and the succession of either state. Appendices A to C include clauses to this effect.

A critic may say that a perpetual payment from a new state to its parent is tribute under another name, and Section VII treats tribute as an incident of

dependence. The distinction lies in what the payment buys and what failure to pay entails. The Septinsular Republic's tribute acknowledged the Sultan's suzerainty and carried his political authority with it. Rent under the model buys the use of land, is owed by a state that governs itself, can be enforced only as a debt, and confers no power over the tenant's government. It is also finite: the lease runs for a term, and the instruments can give the Startup State an option to purchase the freehold at a price fixed by formula, so that the arrangement can end in full ownership at the tenant's election. At the end of the term without purchase, the land would revert to the Grantor State as property, not as territory, and the treaty would need to provide for renewal or purchase so that the question never arises by default.

§XVIII.9 Statehood criteria, succession, recognition, and membership

Statehood. A constitutive instrument clears the legal path; it does not supply what the Montevideo criteria require in fact. A permanent population must be present; the territory is defined by the instrument; the government must exercise effective authority, which Trieste never did; and the capacity for relations with other states is shown by the new state's own practice.

Treaty succession. The Vienna Convention on Succession of States in respect of Treaties of 1978 has fewer than twenty-five parties, and binds a new state as a matter of treaty only if that state becomes a party.²²⁵ Its rules nonetheless frame the question, and they point in different directions depending on the territory's prior status. For a "newly independent state", defined as one whose territory was a dependent territory for whose international relations the predecessor was responsible, Article 16 states the clean-slate rule: the new state is not bound by its predecessor's treaties by reason only that they applied to its territory, and Article 17 allows it to opt into multilateral treaties by notification. For a state formed by separation of part of an existing state's territory, Article 34 states the opposite presumption: treaties in force for the whole of the predecessor's territory continue in force for the new state unless the states concerned agree otherwise. Ducie, part of a British Overseas Territory, would fall under the first rule. A Startup State carved from a Grantor State's metropolitan territory would fall under the second, and the customary status of Article 34 is disputed. A constitutive treaty would therefore need to state in terms which of the Grantor State's treaties the Startup State assumes and which it does not, rather than leaving the question to a default that may cut either way.

Recognition. A constitutive instrument establishes the new state's existence as between the parties to it. It does not guarantee the broader recognition on which the state's practical position will depend, as Somaliland's thirty-five years of effective government and near-universal non-recognition show.

Membership. Admission to the United Nations requires an application, a Security Council recommendation subject to the veto, and a General Assembly decision. It is a political process layered on top of statehood rather than an element of it. Brunei was admitted nine months after independence; Libya waited four years because of a Soviet veto; Switzerland chose to remain outside until 2002 without its statehood ever being doubted. Membership is therefore a distinct objective.

§XVIII.10 The clean conception, step by step

The clean conception can now be set out as a single sequence. It is offered as an illustration, not as a proposal concerning any real territory, and every step is subject to negotiation and to the law of the state concerned.

The initiator is a privately led consortium: one firm or several, with investors, advisers, and prospective residents, organised to finance and build a new jurisdiction. It approaches a member state of the United Nations that is stable, democratic in the ordinary sense of holding free elections and respecting the rule of law, and fully independent. The discussion concerns a territory that state controls and owns free and clear: uninhabited, unused, and preferably remote; with title the state can demonstrate from its own records and an independent survey; with no burial or heritage sites and no history of seasonal or customary use; and subject to no dispute with any other state, any indigenous people, or any other claimant. The state is the sole owner, and it says so on the record.

The state designates the territory a special administrative region, province, or territory of special status under its own law, if it has not already done so. That designation fixes an administrative boundary, which under the principle of *uti possidetis juris* would become the international frontier of any state that later emerged from it, so that independence, if it comes, arrives with its borders settled.²²⁶ A critic may object that the principle hands the Grantor State the power to draw the line to suit itself. The answer is that *uti possidetis* is only a default: the constitutive treaty can fix the frontier in terms, including any maritime boundary between the two states, and the new state confirms that frontier when it confirms the treaty. The state leases the land to the consortium

for a long term of ninety-nine to one hundred and ninety-nine years, at an initial premium and a continuing rent paid into its treasury, with environmental and heritage protections stricter than its ordinary law requires. A provisional authority governs the region under the state's law, and the lease and the enabling law say in terms that nothing in them obliges the state to consider any further change in the region's status.

Under the terms of the lease and the state's immigration law, the consortium brings in residents, vetted and holding medical evacuation insurance, who over time form a community with its own institutions and become the region's electorate. If the state later chooses to go further, and only then, it negotiates with the provisional authority a treaty of independence. Its constitution may require a national referendum, a referendum in the region, a legislative supermajority, or all three, and the parties may choose to hold both referendums even where the law does not require them, because a double mandate is the cleanest evidence of consent available. On the treaty's entry into force the provisional authority becomes the government of the Startup State. The Startup State holds imperium over the territory; the parent state keeps dominium and continues to receive rent as landlord.

Where the parent state's constitution and law permit, the designation, the lease, and the grant of independence may be concluded together, in a single treaty and a single set of enabling acts, with the constitutive provision taking effect on a fixed date or on the satisfaction of defined conditions. In many cases that would be the more expedient course, and nothing in international law requires the stages to be separated in time. Where procedure, prudence, or the need for a population to form first requires separate steps, the staged sequence applies.

Where the stages are separated, the arrangement before independence is not a state and not a treaty; it is a domestic instrument of the kind §XII.5 describes, protected as far as the parent state's law and any applicable investment treaty allow. It asks the parent state for less than any conjured polity in the record required, and it is the more attainable outcome standing alone. Independence remains a separate request the parent state may never be prepared to grant, and Bougainville, where a vote of 97.7 per cent in 2019 has yet to be ratified, shows how long that request can wait even when the procedure is written into the parent state's constitution (§X.6). The model is therefore designed so that Stage One is worth having if Stage Two never comes: its investors would

price it as a special administrative region with a long lease, not as a state in waiting, and its residents would be told as much before they arrive. Where independence is granted, the parties may interpose a transitional condominium of fixed duration, as §XVIII.8 describes, before the Startup State's authority becomes exclusive.

The special administrative region also closes a gap the population requirement would otherwise leave open between the two stages. Section XVI identified the difficulty: the Montevideo population criterion cannot be met until people are present, but a population introduced solely to satisfy a later constitutive act would raise the consent question that section left unresolved. The Grantor State's own law supplies a way through. Exercising its ordinary domestic authority, it can permit settlement within the region under terms it sets and enforces, as any state does when it creates a new municipality or economic zone. A population that takes up residence under a lawful domestic framework the Grantor State designed and administers is present by the same process that populates any new jurisdiction, migration on terms known in advance, and not by an act contrived to manufacture a criterion. What the intermediate region supplies is time: a period, perhaps long, during which a self-selected community forms under transparent terms before any question of Stage Two need be asked, and during which the Grantor State retains the legal power to end the arrangement if it ceases to serve its interests, subject to the compensation and treaty protections the lease and any applicable investment treaty provide (§XII.5). A project that treats this period as a formality to rush misunderstands its purpose; its value lies in not being rushed.

The comparison a critic will draw is with Hatay, where voters were brought in to decide a territory's future (§XIII.8). The difference is not that the model involves no selection of residents; it does. The difference is that Hatay's imported voters were registered to outvote a population already present and to deliver the territory to the state that imported them, whereas the model's residents arrive on land where no one lives, under terms the Grantor State sets and publishes, and vote on the region's future only after years of residence. One safeguard follows from the comparison and from Article 25 of the International Covenant on Civil and Political Rights, which guarantees every citizen the right to vote without unreasonable restrictions.²²⁷ Admission to the region may depend on vetting, means, and insurance, as immigration to any state may; the franchise, once residence is established, depends in the model on residence alone and is

equal for every resident, so that the conditions of entry never become a property qualification for the vote.

§XVIII.11 The sequence in full

The table and figure below consolidate the preceding subsections. They add no proposition not already stated.

Question	Required actor	Governing standard	Addressed in
Authority to lease (Stage One) and to transfer authority (Stage Two)	The Grantor State's own constitutional order	Domestic constitution; VCLT art 46	§XVII.5, §XVIII.6
Treaty-making capacity	The Grantor State	General international law; VCLT art 6	§XVIII.2, §XVIII.7
The constitutive act	The Grantor State, by instrument, under the sequencing doctrine	VCLT art 31; §III.4	§III.2, §III.4, §XVIII.7
Valid consent	The Grantor State	VCLT arts 46 to 53	§IV.4, §XVII.2, §XVIII.7
No unlawful use of force	All states concerned	UN Charter art 2(4)	§XV.3, §XVIII.7
Self-determination where a population exists	The affected population	Chagos; Western Sahara	§XVI
Effective government in fact	The Startup State	Montevideo art 1	§V, §XVIII.9
Treaty succession	The Grantor State and the Startup State, by agreement	VCST 1978 arts 16, 34	§XVIII.9
Recognition	Third states, individually	State practice	§XIV, §XVIII.9
United Nations membership	The Startup State, the Security Council, and the General Assembly	UN Charter arts 4 and 27	§XIV.4, §XVIII.9
The private actor's role throughout	Proposal, finance, design, negotiation, contract	Not a state act	§XIII, §XVIII.2



Above the Startup State: steps a private actor may propose and finance, which only states and the population concerned can take. Below it: what depends on the new state itself and on third states.

Figure 1. The legal architecture of a privately initiated transaction, in two stages.

Read as a sequence, the steps fall in this order. The first is to confirm, under the Grantor State's own law, what that state is authorised to do at each stage, since everything that follows depends on it. The second is to establish that no other state and no population with a self-determination interest asserts a claim over the territory, which is a matter of evidence rather than assumption. The third is to negotiate Stage One: the statute, the special administrative region, and the lease, with Stage Two disclosed as an option and disclaimed as an entitlement. A project may stop there, and many would. If it continues, the fourth step is to allow a population to form under the Grantor State's own law, and the fifth is to allow time, so that a self-selected community and its own institutions can mature. Only then, and only if the Grantor State is willing, does the sixth step arise: negotiation of a constitutive treaty in express terms, followed by whatever domestic ratification the Grantor State's constitution requires, the establishment of effective government, and the separate political undertakings of recognition and membership. Where the Grantor State's law allows, the negotiated steps may be combined in a single treaty and its enabling acts.

Two matters cannot be reduced to a step. Identifying a willing Grantor State is a diplomatic undertaking for which no analysis can supply a method, and the historical record shows no state that has granted territory for a commercial reason. And protection against non-recognition or later reversal, through investment-treaty protection, arbitration clauses, political-risk insurance, or comparable instruments, is a question for the specific transaction and its counsel.

§XVIII.12 What the record favours

The considerations distilled from the preceding subsections and from the record's hardest lessons resolve into a short list of tendencies rather than rules. A transaction departing from one of them would not thereby fail any legal test, and none is offered as advice on any transaction; each records what the historical record suggests durability rewards.

The record favours territory that is uninhabited or nearly so, verified rather than assumed, because verification is what distinguishes a clean conception from the displacement Liberia and the Congo produced. It favours a lease over a purchase and governmental authority over ownership, because asking less makes consent easier to give and easier for third states to accept. It favours

a continuing rent over a single payment, because a rent aligns the Grantor State's interest with the arrangement's survival, as Sark's four centuries show. It favours adherence to the Grantor State's constitutional procedure over any assumption that the procedure is satisfied, because an instrument the Grantor State's own courts could later invalidate is no foundation. It favours express constitutive language over language a critic could read as recognitional, which is the most consistent lesson of Sections IV to IX. It favours neutrality as a standing policy, for the reasons given in §XIV.4, as Vatican City and Cracow adopted it in their constituting instruments and Luxembourg by the Treaty of London of 1867. It favours a Grantor State whose title to the territory is clean and uncontested, because a disputed title transmits its dispute to any arrangement built on it. And it favours a territory whose population, when there is one, has chosen the polity, because Eastern Rumelia, Crete, and Cyprus show what happens when it has not.

§XVIII.13 What this section establishes

This section establishes no new historical proposition. It restates, in sequential form, conclusions reached in Sections III to XVII. It establishes that a private actor's role is real but bounded: proposal, finance, design, negotiation, and contract are open to it; the constitutive act, treaty-making capacity, and governmental authority are not. It does not establish that any state would agree to such a proposal, that any particular territory satisfies the population requirements, or that the sequence, followed to the letter, guarantees recognition or membership.

SECTION XIX

When the Bargain Fails: Breach, Revocation, and Succession

Every instrument in this monograph assumes that the parties will keep their word. A design that seeks the confidence of those who would advise a Grantor State, a consortium, or a new state must also say what happens when they do not. This section examines the failure of the bargain from both directions and at each stage of its life: before independence, in the interval between signature and entry into force, and after the new state exists and other states have recognised it. It then asks what becomes of the arrangement when either state is transformed, by revolution, by dissolution, or by union with another. The answers are drawn from the law of treaties, the law of state responsibility, the law of state succession, and the practice of states and tribunals. They are less comforting than an advocate would wish and more comforting than a sceptic would expect.

A grant of independence, once performed, cannot be taken back by the state that made it. What can be taken back is cooperation, and against that the law offers remedies but no guarantee.

§XIX.1 The problem stated

The arrangement this monograph describes is a long relationship between unequal partners. In its first stage one party is a state and the other is a consortium operating under that state's law. In its second the two parties are states, but one is old, populous, and recognised by all, while the other is new, small, and at first recognised by few. The asymmetry is greatest in the months after independence, when the Grantor State may be the only state that has recognised the new one, the only neighbour with which it trades, and the only landlord of the land on which it stands. A Startup State in that position is exposed in a way no established microstate is, and the first business of its government is to reduce that exposure by securing recognition, membership of international organisations, and relations with as many states as will extend them.

Three kinds of failure must be distinguished, because the law does not treat them alike. The first is breach: a party fails to perform an obligation it has undertaken, whether to pay rent, to permit access, or to respect a frontier. The second is repudiation of status: the Grantor State purports to withdraw its recognition of the new state, or to treat the grant of independence as void. The third is transformation: one of the two states ceases to exist in its existing form, through dissolution, union, or a revolutionary change of government, and the question becomes which of the arrangement's obligations pass to whoever stands in its place. The subsections that follow take the stages in order and then the transformations.

§XIX.2 Before independence: a lease under the Grantor State's law

Before Stage Two the consortium is not a subject of international law, and the special administrative region is a creature of the Grantor State's own legal order. Sections XII.5 and XII.7 described the consequence: the lease and the enabling statute are domestic instruments, exposed to the Grantor State's later legislation. A government that changes its mind can amend the statute, cancel

the lease, or decline ever to consider Stage Two, and nothing in international law entitles the consortium to statehood. The model has always said so. Stage Two is disclosed to the Grantor State as an option and never asserted as an entitlement (§XVIII.5), and the absence of a right to independence is the price of the model's honesty about consent.

The consortium's protection at this stage is the protection of any foreign investor, and it can be substantial. A stabilisation clause in the lease commits the Grantor State not to alter the legal framework to the investor's detriment, or to compensate if it does; an umbrella clause in an applicable investment treaty brings, in Christoph Schreuer's phrase, "contractual commitments under the BIT's protective umbrella", so that a breach of the lease may also be a breach of the treaty.²²⁸ Where a bilateral investment treaty or a free trade agreement with an investment chapter is in force between the Grantor State and the consortium's home state, the investor may bring a claim before an international tribunal for expropriation without compensation or for breach of the fair and equitable treatment standard. Constitutional entrenchment of the region, where the Grantor State's law permits it (§XII.7), raises the domestic cost of repeal.

Where no investment treaty applies, the consortium's protection in international law is diplomatic protection by its home state, which is a right of that state, exercised at its discretion and as a rule only after local remedies have been exhausted. For a corporation, the state entitled to exercise it is, on the rule in *Barcelona Traction* restated in Article 9 of the International Law Commission's Articles on Diplomatic Protection of 2006, the state of incorporation rather than the state of the shareholders, subject to a narrow exception where management, control, and business lie elsewhere;²²⁹ the choice of the consortium's seat therefore determines which state, if any, can take up its claim. The rule of continuous nationality in Article 5 has a further consequence at independence: a resident who takes the new state's nationality may lose the protection of the former state of nationality for earlier injuries, and the new state may not present a claim against a state of which the injured person was a national when the injury was suffered.

The claim brought by the developers of Próspera against Honduras is the live test of these protections. After Honduras repealed the law authorising its zones for employment and economic development in 2022, the developers began proceedings under the Central America–Dominican Republic Free Trade

Agreement and an investment agreement guaranteeing legal stability, claiming damages first announced as up to US\$10.775 billion. The case was registered at the International Centre for Settlement of Investment Disputes in February 2023. Honduras denounced the ICSID Convention with effect from August 2024 and ratified it again in July 2026; the denunciation did not affect consent already given, and at the research cut-off the claim was pending, the respondent having filed its counter-memorial in July 2026.²³⁰ Whatever its outcome, the case shows both the reach of investment protection and its limit. A tribunal can award damages for the repeal of a zone. It cannot restore the zone, and it cannot convert a repealed concession into a state.

No remedy available to the consortium turns Stage One into Stage Two against the Grantor State's will. Before independence the consortium has contract, statute, and investment treaty. It does not have the law of statehood on its side, and a model that pretended otherwise would deserve the scepticism it would receive.

§XIX.3 Between signature and entry into force

The most dangerous interval in the life of the arrangement is the one between the signature of the constitutive treaty and its entry into force. The Grantor State has agreed, but its agreement has not yet taken effect, and its domestic procedures, which may include a referendum and a legislative vote, are still to be completed. Article 18 of the Vienna Convention governs the interval:

“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.”

Vienna Convention on the Law of Treaties, art 18

The obligation is real but limited. It forbids the Grantor State to defeat the treaty's object while it remains a signatory, for example by alienating the territory to a third state or granting another party rights in it that the treaty excludes; it does not oblige it to ratify, and it ends when the state makes clear its intention not to become a party.²³¹ A Grantor State that changes its mind before ratification is free to do so, subject only to the good faith Article 18 requires in the meantime. The Startup State, which does not yet exist, has no

standing to complain; the provisional authority that negotiated the treaty can protest, but it is not a subject of international law. That status bears on the rule itself. The Vienna Convention applies to treaties between states (Articles 1 and 2(1)(a)), and an instrument signed by a state and an entity that is not yet a state falls outside it until the new state exists and confirms the instrument; in the interval, Articles 18 and 25 apply, if at all, as expressions of customary law and of the general obligation of good faith that Article 3 preserves. The threshold is in any event high: Article 18 is breached only by acts that would render performance of the treaty impossible or meaningless, not by acts that make it less attractive.

The design answer is to shorten the interval and to fill it with commitments that bind on their own. Four devices are available. The Grantor State can complete its domestic procedures, including any referendum and legislation, before it signs, so that signature and ratification are separated by days rather than months. The treaty can provide for its own entry into force on a fixed date upon ratification, so that no further act of the Grantor State is needed to bring the new state into being. Article 25 of the Vienna Convention allows a treaty, or part of it, to be applied provisionally pending entry into force, which can bring the lease's protections and the dispute-settlement clause into operation at signature.²³² And the Grantor State can make a public unilateral declaration of its commitment. The International Court of Justice held in the *Nuclear Tests* cases that a declaration made publicly and with an intent to be bound is binding without acceptance by any other state:

“An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding.”

Nuclear Tests (Australia v France), ICJ Reports 1974, para 43

A declaration does not make ratification compulsory, but it raises the legal and reputational cost of withdrawal, and other states “are entitled to require that the obligation thus created be respected”.²³³

The *Nuclear Tests* principle has limits the Court itself has drawn. In *Frontier Dispute (Burkina Faso/Mali)* the Chamber declined to treat a head of state's statement as binding where nothing had prevented the parties from expressing their intention by the ordinary method of a formal agreement, a caution that applies with force to a declaration made in the course of negotiating the treaty it concerns.²³⁴ The International Law Commission's Guiding Principles on

unilateral declarations of 2006 add that a declaration which has created legal obligations “cannot be revoked arbitrarily”.²³⁵ That is the measure of what a declaration adds in the interval: not an obligation to ratify, but a constraint on withdrawing the commitment without cause.

§XIX.4 After independence: can recognition be revoked?

Once the constitutive treaty has entered into force and the new state exists, the Grantor State’s position changes in kind. It is no longer deciding whether to create a state; it is bound by a treaty that has done so, and it has, by the treaty itself, recognised the result. Three bodies of law then stand between the Grantor State and any attempt to undo its act.

The first is the law of recognition. Article 6 of the Montevideo Convention states the classical rule:

“The recognition of a state merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.”

Convention on Rights and Duties of States (Montevideo, 1933), art 6

The Convention binds only its American parties, and the customary status of the irrevocability rule is debated, 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.²³⁶ The reason lies in the declaratory theory this monograph adopts (§XIV.5). If recognition acknowledges a fact rather than creating it, withdrawing recognition cannot unmake the fact. The Arbitration Commission of the Conference on Yugoslavia stated the point in its tenth opinion: recognition “is not a prerequisite for the foundation of a State and is purely declaratory in its impact”.²³⁷

Practice offers apparent exceptions. Serbia’s government announced between 2013 and 2020 that eighteen states had withdrawn their recognition of Kosovo; several of those claims were contested or later reversed, most of the states named said nothing, and the campaign was suspended for one year under the commitments made in Washington in September 2020.²³⁸ Thirty-nine of the eighty-four states that once recognised the Sahrawi Arab Democratic Republic have frozen, suspended, or withdrawn that recognition.²³⁹ Neither episode shows that a state ceases to exist when it is derecognised, and both concern entities whose statehood was contested from the outset. The switches of recognition between Beijing and Taipei are a different phenomenon again:

they concern which government represents China, not whether a state exists. The scholarship that defends a power to withdraw recognition of a state concedes that withdrawal “does not affect the existence of a state”.²⁴⁰ Hersch Lauterpacht wrote in 1945 that the power, if it exists, “must be exercised with a circumspection and restraint even more pronounced than the positive act of granting recognition” and “cannot properly be used as an instrument of political pressure or disapproval”.²⁴¹

The second body of law is the law of treaties. The constitutive treaty is a treaty in force between two states, and Article 26 of the Vienna Convention requires that it “be performed by them in good faith”. Article 42 provides that termination, denunciation, or withdrawal “may take place only as a result of the application of the provisions of the treaty or of the present Convention”, and Article 56 adds that a treaty with no provision on termination “is not subject to denunciation or withdrawal” unless the parties intended to allow it or a right of withdrawal is implied by the treaty’s nature.²⁴² A constitutive treaty is the clearest case of a treaty whose nature excludes withdrawal: its central provision is executed the moment it takes effect. Article 70 confirms the consequence. Even where a treaty is terminated in accordance with its terms or the Convention, termination “does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination”.²⁴³ The new state’s existence is, at the least, a legal situation created through the execution of the treaty, and on the declaratory view it is also a fact that does not depend on the treaty’s continuance. Article 70 is a residual rule, which applies “unless the treaty otherwise provides or the parties otherwise agree”, but nothing in a constitutive treaty would provide otherwise. Its existence survives the end of the instrument that created it.

A Grantor State that wished to undo its act would be more likely to contest the treaty’s validity than to terminate it, and the probable vehicle is its own constitutional court. A domestic judgment annulling the act of approval does not of itself affect the treaty in international law. Article 27 of the Vienna Convention forbids a party to invoke its internal law as justification for failure to perform, and Article 46 allows a violation of internal law on competence to conclude treaties to invalidate consent only where the violation “was manifest and concerned a rule of its internal law of fundamental importance”. The Court read that exception with restraint in *Land and Maritime Boundary between Cameroon and Nigeria*, holding that a limitation on a head of state’s au-

thority is not manifest unless at least properly publicised, and no international tribunal has yet upheld an Article 46 plea.²⁴⁴ A constitutional requirement of a referendum or a supermajority for any alienation of territory is, however, both fundamental and public, and its violation is the one case in which the plea could succeed. If it did, Article 69 rather than Article 70 would govern the consequences: each party could require the other to establish, as far as possible, the position that would have existed had the treaty not been performed, though acts performed in good faith before invalidity was invoked would not be rendered unlawful by reason only of it. The protection lies in exact compliance with the procedure §XVIII.6 describes, and in Article 45, under which a state that, after becoming aware of the facts, has expressly agreed that the treaty is valid or has acquiesced in its validity by conduct loses the right to invoke the ground.

The third is the law of boundaries. A constitutive treaty fixes the frontier of the new state, and the Vienna Convention protects boundary treaties with particular force: a fundamental change of circumstances “may not be invoked as a ground for terminating or withdrawing from a treaty ... if the treaty establishes a boundary”.²⁴⁵ The International Court of Justice explained the principle in the *Libya/Chad* case:

“A boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. The treaty can cease to be in force without in any way affecting the continuance of the boundary.”

Territorial Dispute (Libyan Arab Jamahiriya/Chad), ICJ Reports 1994, para 73

Behind all three stands the principle of good faith in its forensic form. In the *Temple of Preah Vihear* the Court held that Thailand, having “for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier”, was “precluded by her conduct” from denying the line it had accepted; it was “not now open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was ever a consenting party to it”.²⁴⁶ A Grantor State that has drawn rent from the new state, conducted relations with it, and accepted its frontier would be in Thailand’s position if it later denied the new state’s existence.

Preah Vihear is most often read as a case of acquiescence, and the doctrines of acquiescence and estoppel supply the general form of the argument. Acquiescence, in the words of the Chamber in *Gulf of Maine*, “is equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent”; estoppel requires in addition a clear representation on

which the other party has relied to its detriment or to the advantage of the party making it, as the Court stated in *North Sea Continental Shelf* and restated in *Obligation to Negotiate Access to the Pacific Ocean*.²⁴⁷ A new state that has built institutions, incurred debt, and entered into relations with third states in reliance on the Grantor State's treaty and conduct would meet those conditions, and Article 45 of the Vienna Convention gives the same idea its treaty form.

The legal conclusion is clear. A Grantor State's purported withdrawal of recognition after independence would not end the new state's existence, would not terminate the constitutive treaty, and would not move the frontier. It would in all likelihood be a breach of the treaty and of the obligation of good faith, engaging the Grantor State's responsibility. The practical conclusion is less comfortable. A neighbour that denies a state's existence can still close its ports, cut its cables, and lobby against its admission to international organisations, and the new state's protection against that conduct lies in the remedies the next subsections describe and, above all, in the recognition of other states.

§XIX.5 Breach, suspension, and the severance of relations

A Grantor State that does not deny the new state's existence may still fail to perform: it may withhold services it has promised, obstruct access to the territory, suspend the lease, or break off diplomatic relations. The law distinguishes these acts with care.

The severance of diplomatic relations does not by itself affect the treaty. Article 63 of the Vienna Convention provides:

“The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except insofar as the existence of diplomatic or consular relations is indispensable for the application of the treaty.”

Vienna Convention on the Law of Treaties, art 63

Practice bears the rule out. The United States severed diplomatic relations with Cuba on 3 January 1961 and resumed them on 20 July 2015; throughout those fifty-four years the Guantánamo lease remained in force, and the United States continued to tender the rent.²⁴⁸ When Saudi Arabia, the United Arab Emirates, Bahrain, and Egypt broke relations with Qatar in 2017, Qatar used the dispute-settlement clauses of the aviation treaties those states remained bound by, and the International Court of Justice upheld the jurisdiction of the ICAO Council to hear its complaint.²⁴⁹ The Taiwan Relations Act of 1979 shows a

recognising state going further: having withdrawn recognition from the government in Taipei, the United States provided by statute that “the absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan”, and approved the continuation in force, unless and until terminated in accordance with law, of the treaties concluded with it; the Mutual Defense Treaty of 1954 was not among them, having been terminated on notice with effect from 1 January 1980.²⁵⁰

Suspension or termination of the treaty for breach is permitted only on narrow terms. Article 60 allows a party to invoke a “material breach” of a bilateral treaty as a ground for terminating or suspending it, and defines material breach as “a repudiation of the treaty not sanctioned by the present Convention” or “the violation of a provision essential to the accomplishment of the object or purpose of the treaty”.²⁵¹ A late payment of rent is not such a breach; a refusal to pay at all for years might be, but its consequence would be the suspension of the lease, not the undoing of independence, for the reasons §XIX.4 gives. Articles 65 to 68 add a procedure: the party invoking a ground for termination must notify the other, wait at least three months, and, if the other objects, seek a solution through the means listed in Article 33 of the Charter.²⁵² The International Court of Justice applied these rules with rigour in *Gabčíkovo-Nagymaros*, holding that Hungary’s notification of termination was “premature”, that the changed circumstances it invoked were not of the kind Article 62 contemplates, that reciprocal wrongful conduct “did not bring the Treaty to an end”, and that the 1977 treaty therefore remained in force between the parties.²⁵³ In *Croatia/Slovenia* the tribunal held that one party’s serious procedural misconduct, once remedied by the reconstitution of the tribunal, did not “defeat the object and purpose of the Agreement” and so did not entitle the other to terminate it.²⁵⁴ The tendency of the case law is plain: treaties survive breaches, and parties are held to them.

A breach engages the responsibility of the state that commits it. “Every internationally wrongful act of a State entails the international responsibility of that State”, and the responsible state must cease the act, offer guarantees of non-repetition where circumstances require, and “make full reparation for the injury caused”, by restitution where possible and compensation where not.²⁵⁵ The injured state may take countermeasures to induce compliance, such as withholding rent in proportion to the injury, but countermeasures “shall not affect the obligation to refrain from the threat or use of force”.²⁵⁶ They must

also be proportionate, be preceded by a demand and an offer to negotiate, and be suspended once the dispute is pending before a tribunal with authority to make decisions binding on the parties, which gives a compulsory arbitration clause a second function: it narrows the room for self-help on both sides. That limit protects both parties. The Startup State cannot answer a breach with force, and the Grantor State cannot recover the territory by force whatever the Startup State has done: Article 2(4) of the Charter forbids “the threat or use of force against the territorial integrity or political independence of any state”, and the Security Council’s response to the annexation of Kuwait in 1990, examined in §XV.4, shows the response such an act would invite. The Council decided that the annexation “has no legal validity, and is considered null and void”, and called on all states “not to recognize that annexation”.²⁵⁷

Resolution 662 gave institutional form to a duty that now binds states without any decision of the Council. Under Articles 40 and 41 of the Articles on State Responsibility, a serious breach of an obligation arising under a peremptory norm obliges every state not to recognise as lawful the situation it creates, not to render aid or assistance in maintaining it, and to cooperate to bring it to an end through lawful means; the Court applied that duty in its advisory opinions on the *Wall* in 2004 and on the *Occupied Palestinian Territory* in 2024.²⁵⁸ The duty is confined to serious breaches of peremptory norms. A forcible reincorporation of the new state’s territory would engage it as an act of aggression; a refusal to pay rent, a closed frontier, or a purported withdrawal of recognition would not, and against conduct of that kind third states are free, but not bound, to respond.

§XIX.6 Remedies, forums, and their limits

A right without a forum is a weak right, and the constitutive treaty must supply the forum in advance. Article 33 of the Charter lists the peaceful means, “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement”, and binding arbitration is the means best suited to a relationship between a large state and a small one.²⁵⁹ The Permanent Court of Arbitration administers disputes involving “various combinations of states, state-controlled entities, intergovernmental organizations, and private parties”, its Arbitration Rules 2012 are available wherever at least one party is a state, a state-controlled entity, or an intergovernmental organisation, and it has conducted arbitrations of the kind this model needs at each stage.²⁶⁰ In the *Abeyi* arbitration it acted as

registry for a tribunal deciding a territorial dispute between the Government of Sudan and the Sudan People's Liberation Movement/Army, a state and a non-state party, under rules designed for disputes "between Two Parties of Which Only One is a State"; both parties said they would accept the final award of July 2009, two years before South Sudan became independent.²⁶¹ The Eritrea-Ethiopia Boundary Commission and Claims Commission, constituted under the Algiers Agreement of December 2000, decided boundary and damages questions between a new state and its former parent, whose determinations the parties agreed "shall be final and binding".²⁶² A constitutive treaty can therefore provide, from the moment of signature, for arbitration under the PCA's rules between the Grantor State and the provisional authority, and from independence between the two states, with the PCA's Secretary-General as appointing authority so that neither party can block the tribunal's formation.

The International Court of Justice is the alternative forum, and the path to it is narrower than it appears. The Grantor State is a party to the Statute as a member of the United Nations; the new state becomes one on admission, or earlier under Article 93(2) of the Charter, and may in the meantime have access by lodging the declaration Security Council resolution 9 (1946) prescribes. Jurisdiction under the optional clause in Article 36(2) of the Statute extends only as far as the two declarations coincide, and many declarations exclude disputes with a state that accepted the clause less than twelve months before the application, which would close the Court to a new state for its first year. A compromissory clause under Article 36(1) is the more reliable basis, and the Court held in the *ICAO Council* appeal of 1972 between India and Pakistan that a unilateral suspension or termination cannot render a jurisdictional clause inoperative, since one of its purposes may be to test the validity of that very act.²⁶³

The record also shows the limits of adjudication, and the model must not overstate what an award can do. The Eritrea-Ethiopia Boundary Commission's decision of April 2002 was not implemented on the ground for sixteen years; Ethiopia accepted it "in principle" and demarcation stalled until a change of government in Addis Ababa produced the peace declaration of July 2018.²⁶⁴ China declared the award in the *South China Sea* arbitration "null and void" and has not complied with it.²⁶⁵ Croatia withdrew from the *Croatia/Slovenia* proceedings, and when Slovenia sought enforcement through the Court of Justice of the European Union, the Court held that it lacked jurisdiction.²⁶⁶

Awards against powerful states are enforced, when they are enforced, by reputation, reciprocity, and the attitude of third states rather than by any mechanism within the award.

Three conclusions follow for the design. First, the forum is best agreed before independence and made to survive allegations of breach, so that the question whether the treaty has been breached is itself arbitrable and neither party can escape the forum by alleging the other's default. Second, the strongest practical protection is not the award but the breadth of the new state's international relations. A state recognised by one neighbour depends on that neighbour; a state recognised by many, admitted to the United Nations, and party to the ordinary network of treaties can call on others when its neighbour defaults. Admission to the United Nations matters most of all. It requires a recommendation of the Security Council and a decision of the General Assembly, and expulsion requires the same; Article 6 has never been applied, the only attempt, against South Africa in 1974, having failed on the veto of three permanent members.²⁶⁷ A member state of the United Nations has, in practice, never been removed from the community of states by the decision of others. Third, the timing of recognition is itself a protection. Montenegro, whose independence its parent state had authorised in advance, was admitted to the United Nations within weeks; a Startup State constituted with comparable consent would face no legal obstacle to the same timetable, and each month in which its Grantor State remains its only recognising state prolongs the exposure §XIX.1 describes.

§XIX.7 When the rent goes unpaid

The failure most likely to occur is also the least dramatic. A Grantor State may never repudiate the bargain, and neither state may ever undergo a revolution; but a new country built on private capital may, at some point in a lease of a century or more, be late with its rent, unable to pay it, or unwilling to. Its founders may have overestimated the number of people who would come, the value of the land, or the patience of investors; a hurricane, a pandemic, or a financial crisis may strip its revenue in a season. A consortium well capitalised at signature is no guarantee of a solvent state twenty years later. The law's answer depends, once again, on the stage at which the default occurs, because the identity of the debtor changes at independence and the remedies change with it.

Before independence the tenant is a company and the rent is a commercial obligation under the Grantor State's law. The landlord's remedies are those of any landlord, enlarged by the powers of a government over its own territory: it may claim the arrears with interest, call on whatever security the lease required, and, if the default continues beyond the period allowed for cure, terminate the lease and re-enter the land. Lenders who have financed the project will have bargained for notice of any default and for the right to step in, cure it, or transfer the lease to a substitute operator, and a Grantor State has reason to accept such rights, since they offer a solvent tenant in place of an empty one. What the Grantor State cannot do is leave the consequences to the market. By the time a default occurs there may be residents, buildings, and a provisional authority on its territory, and it remains responsible for them under its own law and under the human rights treaties that bind it. The prudent lease therefore requires a reserve funded in advance and held by a third party, sufficient to pay the rent for a stated number of years and to meet the cost of an orderly wind-down; a performance bond or standby letter of credit from a bank of standing; insurance against natural catastrophe and, where it can be had, against political risk; and a plan, agreed at the outset, for the residents' status if the project fails. The question raised in §XVIII.10, whether Stage Two would ever come, is here answered from the other side. A Grantor State asked to grant independence is entitled to evidence that the region can pay its way, and the milestones for Stage Two can include a test of fiscal capacity measured over several years, not a referendum alone.

After independence the tenant is a state, and three consequences follow. First, as §XVIII.8 explained, re-entry is gone. The Grantor State cannot recover the land by force without violating Article 2(4) of the Charter, and the constitutive treaty provides that no breach of the lease, non-payment included, affects the new state's independence or restores the Grantor State's authority. Second, the rent becomes an international obligation, governed by the law of state responsibility, and its non-payment an internationally wrongful act. Third, enforcement passes from a domestic court, which can order a company to pay and seize its assets if it does not, to the far 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, and with some precision. In the *Russian Indemnity* arbitration of 1912, Russia claimed interest from the Ottoman Empire on instalments of

the war indemnity fixed after the war of 1877 and 1878, which had been paid years late. 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, unless the existence of a contrary international custom is established”.²⁶⁸ It rejected the Ottoman plea that the empire’s financial difficulties amounted to force majeure, observing that it “would clearly be exaggeration to allow that the payment” of about six million francs “would imperil the existence of the Ottoman Empire or seriously compromise its internal or external situation”. The claim for interest failed only because Russia’s embassy had, in its correspondence, repeatedly treated the unpaid balance as principal alone, and Russia was held to have renounced the interest. The Permanent Court of International Justice took the same view of financial hardship in the *Serbian Loans* case of 1929, holding that the war and its economic consequences had not released the Serbian State from its obligation to pay its French bondholders in gold value.²⁶⁹ The Articles on State Responsibility now provide that interest on any principal sum due is payable “when necessary in order to ensure full reparation” (Article 38), and they confine the defences on which a defaulting state might rely. Force majeure requires “the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation” (Article 23), and a shortage of money will seldom make payment materially impossible. Necessity may be invoked only where the act “is the only way for the State to safeguard an essential interest against a grave and imminent peril” (Article 25), a test tribunals apply strictly; the investment tribunals that heard claims arising from Argentina’s crisis of 2001 divided on whether that crisis met it, and the Articles add that a successful plea is without prejudice to “the question of compensation for any material loss caused by the act in question” (Article 27).²⁷⁰ The new state’s rent therefore does not lapse because the state cannot pay. It accrues, with interest, until it is paid or the parties agree otherwise.

What a Grantor State can do about it is a narrower question. It can claim, and the constitutive treaty gives it a forum: in the model, a tribunal under the PCA Arbitration Rules (§XIX.6). It can take countermeasures, suspending the performance of its own obligations towards the new state, provided the measures are proportionate, are directed to inducing payment rather than to punishment, are reversible, and leave untouched the obligations Article 50 of the Articles protects, the prohibition of force first among them (§XIX.5). It

can downgrade diplomatic relations, which is lawful and affects neither the treaty, by Article 63 of the Vienna Convention, nor the new state's existence. It cannot use force. The use of armed force to collect money owed by states was an accepted practice until the early twentieth century: Britain, Germany, and Italy blockaded the Venezuelan coast in 1902 and 1903 to enforce claims that included unpaid debts, and the episode provoked the doctrine of the Argentine Foreign Minister, Luis María Drago, that public debt could not justify armed intervention. The Second Hague Convention of 1907 accepted the principle in a qualified form: its parties agreed "not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals", unless the debtor refused arbitration or failed to comply with an award.²⁷¹ The Charter has since removed the exception. No unpaid debt, however large, justifies force today. Nor, as §XIX.4 explained, can the Grantor State answer a default by withdrawing recognition. The new state's existence does not depend on its rent account. A state that does not pay its debts remains a state, with a debt.

The harder question is enforcement, and here the experience of private creditors pursuing states is instructive, because a Grantor State holding an unpaid award would be in much the same position. An award against a state binds it but does not execute itself, and the property of a foreign state is protected by an immunity from execution that the International Court of Justice has described as going further than immunity from jurisdiction. In *Jurisdictional Immunities of the State* the Court held that a measure of constraint against a foreign state's property requires, at least, that the property be in use for an activity not pursuing government non-commercial purposes, that the state have expressly consented to the measure, or that it have allocated the property for the satisfaction of the claim.²⁷² The United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004, not yet in force, states the same conditions in Article 19, and Article 21 places beyond reach, in particular, the property of diplomatic missions, "property of a military character", and "property of the central bank or other monetary authority of the State".²⁷³

Argentina's default of 2001 shows what follows when a state will not pay and its creditors will not settle. Funds managed by Elliott Management, led by Paul Singer, pursued Argentina's assets for over a decade in several jurisdictions. In October 2012 one of them, NML Capital, obtained an order from the High Court in Accra detaining the Argentine naval training ship

ARA Libertad in the port of Tema; the International Tribunal for the Law of the Sea ordered its release on 15 December 2012, holding that “in accordance with general international law, a warship enjoys immunity”.²⁷⁴ The creditors’ decisive leverage came not from seizing property but from injunctions issued in New York that barred Argentina from paying its other bondholders unless it also paid them, and the dispute ended in 2016 with settlements under which Elliott was reported to receive about US\$2.4 billion.²⁷⁵ The lesson cuts both ways. Collection from an unwilling state is slow, costly, and uncertain. But a state that defaults and refuses to settle pays heavily in the end, in its access to capital, in the price of its future borrowing, and in the attention of creditors who are patient and well advised. A small new state, dependent on investment and trade, can afford that price less than most.

The practice of states towards one another points to a different solution, and the more useful one. Rent between states is seldom collected by litigation; it is secured, offset, or renegotiated. The annuity the United States owed Panama under Article XIV of the canal treaty of 1903, “two hundred and fifty thousand dollars (\$250,000) in like gold coin”, became a dispute when the United States left the gold standard. Panama declined the tenders of 1934 and 1935 in legal tender, and the dispute was resolved not by a tribunal but by a new General Treaty, signed in March 1936, which fixed the payments “beginning with the annuity payable in 1934” at 430,000 balboas.²⁷⁶ Under the agreements of 1997 on the Black Sea Fleet, Russia’s annual payment for the use of the base at Sevastopol, US\$97.75 million, was set off against Ukraine’s debt to Russia; when Russia terminated the agreements in April 2014, after its annexation of Crimea, the set-off ended, and Ukraine’s Finance Ministry later recorded that the remaining debt tied to it could no longer be serviced.²⁷⁷ Russia pays Kazakhstan a rent reported at US\$115 million a year for the Baikonur Cosmodrome, under a lease of 1994 extended in 2004 to 2050.²⁷⁸ And at Guantánamo the rent, converted in 1934 from \$2,000 in gold coin to \$4,085, is still tendered by the United States and, with a single exception, has not been cashed by the Cuban government, since to cash it would acknowledge a lease Cuba regards as void.²⁷⁹ The episodes show that rent between states is political as well as financial, that set-off arrangements are efficient but fall with the relationship that sustains them, and that states renegotiate when a bargain no longer reflects reality.

The model draws three lessons from this record. The first is to secure the rent before independence, while the Grantor State still holds a company's covenant and the jurisdiction of its own courts. The constitutive treaty can require a rent reserve, funded before the Effective Date, held by an independent trustee, sufficient for several years' rent, and replenished from the new state's revenue. Interwar practice supplies a precedent for an international trustee of a state's payment obligations in the role of the Bank for International Settlements as trustee of the German Government International Loan of 1930.²⁸⁰ The second is to make the remedy as certain as the law allows. Article 19 of the 2004 Convention 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 treaty can contain such a consent, limited to the rent reserve and to identified revenue, which gives the Grantor State a realisable security without exposing the new state's embassies, central bank, or public functions. It also fixes the grace period, the rate of default interest, and the order of remedies, so that the consequences of late payment are settled before it happens. The third is to plan for misfortune instead of treating it as breach. Small states have shown how. Grenada's debt restructuring of 2015 introduced a clause allowing payments to be deferred after a qualifying hurricane, and in 2024, after Hurricane Beryl, Grenada used it to defer more than US\$17 million of payments; Barbados's bond of 2022 allows payments to be deferred for up to two years after a natural disaster whose occurrence is confirmed by the Caribbean Catastrophe Risk Insurance Facility, its parametric insurer, with the deferred amounts capitalised.²⁸¹ A rent clause on the same pattern, with deferral capitalised rather than forgiven, protects the Grantor State's income and the new state's solvency together, and leaves the plea of force majeure for the extreme case in which it belongs.

History also supplies a warning about how far security should go. When the Ottoman Empire, Egypt, and the Dominican Republic could not pay their creditors, the creditors or their governments installed administrations that collected and controlled the debtor's revenue: the Caisse de la Dette Publique in Egypt from 1876, the Ottoman Public Debt Administration from 1881, and the American receivership of the Dominican customs from 1905. Each turned a creditor's security into control of a debtor's government, and each is remembered as an instrument of dependence. The model's security must stop short of that. A reserve, and a consent to execution against identified funds enforceable

through an arbitral award, are compatible with independence; a power for the Grantor State to collect the new state's taxes, administer its customs, or approve its budget is not. Section VII treated tribute as an incident of dependence, and a receivership would make the rent one.

What, then, of the outright default, in which the new state cannot pay and does not recover? International law has no bankruptcy court for states. The International Monetary Fund's proposal of 2002 for a Sovereign Debt Restructuring Mechanism was not taken forward, and the General Assembly's Basic Principles on Sovereign Debt Restructuring Processes of 2015, adopted by 136 votes to 6 with 41 abstentions, do not bind; they affirm that a state "has the right, in the exercise of its discretion, to design its macroeconomic policy, including restructuring its sovereign debt", and add that restructuring "should be done as the last resort and preserving at the outset creditors' rights".²⁸² A state cannot be wound up, and its territory cannot be sold to satisfy its creditors. An outright default therefore ends as defaults between states have always ended, in negotiation: a reduced rent, a longer term, a purchase of the reversion, or a settlement in kind. Its cost falls on the new state in other ways. A default on the rent is likely to trigger the cross-default clauses of any bonds the new state has issued, to cost it its credit rating, and to close the capital markets to it when it most needs them. For a small state that lives on investment, that is the sanction that matters.

Newfoundland shows where a polity's insolvency can lead. A self-governing dominion that owed some \$97 million by 1932 and was contemplating a partial default, it accepted the recommendation of a British Royal Commission in 1933 that responsible government be suspended, with its debt rescheduled under a British guarantee. Its legislature asked the Crown to suspend the constitution, the United Kingdom Parliament passed the Newfoundland Act 1933, and on 16 February 1934 an appointed Commission of Government took office, to remain until the country was again "self-supporting" and its people asked for the return of responsible government.²⁸³ Newfoundland never resumed its former status: after two referendums in 1948 it joined Canada on 31 March 1949. The lesson for the model is not that a defaulting state loses its independence, for Newfoundland's government surrendered its powers at its own request, and no creditor could have taken them. It is that a polity which cannot pay its way will in time be pressed to trade autonomy for solvency, and that the moment to prevent that choice is the design stage: by fixing the rent at what the territory

can bear, and by building in the reserve, the deferral clause, and the rent review that make an outright default unlikely.

For founders the point is plain. The rent is the first charge on a new state's public finances and the one its parent will watch most closely, and a project that cannot meet it from a reserve and a realistic budget is not ready for independence. For a Grantor State the point is that its counterparty changes character at independence, from a company it can sue in its own courts to a state it can only arbitrate against, and that the security worth having must be taken before that change. In law, a default after independence produces a debt, interest, and an award. It does not return the land or end the state, and no drafting should pretend that it could.

§XIX.8 When the Grantor State changes

The arrangement may outlast the government that made it, and may outlast the state. Three transformations must be considered: a revolutionary change of government, the dissolution or separation of the Grantor State, and its union with another state.

A change of government does not affect the obligations of the state. The principle was stated in the *Tinoco* arbitration in words taken from John Bassett Moore:

“Changes in the government or the internal policy of a state do not as a rule affect its position in international law. A monarchy may be transformed into a republic or a republic into a monarchy; absolute principles may be substituted for constitutional, or the reverse; but, though the government changes, the nation remains, with rights and obligations unimpaired.”

Tinoco Arbitration (Great Britain v Costa Rica) (1923) 1 RIAA 369, 377

The history of long leases confirms the principle and shows its strain. The lease of the New Territories of Hong Kong, concluded with the Qing empire in 1898 for “ninety-nine years”, survived the fall of the dynasty, the Republic of China, whose President declared in 1913 that “all treaties, conventions, and other engagements entered into by the former Manchu” governments “shall be strictly observed”, and the People's Republic, which called the 1898 convention an unequal treaty but held that the status quo should be maintained until the question could be settled by negotiation.²⁸⁴ The lease ended on its own date in 1997, under the Joint Declaration examined in §XII.6. The Guantánamo lease has survived the Cuban revolution of 1959. Article III of the Treaty of

Relations of 1934 provides that the lease continues “until the two contracting parties agree to the modification or abrogation” of its terms; Cuba’s constitution now repudiates as “illegal and void” treaties “agreed to under conditions of inequality”, and Cuba has declined since 1959 to cash the rent; the United States maintains that the lease cannot be ended by one party alone.²⁸⁵ The lease endures, and so does the dispute over its legitimacy, which no forum has been empowered to decide. The counter-example is the Soviet decree of February 1918 annulling “absolutely and without any exception all foreign loans” of the imperial government; the creditors’ claims were not extinguished in law, and the United Kingdom and the Soviet Union settled them by mutual waiver in 1986, sixty-eight years later.²⁸⁶ A revolutionary government may repudiate. The law does not recognise the repudiation, but it cannot prevent it.

The dissolution or separation of the Grantor State is governed by the law of state succession, and here the new state’s position is strong. The Vienna Convention on Succession of States in respect of Treaties of 1978 provides that a succession of states “does not as such affect ... a boundary established by a treaty”, nor “obligations relating to the use of any territory ... established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question”.²⁸⁷ The International Court of Justice held in *Gabčíkovo-Nagymaros* that Article 12 reflects customary international law, that a treaty establishing a territorial regime “could not be affected by a succession of States”, and that the 1977 treaty between Hungary and Czechoslovakia therefore became binding on Slovakia on 1 January 1993.²⁸⁸ The independence of the new state, being an executed situation rather than a continuing obligation, is unaffected by the dissolution of the state that granted it; its frontier is protected by Article 11 and by the principle stated in *Libya/Chad*.

The lease is the harder question. If the Grantor State dissolves, who is the landlord? The answer turns on classification. If the lease is a territorial regime “attaching to the territories in question”, it passes with the territory under Article 12, and the model’s treaty says in terms that it is, though the parties’ label is evidence of the regime’s character rather than conclusive of it. If it is not, the rights under the lease pass under the general rules of treaty succession, in particular Article 34 of the 1978 Convention, while the land itself, as property of the Grantor State, passes under the rules on state property. The Vienna Convention on Succession in respect of State Property of 1983, which is not in force and is treated as a partial guide to customary law rather than a statement of

it, provides that on dissolution “immovable State property of the predecessor State situated outside its territory shall pass to the successor States in equitable proportions”, unless “the successor States concerned otherwise agree”.²⁸⁹ Land owned by the Grantor State within the new state is, after independence, property situated outside the Grantor State’s territory, and on dissolution it would pass to the successors in shares the treaty can and should fix in advance. Article 12(3) excludes from the protection of the rule “treaty obligations of the predecessor State providing for the establishment of foreign military bases”, which is a further reason for the model’s insistence on demilitarisation and its refusal of basing rights.

Practice on dissolution and continuity points the same way. When the Soviet Union dissolved, the members of the Commonwealth of Independent States supported “Russia’s continuance of the membership of the Union of Soviet Socialist Republics in the United Nations”, and the Russian Federation stated that it maintained “full responsibility for all the rights and obligations” of the Soviet Union under the Charter; its claim to continuity was not challenged.²⁹⁰ When Yugoslavia dissolved, the Federal Republic of Yugoslavia’s claim to continue the former state’s personality was rejected: the General Assembly considered in September 1992 that it “cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia”, and it was admitted as a new member only in November 2000.²⁹¹ The Arbitration Commission held that the former federation had dissolved, that “all are successor states”, and that the outcome of succession “should be equitable”.²⁹² Czechoslovakia divided by agreement on 1 January 1993, and both successors declared that they would apply the 1978 Convention to their own succession. A new state whose Grantor State dissolves will therefore face either a continuing state, bound by the treaty as the Russian Federation was bound by Soviet obligations, or several successors, each bound in respect of its share of the arrangement. The model’s treaty anticipates both by naming who would hold the landlord’s interest and how the rent would be divided.

The union of the Grantor State with another state raises the same questions in a milder form. Under Article 31 of the 1978 Convention, a treaty in force for one of the uniting states “continues in force in respect of the successor State” for the territory to which it applied, unless the parties agree otherwise or continuation would be incompatible with the treaty’s object and purpose.²⁹³ Practice has not always followed that rule, and the absorption of one state by

another has been treated as a moving of treaty frontiers under Article 15 rather than as a uniting under Article 31. The united Germany provided in its Unification Treaty of 1990 that the treaties of the Federal Republic would extend to the former German Democratic Republic and that those of the Democratic Republic would be “discussed with the contracting parties concerned with a view to regulating or confirming their continued application, adjustment or expiry”.²⁹⁴ When the two Yemeni states united in 1990, they informed the Secretary-General that all treaties concluded by either “will remain in effect”.²⁹⁵ On either footing the boundary and any territorial regime survive under Articles 11 and 12; an obligation of a personal kind could lapse if the Grantor State were absorbed into another state, as many of the Democratic Republic’s treaties lapsed in 1990, which is a further reason for the treaty to classify the lease as attaching to the territory.

§XIX.9 When the Startup State changes

The new state may itself be transformed. It may change its government, by election or otherwise; it may wish to unite with another state; it may divide. Each possibility engages the Grantor State’s legitimate interests as landlord, neighbour, and party to the treaty, and each tests the line between protecting those interests and compromising the new state’s independence.

A change of government in the new state leaves its obligations intact, on the principle stated in *Tinoco*. The treaty, the lease, and the rent continue whoever governs. The temptation for a Grantor State is to go further and to make the arrangement conditional on the character of the new state’s government, by a clause allowing it to suspend the lease if democratic government is overthrown or to intervene to restore the constitutional order. A clause of that kind would undercut the arrangement it was meant to secure. The Treaty of Guarantee of 1960 gave Greece, Turkey, and the United Kingdom a right to take action “with the sole aim of re-establishing the state of affairs created by the present Treaty”, and the invocation of that right in 1974 preceded the division of Cyprus that persists today (§IX.3). A right of intervention is an invitation to the very conduct the model exists to exclude. The new state’s commitment to representative government is better expressed in its own constitution and in its accession to the International Covenant on Civil and Political Rights, whose Article 25 guarantees the franchise (§XVIII.10), than in a power reserved to its neighbour.

The union of the new state with another state is the more delicate case, because it could transfer the territory, and the Grantor State's land, into the jurisdiction of a third state the Grantor State never chose. Treaty restrictions on a state's freedom to unite with another are familiar, and they are compatible with independence. The Treaty of Saint-Germain of 1919 declared Austria's independence "inalienable otherwise than with the consent of the Council of the League of Nations"; the State Treaty of 1955 prohibits "political or economic union between Austria and Germany"; and the Republic of Cyprus undertook in 1960 "not to participate, in whole or in part, in any political or economic union with any State whatsoever".²⁹⁶ The Permanent Court of International Justice advised in 1931, by eight votes to seven, that the proposed customs régime with Germany would be incompatible with Austria's undertaking in the Geneva Protocol of 1922; Judge Anzilotti, concurring, would have found it incompatible with Article 88 as well.²⁹⁷ Judge Anzilotti explained why such an undertaking does not compromise statehood:

"It also follows that the restrictions upon a State's liberty, whether arising out of ordinary international law or contractual engagements, do not as such in the least affect its independence. As long as these restrictions do not place the State under the legal authority of another State, the former remains an independent State however extensive and burdensome those obligations may be."

*Customs Régime between Germany and Austria, PCIJ Series A/B No 41 (1931),
Individual Opinion of Judge Anzilotti, 58*

The distinction Anzilotti draws is the one the model observes. An undertaking by the new state not to unite with another state without the Grantor State's consent restricts its liberty; it does not subject it to the Grantor State's authority, and it is compatible with independence. A power in the Grantor State to direct the new state's government would not be. The history of Monaco shows both how such clauses work and how they age. The Franco-Monegasque treaty of 1918 provided that if the throne fell vacant, Monaco would become "sous le protectorat de la France, un État autonome", and required French approval of the heir. The treaty of 2002 replaced those provisions with a commitment that the succession would follow Monaco's own constitution, of which France would be informed, and with the statement that "le territoire de la Principauté de Monaco est inaliénable".²⁹⁸ A clause that once constrained a small state's dynastic succession was replaced, by agreement, with one that respected its constitution while preserving the larger state's interest in the territory.

The law of succession supplies the default rules if the new state does unite or divide. Under Article 31 of the 1978 Convention its treaties, including the constitutive treaty and the lease, would continue in force for the territory to which they applied; under Article 34 a successor formed by its division would remain bound in respect of its part. If the new state were instead absorbed into an existing state, practice suggests that Article 15 rather than Article 31 would apply, and only the boundary under Article 11 and any territorial regime under Article 12 would be certain to survive. The Grantor State's land and rent would therefore follow the territory into whatever state succeeded, and the boundary would be protected by Article 11. The treaty can strengthen the defaults: it can require the new state to consult the Grantor State before any union, give the Grantor State an option to sell the freehold to the successor at a fixed formula price, and provide that the lease attaches to the territory and binds any successor. It does not give the Grantor State a veto over the new state's constitutional future beyond the territory it owns.

§XIX.10 The architecture of resilience

The preceding subsections yield a set of drafting principles. None is novel; each is drawn from instruments states have already concluded or rules tribunals have already applied. Together they make the arrangement as resistant to failure as law can make it.

In the model, the constitutive provision is self-executing and irrevocable: it takes effect on a fixed date upon ratification, requires no further act of the Grantor State, and records that the Grantor State's recognition of the new state is unconditional and irrevocable, in the words of Article 6 of the Montevideo Convention. The treaty states that its constitutive and boundary provisions are not subject to denunciation, withdrawal, or suspension, and that the termination or suspension of any other provision does not affect them, giving express effect to Articles 56, 62(2)(a), and 70(1)(b) of the Vienna Convention. The lease is separate from the constitutive provisions, so that a dispute about rent can never become a dispute about statehood, and it is declared to attach to the territory and to bind successors of either party. The rent is secured by a reserve held by an independent trustee and funded before independence, by a limited consent to execution against that reserve and identified revenue, and by a fixed grace period and rate of default interest, and it may be deferred, with interest, after a natural disaster determined by an objective measure; nothing in the security gives the

Grantor State any control over the new state's revenue or budget. The dispute-settlement clause provides for arbitration under the PCA Arbitration Rules 2012, applies from signature, survives any allegation of breach or termination, and names the PCA's Secretary-General as appointing authority. The treaty names the successor to the landlord's interest if the Grantor State dissolves, divides the rent among successors in fixed shares, and provides for consultation and a purchase option if either state unites with another. It excludes military bases, which Article 12(3) of the 1978 Convention leaves outside the protection of territorial regimes. It is registered with the Secretariat of the United Nations under Article 102 of the Charter, so that it can be invoked before any organ of the United Nations. Registration is not a condition of validity: the Court held in *Qatar v Bahrain* that non-registration "does not have any consequence for the actual validity of the agreement".²⁹⁹ Nor does registration confer on an instrument the status of a treaty it would not otherwise have. Its value lies in publicity, and the Grantor State, as a member, can register the treaty as soon as it enters into force. And it is accompanied by a recognition strategy and an application for membership of the United Nations within the first year, as Appendix C's operation milestones already require.

The template in Appendix C carries these principles into model clauses. They will not prevent a determined government from breaking its word. They will ensure that a government that does so is in evident breach, that the breach has a forum, that the new state's existence and frontier are untouched by it, and that other states asked to choose between the parties will see which of them has kept the bargain.

§XIX.11 What this section establishes

Before independence, the consortium's protection is that of an investor: contract, statute, and investment treaty, enforceable by damages but not by statehood. Between signature and entry into force, the Grantor State is bound not to defeat the treaty's object but remains free not to ratify, which is why the model keeps the interval short and the commitments around it binding in their own right. After independence, the Grantor State has no lawful means of undoing what it has done. Recognition of a state is, on the dominant view, irrevocable while the state meets the criteria; the constitutive treaty is not open to unilateral denunciation, and its execution survives its termination; the frontier is permanent; and the severance of relations does not affect the treaty.

A Grantor State that breaks its word incurs responsibility and faces arbitration, and it may not use force to recover the territory. A new state that does not pay its rent incurs a debt with interest, recoverable through arbitration and from security taken before independence, but it does not forfeit the land or its existence. The succession of either state leaves the new state's existence and frontier intact and carries the lease to whoever succeeds, provided the lease is drafted, and not merely labelled, as attaching to the territory. Restrictions on the new state's freedom to unite with another state are compatible with its independence if they restrict its liberty without subjecting it to the Grantor State's authority.

What the law cannot do is compel cooperation. The record of awards ignored and leases contested shows that the final protection of a small state is the number and seriousness of the states that recognise it, trade with it, and would object if it were wronged. A Startup State's first diplomatic task is to make its existence a fact that many states have an interest in maintaining, so that its relationship with its Grantor State, however close, is never its only relationship.

SECTION XX

Two Hypotheticals and a Model

The record shows that the mechanism is real. What follows shows what building with it would require, tested against two worked instrument suites rather than asserted in the abstract.

The preceding sections examined a historical record. What follows is different in kind, and the difference must be stated first. No treaty has been concluded, no ordinance made, no referendum held, and no constitution promulgated for either territory discussed below. Nothing here is a prediction, a proposal put to any government, or a claim that the outcome described is likely. The purpose is to test the method and the two-stage model against worked instruments, to show in concrete terms what satisfying them would require and where each hypothetical falls short. The instrument suites are reproduced in Appendices A and B, and a generalised template in Appendix C.

§XX.1 Why Ducie Island, and why a fictional second case

The first hypothetical concerns Ducie Island, an uninhabited coral atoll of about 0.7 square kilometres of land at the eastern end of the Pitcairn Islands, a British Overseas Territory. The choice is deliberate on several grounds.

Ducie comes as close as any territory on earth to the clean conception described in §I.4. It lies more than 500 kilometres from Pitcairn Island, the only inhabited island of the group, in one of the most remote stretches of ocean on the planet. It has no permanent population, no known history of settlement,

and no known burial or heritage sites. Its title is held by a single state, with no competing claim. A transaction there would displace no one and would raise the self-determination question in its weakest form.

The choice of a British territory is equally deliberate, and it reflects discretion rather than any view about which states might one day take part in such a transaction. A named hypothetical attached to the territory of a small or developing state that has made no such proposal would presume on the sensitivities of a government and people who have not chosen to be associated with it, and could be misread as implying that the model depends on the weakness of its counterparty. It does not; many small states would be natural partners in it, and the choice to become one belongs to them alone. The United Kingdom is a permanent member of the Security Council with long experience of granting independence, and a hypothetical concerning one of its territories presumes on no one. The improbability of the transaction is part of the point: it keeps the legal architecture free of any suggestion of present political intent.

The choice has a diplomatic cost, and the cost is stated. A grant by a permanent member would be recognised by that member at the moment of creation, and the United States and France would probably follow. Russia and China have, in other contexts, made their positions on new states depend on their own territorial concerns, and a new microstate seeking rapid admission to the United Nations could face conditions unrelated to anything it had done. That is not a legal defect. It is the price of the feature that makes Ducie attractive, and the two cannot be separated. A permanent member acting as Grantor State removes its own veto from the path to admission and leaves the other four where they were. Kosovo, recognised by around half of the United Nations' members and blocked from admission, and Abkhazia and South Ossetia, backed by Russia and recognised by almost no one else, show that the involvement of a permanent member is not sufficient for broad recognition.

Two further facts about Ducie shape the hypothetical and are handled within it. First, since 2016 the waters around the Pitcairn Islands, including Ducie's, have formed the Pitcairn Islands Marine Reserve, some 830,000 square kilometres in which commercial fishing and mineral extraction are prohibited.³⁰⁰ The instruments do not disturb the reserve. They bind the Commonwealth of Ducie by treaty to maintain it, which strengthens rather than weakens the case: a new state that inherits and upholds one of the largest marine reserves in the world is easier for the United Kingdom and for third states to

accept. Second, under Article 121(3) of the United Nations Convention on the Law of the Sea, as the tribunal in the *South China Sea* arbitration read it in 2016, rocks that cannot sustain human habitation or economic life of their own generate no exclusive economic zone.³⁰¹ The instruments therefore claim for Ducie a territorial sea and contiguous zone only, and leave any wider zone to be determined by the law as it applies once settlement is established.

The second hypothetical is wholly fictional. A Pacific island state, the Republic of the Southern Reaches, grants independence to the Republic of Tern, established on Aurel Atoll, an uninhabited outlying atoll within its jurisdiction. Neither party is a permanent member, and the resulting arrangement includes a time-limited joint commission. The names identify no existing state or territory, so that the architecture can be examined without importing assumptions about a real government's intentions. Ducie supplies the cleanest illustration of the constitutive mechanism at work; Tern is closer to the case a real project would more often face.

§XX.2 The Commonwealth of Ducie: architecture

The instrument suite in Appendix A proceeds in four phases that follow the sequence by which the United Kingdom has granted independence to its territories, adapted to the Pitcairn constitution.

Phase I comprises two ordinances made by the Governor of the Pitcairn Islands: the Ducie Island (Special Administrative Region) Ordinance, establishing an interim region and authorising a 199-year lease to a private lessee, and the Ducie Island Independence Referendum Ordinance. This is Stage One. Phase II comprises United Kingdom instruments: an Order in Council amending the Pitcairn Constitution Order 2010 to accommodate the region, and a Ducie Island Independence Act on the model Parliament has used for territories released since 1945. Phase III is the Treaty of Independence and Cooperation, the constitutive instrument. Phase IV is the Constitution of the Commonwealth of Ducie, promulgated by Order in Council.

The treaty applies the sequencing doctrine in its second form. Article 1 performs the constitutive act: the United Kingdom, acting in its own right and in respect of the Pitcairn Islands, whose external affairs it conducts and which have no separate international personality, constitutes the territory of Ducie as an independent state with effect from Independence Day. The Commonwealth of Ducie is not a party at signature, because it does not yet exist;

its first government confirms the treaty by instrument deposited within thirty days, and the treaty takes effect between the United Kingdom and the Commonwealth from Independence Day. The Pitcairn Islands appear throughout as the territory in respect of which the United Kingdom acts, not as a party. This is a different thing from Botswana's independence, which the United Kingdom effected by statute alone: here the Independence Act authorises the constitutive instrument, and the instrument, confirmed by the new state, is what constitutes it.

The treaty applies the primary land model. The private lessee assigns the Stage One lease to the Commonwealth, which becomes lessee of the land from the Crown for the remainder of the term. The Commonwealth governs the territory as an independent state and pays an indexed annual rent to the United Kingdom, a separate indexed payment to the Government of the Pitcairn Islands, and an annual dividend to each registered elector of the Pitcairn Islands. The payments to the islanders are generous by design. Their purpose is not to find the lowest price the islanders would accept but to ensure that the people with the closest connection to Ducie have every reason to welcome the arrangement and none to oppose it, and the referendum ordinance gives the Pitcairn electorate a separate majority requirement. A critic may say that a hereditary payment to each elector (passing on the elector's death to their descendants, within a fixed total), beginning on Independence Day, buys the result of the vote. The answer is in the terms: the payments are consideration for the separation, disclosed in full before the vote, payable to every elector regardless of how that elector voted, and approved or rejected in the open. They are payable only if independence proceeds, and a critic will say that this is what makes them an inducement. The reply is that compensation in any consensual transfer is paid only if the transfer occurs, and that its purpose is to price what the electorate gives up, a connection with Ducie, rather than to reward a vote. Whether that reply satisfies a given observer will depend on the size of the payments relative to what is given up, which is why the instruments leave the amounts to be fixed openly and in advance. The vice the Chagos Opinion identified was the absence of a free and genuine expression of will, not the presence of benefits, and a vote taken with every term public is the opposite of what the Court condemned.

Three features of the architecture deserve notice. First, no joint commission or condominium appears anywhere in the Ducie instruments; authority passes

without residue, subject only to the commitments assessed in §XX.3, among them membership of the Commonwealth of Nations and a retained appeal to the Judicial Committee of the Privy Council, which many independent states accept. Second, the instruments do not purport to waive anyone's statutory rights: a British citizen's right of abode cannot be extinguished by private contract or ordinance, and the Special Administrative Region Ordinance instead provides that no one acquires new status by connection with Ducie. Third, the maritime arrangements are confined to what the law allows: no lease of maritime zones, for which the Convention on the Law of the Sea makes no provision, and no exploitation rights inconsistent with the Marine Reserve.

§XX.3 The Commonwealth of Ducie: assessment

If enacted substantially as drafted, the instruments would place Ducie on the top rung. No Ducie polity has ever existed, and the treaty would bring one into being in express terms, withdraw the United Kingdom's authority, and dispose of the territory's use in a single instrument, much as Article 3 of the Lateran Treaty did for Vatican City, although the Lateran Treaty also transferred ownership, which the primary land model does not.

On independence, the Constitution establishes a territory, a government, and a framework for a population, and the treaty's commitments to demilitarisation, neutrality, and the Marine Reserve, and the retained Privy Council appeal, are commitments the new state accepts rather than controls held by another state. The treaty commits the United Kingdom to provide defence at the Commonwealth's request, and the tension between that undertaking and permanent neutrality is resolved in the drafting by making the arrangement terminable by Ducie and confined to defence against external attack. The commitments must also be assessed together, since a set of modest limits can amount to more than any one of them. Taken together, demilitarisation, neutrality, the Marine Reserve, the Privy Council appeal, membership of the Commonwealth of Nations (a voluntary association any member may leave), the defence undertaking, and a tenancy of land the Crown continues to own still leave the Commonwealth's government answerable to no other state. The defence undertaking is terminable by Ducie, the Privy Council appeal is retained or abolished by its own Constitution, neutrality and environmental protection are self-limitations of a kind many states accept, and the non-forfeiture clause in Article 2.4 ensures that the Crown's ownership confers no power to govern.

Independence would be substantial, with those commitments stated as its qualification.

Operation is the variable no drafting can supply. Whether a National Assembly would convene, legislate, and govern, and whether a community would form on an island without fresh water or an airstrip, are questions only events could answer. The absence of any resident population at the outset makes the gap between legal establishment and operation wider at Ducie than in any historical case. The hypothetical's value lies in showing that the legal architecture can be built with its difficulties stated; it does not show that the polity would come to life. On the physical facts, an island of 0.7 square kilometres without fresh water or an airstrip, and a rock under Article 121(3), since the *South China Sea* award assessed an island's capacity by its natural conditions rather than by settlement supported from outside, Ducie may never support the permanent population the Montevideo criteria require, and the hypothetical is offered as a legal illustration rather than a site assessment.

§XX.4 The Republic of Tern: architecture

The second suite, in Appendix B, proceeds in three phases. Phase I is legislation of the Republic of the Southern Reaches: a constitutional amendment empowering its parliament, by two-thirds majorities and subject to referendum, to establish special administrative regions, to lease public land for up to 199 years, and to enter time-limited joint arrangements with a successor state; an Act establishing the Aurel Atoll Special Administrative Region, authorising a lease to a private consortium, and providing a pathway to independence conditional on a negotiated constitutive treaty; and an Act providing for referendums in the Southern Reaches and in the region. Phase II is the Constitutive Treaty, which applies the sequencing doctrine in the same way as the Ducie treaty: the Southern Reaches constitutes the Republic of Tern with effect from entry into force, and Tern confirms the treaty once its government exists. Phase III comprises Tern's constitution and implementing legislation.

The distinguishing feature is a Joint Commission, sitting for an initial term of twenty years from independence. The Commission monitors compliance with the treaty, certifies environmental standards for construction, and resolves disputes by consensus. Representatives of the Southern Reaches sit as a minority in Tern's legislature for the same term, with no vote on Tern's domestic affairs. The arrangement ends automatically at the end of the term unless Tern's

own legislature, by its own resolution, renews it for a further period of up to ten years; it cannot be extended by the Southern Reaches, by the Commission, or by mutual agreement without that resolution. The treaty, the Southern Reaches' constitutional amendment, and Tern's constitution state the same rule, so that no instrument can be read to prolong the arrangement against Tern's will. The Act establishing the region does not describe it as an inalienable part of the Southern Reaches, a description that would be incompatible with the pathway to independence the same Act provides. The Joint Commission is a limited form of the transitional condominium described in §XVIII.8: it shares oversight, not government, and it ends on a fixed date.

§XX.5 The Republic of Tern: assessment

Tern would stand on the top rung for the same reasons as Ducie. Its independence is more qualified. The minority presence of the Southern Reaches' representatives in Tern's legislature places officials of another state within the new state's institutions, and the method applied to the Ionian Islands and Danzig in Section VII requires that the arrangement be tested against the external-domination question rather than waved through. Three features distinguish it from those cases: the representatives form a minority and cannot vote on domestic matters; their presence ends automatically after twenty years unless Tern alone chooses otherwise; and it rests on Tern's own confirmation of the treaty. The Ionian Lord High Commissioner held executive power and a veto, indefinitely, by the protecting power's appointment; Poland conducted Danzig's foreign relations by treaty obligation without limit of time. Tern's arrangement is a transitional limitation on independence, not a controlling power, and its cost to independence is a matter of degree. The continuing provision of defence by the Southern Reaches, terminable by Tern, qualifies independence further in the same way. Operation is as uncertain as at Ducie.

§XX.6 Comparative assessment

The two hypotheticals occupy different points on the same spectrum. Ducie offers the cleaner constitutive architecture and the cleaner independence, bought at the cost of exposure to the recognition politics that attend any act of a permanent member. Tern offers a more representative setting, free of involvement by a permanent member, at the cost of a transitional arrangement that qualifies its independence for a defined period. Neither offers certainty on operation, and both show the single most important lesson of the exercise for any reader

tempted to treat either suite as a template: the drafting can be as sound as the strongest historical instruments, and the result will still depend on the one variable no instrument controls, a community that governs itself in fact.

§XX.7 Towards a model

Appendix C develops a generalised instrument template, offered for educational purposes only. It names no territory or party and does not purport to be a universal formula; any real transaction would have to be built for its own territory, population, and Grantor State. Six design choices distinguish it from one or both hypotheticals.

First, as in the Tern treaty, any transitional joint arrangement is optional and self-executing in its expiry: it lapses on a fixed date unless the new state's own legislature renews it, which preserves the practical advantages Tern's drafters sought, access to an established administration during the most fragile years, without an open-ended limit on independence. Second, the model treaty performs the constitutive act, recognition, the disposition of the territory's use, and the transitional arrangements in a single consolidated instrument, rather than distributing that work across a treaty and several domestic Acts. Third, the treaty makes operation demonstrable rather than asserted, through dated milestones: the first sitting of the legislature, the appointment of the judiciary, the conclusion of at least one international agreement in the new state's own name with a state other than the Grantor State, and an application for membership of the United Nations, each recorded by joint communiqué when achieved. Fourth, the template provides for both land models set out in §XVIII.8, with the landlord-and-tenant model as the default and full transfer of ownership as the alternative. Fifth, where the new state adopts neutrality, the template records it as a unilateral undertaking in the new state's own constitution, which it may revise through its own procedures, rather than as a treaty obligation owed to the Grantor State, as the Ducie and Tern treaties provide. The historical examples placed neutrality in treaties, as the Lateran Treaty and the Vienna settlement did for Vatican City and Cracow; Austria in 1955 shows the alternative, neutrality declared by the new state's own constitutional law (§X.4). The template follows Austria, because that approach grants the new state more freedom and weighs less against its independence, unless a particular Grantor State insists on a treaty commitment. Sixth, the template carries the principles of resilience set out in §XIX.10: recognition stated to be unconditional and irrevocable,

constitutive and boundary provisions protected from denunciation and from the consequences of any breach, a dispute-settlement clause that applies from signature and survives allegations of breach, a succession clause naming the successor to the landlord's interest, and a prohibition of foreign military bases.

No drafting choice can make operation certain. The template is offered as a benchmark for the drafting question, not as a substitute for the whole of the inquiry.

SECTION XXI

Conclusion

Section II posed two questions: whether an international instrument can bring a new state into being, and whether a private actor may lawfully set such a process in motion. The record now permits both to be answered with the precision they deserve.

The three findings bear restating in final form, because the temptation to collapse them is strongest at the point of conclusion. Legality, historical novelty, and recognition are three separate questions with three separate answers. A transaction can be lawful and unrecognised, just as one can win wide recognition despite a serious legal defect; the two do not move together. A state formed by grant from uninhabited territory would carry none of the liabilities of a contested secession or a rival claim to govern an existing state, but it would carry others. Its admission to international organisations and its recognition could be made hostage to disputes among the very states whose recognition it seeks, which is why neutrality, whether written into the constituting instrument or adopted by the new state's own constitution, is less a historical curiosity than an operating necessity for any state formed this way.

§XXI.1 What the record has established

International law has, on repeated occasions across more than two centuries, permitted existing states, or a subject of international law standing in a state's place, or the General Assembly acting under authority states conferred by treaty, to bring a new polity into existence by international instrument. The ladder of constitutive power arranges that evidence by strength.

At the top stand the conjured polities. Vatican City, examined in Section IV, is the clearest and most enduring: a territorial state created by treaty, distinct

from the pre-existing international person under whose authority it was placed, and continuously governed for nearly a century. Trieste, in Section V, shows that an instrument can constitute an entity even where the entity never comes to life. The Septinsular Republic, the Duchy of Warsaw, the Ionian Islands, and Cracow, in Section VII, show the power exercised by the states of Napoleonic and Congress Europe, in most cases to produce protected polities. Eastern Rumelia, in Section VIII, is a province invented at a conference table. Libya and Cyprus, in Section IX, show the power exercised after the Charter: Libya by an instrument of the General Assembly drawing its force from treaty, and Cyprus by treaties among the states concerned, each producing a state that exists today.

Below them stand the codified polities, where an instrument gave the form of a state to a community that already had a separate identity: Fiume, Greece, Samos, Bulgaria, Crete, Albania, Luxembourg, Danzig, and Somalia. Below them again stand the transformed and restored cases, Iceland, Singapore, the Maldives, Brunei, Austria, and Frankfurt with the Hanseatic cities, and at the foot of the ladder the recognition cases, which are the ordinary way states have come into being and which the monograph has never confused with the rest.

International law has, with equal consistency, distinguished this mechanism from the transactions with which it is confused. Recognition of an established state is not constitution. Union is not a grant. A jurisdictional lease, however extensive, is not a transfer of authority. Private and corporate exercise of territorial power, examined in Section XIII, has never coincided with the grant, although in the Congo Free State it produced an entity that states recognised by instrument. Unclaimed territory, examined in Section XI, removes the Grantor State the mechanism requires. And durability, examined in Section XV, is not constitution: the polities conjured by instrument before 1945, Vatican City apart, were ended either by the powers that made them or by their own people's choice to join a larger nation, while the polities conjured after 1945 that became states have endured as states, and those that did not, Trieste among them, were undone.

The table below sets out the principal cases on the three variables Section III keeps apart. Of the nine conjured polities, five were protected, tributary, or client polities at their creation, one never operated, and three, Vatican City, Libya, and Cyprus, became independent states that exist today. All three belong to the twentieth century. The power to conjure a polity by instrument is old; its

use to produce an independent state that endures is modern, and the post-1945 order is where it has worked best.

Case and instrument	Rung	Independent at creation?	Operated?	Outcome
Septinsular Republic, 1800	Conjured	No (Ottoman suzerainty)	Yes	Ceded to France, 1807
Duchy of Warsaw, 1807	Conjured (boundary)	No (French client)	Yes	Divided, 1815
Danzig, 1807	Codified	No (protectorate)	Yes	Returned to Prussia, 1815
Ionian Islands, 1815	Conjured	No (British protectorate)	Yes	United with Greece, 1864
Cracow, 1815	Conjured	Qualified (protecting powers)	Yes	Annexed by Austria, 1846
Frankfurt, 1815	Restored	Within the Confederation	Yes	Annexed by Prussia, 1866
Luxembourg, 1815	Codified	Qualified (personal union)	Yes	Endures
Greece, 1830	Codified	Yes, under guarantee	Yes	Endures
Samos, 1832	Codified	No (Ottoman suzerainty)	Yes	United with Greece, 1913
Bulgaria, 1878	Codified	No (tributary principality)	Yes	Independent 1908; endures
Eastern Rumelia, 1878	Conjured	No (autonomous Ottoman province)	Yes	United with Bulgaria, 1885
Crete, 1898	Codified	No (Ottoman suzerainty)	Yes	United with Greece, 1913
Albania, 1913	Codified	Qualified (international control)	Briefly, then again from 1920	Endures
Iceland, 1918	Transformed	Qualified (personal union)	Yes	Republic, 1944
Danzig, 1919	Codified	Qualified (Polish foreign relations)	Yes	Annexed by Germany, 1939

Case and instrument	Rung	Independent at creation?	Operated?	Outcome
Fiume, 1920	Codified	Yes, briefly	About a year	Annexed by Italy, 1924
Vatican City, 1929	Conjured	Yes	Yes	Endures
Trieste, 1947	Conjured	Not applicable (never operated)	No	Divided, 1954
Libya, 1949	Conjured	Yes (from 1951)	Yes	Endures
Somalia, 1949	Codified	No (trust territory to 1960)	Yes	Independent 1960
Austria, 1955	Restored	Yes	Yes	Endures
Cyprus, 1960	Conjured	Qualified (guarantee)	Yes	Endures; divided since 1974
Singapore, 1965	Transformed	Yes	Yes	Endures
Maldives, 1965	Transformed or restored	Yes	Yes	Endures
Brunei, 1984	Restored	Yes	Yes	Endures

§XXI.2 What the record has not established

It has not established that private initiation of a constitutive process is lawful as a positive matter, and it does not claim to. What it has established, across Sections II, XIII, XVII, and XVIII, is narrower, and the narrowness is the point: no identified rule renders a state's constitutive act invalid because the proposal that preceded it came from a private actor, and the absence of a privately initiated grant establishes novelty, not prohibition. That removes one categorical objection. It supplies no licence, and every other requirement, above all a willing Grantor State, stands where it stood before.

It has not established where self-determination's boundary falls for a population sparser than the Sahrawi tribes the Western Sahara Opinion examined, or when a migrant community becomes a people. It has not established that a constituted state would be safe from internal collapse of the kind that ended Fiume's government, or from the loss of loyalty that ended Eastern Rumelia.

And it has not established that any state would grant territory for a commercial reason, since none has.

Nor has it established that the remedies examined in Section XIX would be effective against a determined and powerful Grantor State. The law places a new state's existence and frontier beyond the Grantor State's lawful reach once independence is granted, and it supplies forums for breach; the record of awards that went unimplemented for years shows that legal protection and practical protection are not the same.

§XXI.3 The resulting proposition

The mechanism is real. It has been used across two centuries to conjure, codify, and transform politics, and it survived into the modern order. It has never been used at a private actor's proposal, and nothing in the contemporary law of state creation forbids a private actor from making one. That is not the same as saying a state would agree, and this monograph does not blur the two: without a willing Grantor State, the odds of success remain low, whatever the law permits.

No treaty, no country; and no treaty without parent state permission: not because treaties are the only route to statehood, which they are not, but because a treaty is the only route by which a private initiative can reach statehood with the consent of the state whose territory it needs, consent that is the one condition on which everything else depends; and because a treaty is the only route that converts a claim into a settled fact between the parties before the claim is ever tested. Whether such a treaty will ever be concluded is a question of politics that remains open. Whether it would be lawful if concluded is the question this monograph was written to answer, and the answer is qualified rather than absolute: private origin, standing alone, is not a bar. Self-determination, the prohibition on the use of force, the Grantor State's constitutional order, and every ordinary ground of invalidity remain in force whoever initiates the process, and it is against those requirements, not against the fact of private initiative, that any actual proposal must be tested.

§XXI.4 The monograph's contribution, and questions it leaves open

The monograph's contribution is twofold: a ladder of constitutive power, applied across two centuries of cases and separating what an instrument did from what the resulting polity became; and a model, built on the disaggregation of dominium from imperium, under which a parent state may grant a new country governmental authority over territory while keeping title to the land, either in stages or in a single treaty. The model aims at statehood rather than at a zone for two reasons the post-1945 record makes plain: states endure where zones can be abolished by ordinary law, and statehood carries a burden of responsibility that zones can avoid. Neither exists in this form in the scholarship surveyed in Section III, and their combination joins two subjects the literature has treated apart.

Five questions remain open. First, how much settled residence, self-government, and independence from its founders a migrant population would need before its consent could be treated as adequate under the reasoning the monograph extends from Chagos and Western Sahara, a question future scholarship or litigation would have to settle. Second, whether the declaratory theory explains entities that meet the Montevideo criteria without the practical incidents of statehood, or whether a more granular theory distinguishing bilateral recognition from institutional access would describe practice better. Third, whether any state has given serious consideration, in internal deliberation, to a proposal of the kind the hypotheticals illustrate, which the public record cannot show. Fourth, whether a procedural device, such as a referendum after a defined period of settlement or a franchise graduated by residence, could turn the migration-consent argument into an administrable standard. Fifth, whether a tribunal would classify a Grantor State's retained ownership under the model's lease as a territorial regime attaching to the territory under Article 12 of the 1978 Convention, so that it passes automatically on succession, or as a personal right of the Grantor State; §XIX.8 explains why the treaty should settle the question in terms rather than leave it to a tribunal.

A thesis worth defending deserves a statement of the conditions of its defeat, and the conditions that matter are the ones a serious critic could establish. Three would require revision rather than qualification. The first would be an authoritative holding, or a settled body of practice, that a state must hold ownership as well as governmental authority over the whole of its territory, so that a state whose land is owned by another state fails the requirement of

a defined territory or of independence. That would defeat the primary land model, though not the alternative model in which title passes with authority. The second would be evidence that the empty intersection reflects structural exclusion rather than historical contingency: that states have considered proposals of this kind and rejected them because they regarded private initiation as disqualifying in principle, not because the terms were poor. §XVIII.2 accepts that possibility and rests the finding on the absence of such evidence. The third would be the discovery of a case, overlooked here, in which a state granted territory it held, by constitutive instrument, at a private actor's initiative; the Congo Free State, the nearest candidate, does not meet that description, for the reasons given in §XIII.1. The model's exposure to non-payment of rent after independence, which might otherwise be a fourth, is met by the non-forfeiture provisions described in §XVIII.8. None of the three has occurred on the evidence available.

APPENDIX A

Illustrative Instrument Suite: The Commonwealth of Ducie

This appendix reproduces the hypothetical instrument suite discussed in §XX.1 to §XX.3. It is speculative, has no connection to any proposal, negotiation, or government position, and is not addressed to the United Kingdom, the Pitcairn Islands, or anyone else. Bracketed terms are placeholders.

Background

Ducie Island is an uninhabited coral atoll with about 0.7 square kilometres of land around a lagoon, the easternmost of the four islands (Pitcairn, Henderson, Ducie, and Oeno) that make up the Pitcairn Islands, the last British Overseas Territory in the Pacific. It has no permanent population, no airstrip, and no fresh water capable of supporting settlement without imported infrastructure. Pitcairn Island, the nearest inhabited land and home to fewer than fifty people, lies more than 500 kilometres away. The Governor, who is not resident, administers the territory from Wellington. The surrounding waters form part of the Pitcairn Islands Marine Reserve, designated in 2016. The instruments below take these facts as given and work out, in the sequence a real transfer would follow, what a legally coherent transaction would contain.

Phase I: Pitcairn Islands legislation (Stage One)

1. The Ducie Island (Special Administrative Region) Ordinance [year]

Made by the Governor of the Islands of Pitcairn, Henderson, Ducie and Oeno, after consultation with the Island Council, in exercise of the powers conferred by the Constitution of Pitcairn set out in Schedule 2 to the Pitcairn Constitution Order 2010.

Part I: Preliminary

1. Short title and commencement. This Ordinance may be cited as the Ducie Island (Special Administrative Region) Ordinance [year] and comes into force on publication.

2. Interpretation. In this Ordinance, “Ducie Island” means the island of Ducie and its appurtenant islets, reefs, and territorial sea; “the Lease” means the lease granted under section 4; “the Lessee” means [name of company], incorporated under the laws of [jurisdiction], and its permitted successors; “the SAR” means the Ducie Island Special Administrative Region; “SAR Resident” means a person holding a Residence Permit under this Ordinance; and “the Reserve” means the Pitcairn Islands Marine Reserve.

3. Establishment of the Special Administrative Region. (1) There is established the Ducie Island Special Administrative Region. (2) The SAR comprises Ducie Island. (3) The SAR is administered in accordance with this Ordinance and enjoys a high degree of autonomy in its internal affairs, save as provided by this Ordinance or by any Act of Parliament or Order in Council extending to it. (4) Nothing in this Ordinance obliges the Governor, the Government of the Pitcairn Islands, or the Government of the United Kingdom to consider, or to agree to, any change in the constitutional status of Ducie Island.

Part II: The Lease

4. Grant of Lease. (1) The Governor may, in His Majesty’s name, grant the Lessee a lease of the land of Ducie Island for a term of one hundred and ninety-nine years. (2) To the extent that any law of Pitcairn limits the term of a lease of Crown land, this section has effect notwithstanding that law. (3) The Lessee shall pay into the public funds of Pitcairn an initial premium of [amount] and, until any Independence Day, an annual rent of [amount], indexed to inflation and reviewed at intervals of not less than twenty-five years; from any Independence Day the rent is payable as the Treaty of Independence and Co-operation provides. (4) All sums payable under the Lease are payable to the public funds of Pitcairn and to no other person.

5. Covenants. The Lease shall contain covenants for environmentally assessed and sustainable development; the protection of seabird colonies, reefs, and the lagoon; compliance with the Reserve; renewable energy, water, and waste infrastructure; comprehensive medical evacuation insurance for residents; inspection by the Governments of Pitcairn and the United Kingdom; a prohibition on assignment without consent, save as provided in the Treaty

of Independence and Co-operation; and an indemnity in favour of the Crown and both Governments.

6. Immigration status. (1) No person acquires British citizenship, British Overseas Territories citizenship, the right of abode in the Pitcairn Islands, or the right of settlement in the United Kingdom by virtue of birth, residence, or any other connection with Ducie Island. (2) Nothing in this section affects any status a person already holds. (3) This section governs status only; it requires no waiver, deed, or declaration from any person.

7 to 15. Administration. Sections 7 and 8 establish a vetting and residence-permit system, with grounds for revocation. Sections 9 and 10 require environmental impact assessment of all construction. Sections 11 and 12 establish a Ducie Island Administration and apply Pitcairn law subject to the Governor's power to modify or disapply specified enactments. Sections 13 to 15 contain the regulation-making power and transitional provisions.

2. The Ducie Island Independence Referendum Ordinance [year]

Made by the Governor after consultation with the Island Council.

1. Short title. This Ordinance may be cited as the Ducie Island Independence Referendum Ordinance [year].

2. Holding of referendum. (1) A referendum shall be held on the question whether the SAR should become an independent state, the Commonwealth of Ducie. (2) The Governor shall not appoint a date for the referendum earlier than the date on which not fewer than [number] SAR Residents have each held a Residence Permit and resided in the SAR for a continuous period of not less than [five] years. (3) A Chief Referendum Officer, who holds or has held judicial office in a Commonwealth jurisdiction, shall supervise the referendum.

3. The question. "Do you agree that the Ducie Island Special Administrative Region should become an independent state, the Commonwealth of Ducie, in accordance with the Treaty of Independence and Co-operation to be concluded by the United Kingdom in respect of the Pitcairn Islands and confirmed by the Commonwealth of Ducie?"

4. Franchise. The following may vote: (a) every person registered to vote in elections to the Island Council; and (b) every SAR Resident who has held a Residence Permit and resided in the SAR for a continuous period of not less than [five] years.

5. Result. The Governor shall not proclaim a result in favour of independence unless (a) at least seventy-five per cent of the valid votes cast are in favour; and (b) a majority of the persons voting in each of the two categories in section 4 are in favour.

6. Consequential action. If the result is in favour, the Governor shall transmit the certified result to the Secretary of State with a recommendation that Parliament be invited to legislate, and the Island Council may by resolution request the Government of the United Kingdom to take the necessary steps.

Phase II: United Kingdom instruments

3. The Ducie Island (Constitutional Amendment) Order [year]

Made by His Majesty in Council.

1. Citation and commencement. This Order may be cited as the Ducie Island (Constitutional Amendment) Order [year].

2. Amendment of the Constitution of Pitcairn. After section [34] of the Constitution of Pitcairn insert:

“[34A] **Ducie Island Special Administrative Region.** (1) There shall be a Special Administrative Region of Pitcairn comprising the island of Ducie. (2) The Governor may make laws for the peace, order, and good government of the Region in accordance with the Ducie Island (Special Administrative Region) Ordinance. (3) Nothing in this Constitution prevents the Region from becoming independent of the United Kingdom and of Pitcairn in accordance with the constitutionally expressed wish of the people of Pitcairn and of the residents of the Region, as provided by or under an Act of Parliament. (4) Upon the Region becoming independent, the territory of Pitcairn shall comprise the islands of Pitcairn, Henderson, and Oeno, with their appurtenant islets, reefs, and territorial sea.”

4. The Ducie Island Independence Act [year]

An Act to make provision for the attainment by the Commonwealth of Ducie of independence.

1. Independence. On and after Independence Day, His Majesty’s Government in the United Kingdom shall have no responsibility for the government of the Commonwealth of Ducie, and no Act of Parliament passed on or after that day shall extend to it as part of its law.

2. Treaty. His Majesty's Government may conclude, in respect of the Pitcairn Islands, a Treaty of Independence and Co-operation constituting Ducie Island as the Commonwealth of Ducie, and the Treaty shall have effect in the law of the United Kingdom so far as it requires.

3. Constitution. His Majesty may by Order in Council made before Independence Day provide a constitution for the Commonwealth of Ducie to come into effect on that day, including provision for its amendment by the legislature of the Commonwealth.

4. Existing law. Existing law continues in the Commonwealth of Ducie until altered by its legislature.

5. Nationality. [Provisions on citizenship of the Commonwealth of Ducie, on the model of the Belize Act 1981, which do not deprive any person of British citizenship or British Overseas Territories citizenship held by virtue of a connection other than with Ducie Island.]

6. Amendment of the Pitcairn Constitution Order 2010. On Independence Day the definition of Pitcairn is amended by the omission of Ducie.

7. Interpretation and short title. "Independence Day" means the day appointed by proclamation. This Act may be cited as the Ducie Island Independence Act [year].

Phase III: The Treaty of Independence and Co-operation (Stage Two)

5. Treaty of Independence and Co-operation concerning the Commonwealth of Ducie

Preamble. The United Kingdom of Great Britain and Northern Ireland, acting in its own right and in respect of the Pitcairn Islands, whose external affairs and defence it conducts and which are not themselves a subject of international law with separate treaty-making capacity; recognising the constitutionally expressed wish of the people of the Pitcairn Islands and of the residents of the Ducie Island Special Administrative Region; and desiring to establish the terms on which Ducie Island shall become the territory of an independent state, and to provide for co-operation between the United Kingdom and that state once constituted; has agreed as follows, the Commonwealth of Ducie confirming its acceptance in accordance with Article 1.3.

Article 1. Constitution of independence. 1.1 The United Kingdom hereby constitutes the territory of Ducie Island, with effect from Independence Day, as the Commonwealth of Ducie, an independent state, and relinquishes in its

favour all governmental authority and responsibility for the external affairs and defence of that territory, save as this Treaty provides. 1.2 This Article performs the constitutive act. The Commonwealth of Ducie is not a party at signature, since no such state exists before Independence Day. 1.3 The Government of the Commonwealth of Ducie, acting through those who first take office under its Constitution, shall confirm and accept this Treaty by an Instrument of Confirmation deposited with the Government of the United Kingdom not later than thirty days after Independence Day. The Treaty takes effect between the United Kingdom and the Commonwealth of Ducie from Independence Day. 1.4 The Commonwealth of Ducie shall be a constitutional monarchy with His Majesty as Head of State, represented by a Governor-General appointed on the advice of its Prime Minister. 1.5 The territory of the Commonwealth of Ducie comprises the island of Ducie with its appurtenant islets, reefs, lagoon, and territorial sea, as defined in Annex 1, which the Parties accept as its frontier. Annex 1 also delimits any maritime boundary between the Commonwealth of Ducie and the Pitcairn Islands, and no administrative line drawn before Independence Day has effect as a boundary except as Annex 1 provides.

Article 2. Land. 2.1 Title to the land of Ducie Island remains vested in the Crown in right of the United Kingdom as owner, and nothing in this Article affects the governmental authority of the Commonwealth of Ducie over its territory. 2.2 The lease granted under the Ducie Island (Special Administrative Region) Ordinance (“the Original Lease”) is assigned by the lessee to the Commonwealth of Ducie on Independence Day on terms set out in Annex 2, and the Commonwealth holds the land as lessee for the remainder of the term. 2.3 Alternatively, where the Parties so agree before signature, Annex 2 may provide for the transfer of title to the Commonwealth of Ducie, in which event Articles 2.1, 2.2, and 2.4 do not apply. 2.4 The independence of the Commonwealth of Ducie is not conditional on the Original Lease. No breach of the Original Lease and no failure to pay any sum due under this Treaty entitles the United Kingdom to re-enter the land, to forfeit the lease, or to resume any governmental authority over the territory. Sums unpaid are a debt of the Commonwealth of Ducie, secured as Annex 2 provides and recoverable under Article 11. The Commonwealth of Ducie shall register the title of the Crown in its land registry and protect it by its law as it protects private property. 2.5 Annex 2 shall give the Commonwealth of Ducie an option to purchase the freehold at a price fixed by the formula it specifies, exercisable at any time after the twentieth

anniversary of Independence Day, and shall provide for renewal of the term on its expiry at the Commonwealth's election.

Article 3. Payments. 3.1 The Commonwealth of Ducie shall pay, from Independence Day and for the remainder of the term of the Original Lease: (a) to the Government of the United Kingdom, the rent reserved by the Original Lease; (b) to the Government of the Pitcairn Islands, [amount] per annum; and (c) to each person who, on Independence Day, is a registered elector of the Pitcairn Islands, a dividend of [amount] per annum, which on that person's death passes in equal shares to that person's descendants per stirpes, so that the total dividend payable never exceeds the number of original electors multiplied by [amount]; each indexed to inflation. 3.2 On Independence Day the Commonwealth of Ducie shall pay to the Government of the Pitcairn Islands [amount] in settlement of all claims arising from the separation of Ducie from Pitcairn. 3.3 All payments are made openly to the recipients named and to no other person, and are not assignable.

Article 4. Demilitarisation and neutrality. 4.1 The Commonwealth of Ducie shall maintain no armed forces and no military installations, and shall not permit the stationing of foreign armed forces on its territory, save as provided in Article 4.3. 4.2 The Commonwealth of Ducie shall pursue a policy of permanent neutrality and shall not enter any military alliance. 4.3 At the request of the Government of the Commonwealth of Ducie, the United Kingdom shall provide for its defence against external armed attack, and such provision shall not constitute an alliance or permit the use of the territory of Ducie for any other military purpose. The Commonwealth may terminate this arrangement on one year's notice.

Article 5. The Marine Reserve. 5.1 The Commonwealth of Ducie shall maintain, within its territorial sea, protection at least equivalent to that of the Pitcairn Islands Marine Reserve on Independence Day, and shall co-operate with the United Kingdom and the Pitcairn Islands in its management. 5.2 No commercial fishing and no extraction of minerals or hydrocarbons shall be permitted within the territorial sea of the Commonwealth of Ducie. 5.3 Nothing in this Treaty is to be read as a lease or transfer of any maritime zone. The maritime entitlements of the Commonwealth of Ducie are those the law of the sea attributes to it, and the Parties shall consult on any claim beyond the territorial sea and contiguous zone in the light of Article 121 of the United

Nations Convention on the Law of the Sea and the state of settlement at the time.

Article 6. Immigration. Citizens of the Pitcairn Islands may enter, reside, and work in the Commonwealth of Ducie without visa or permit. British citizens shall receive preferential treatment, subject to vetting, adequate means, and medical evacuation insurance.

Article 7. Criminal law. The criminal law of the Commonwealth of Ducie on Independence Day is the criminal law of Pitcairn at that date, subject to amendment by its legislature consistently with its Constitution and its international obligations.

Article 8. Commonwealth of Nations. The Commonwealth of Ducie may apply for membership of the Commonwealth of Nations, and the United Kingdom shall support its application.

Article 9. Judicial Committee of the Privy Council. The Commonwealth of Ducie may by its Constitution retain a right of appeal to the Judicial Committee of the Privy Council, and the United Kingdom shall give effect to it.

Article 10. Treaty succession. Annex 3 lists the treaties of the United Kingdom applicable to the Pitcairn Islands that the Commonwealth of Ducie assumes on Independence Day. No other treaty of the United Kingdom binds the Commonwealth of Ducie by reason only of its prior application to Ducie Island.

Article 11. Disputes. Disputes not resolved by negotiation within six months shall be submitted to arbitration under the Permanent Court of Arbitration Rules 2012 by a tribunal of three members.

Article 12. Entry into force and duration. This Treaty enters into force on Independence Day and remains in force for ninety-nine years, and thereafter until terminated by agreement. Articles 2, 3, and 5 remain in force for the term of the Original Lease.

Done at [place] on [date]. For the United Kingdom of Great Britain and Northern Ireland, acting in its own right and in respect of the Pitcairn Islands: [signature]. Instrument of Confirmation of the Commonwealth of Ducie: [deposited on date].

Phase IV: The Constitution of the Commonwealth of Ducie

To be brought into effect by Order in Council under the Ducie Island Independence Act.

The Constitution follows the Westminster model used across many independent Commonwealth states: the Crown as Head of State represented by a Governor-General; a unicameral National Assembly and Cabinet government; justiciable fundamental rights with a derogation power confined to declared emergencies; a Public Service Commission, a police service, a Consolidated Fund, and an Auditor-General. Three provisions depart from the Westminster model. The first establishes demilitarisation and neutrality in the terms of Article 4 of the Treaty. The second entrenches that provision, the status of the Head of State, the fundamental rights, the Marine Reserve obligation, and the appeal to the Judicial Committee against amendment without both a two-thirds majority of the National Assembly and approval by referendum. The third retains a right of final appeal to the Judicial Committee of the Privy Council.

Annotated summary of the legal mechanisms

The Governor makes the SAR Ordinance under the Constitution of Pitcairn, overriding any statutory limit on lease terms. Because the Pitcairn Constitution Order 2010 defines the territory as including Ducie, the detachment requires an Order in Council amending it. The referendum is not strictly required by the Pitcairn Constitution, but the United Kingdom's 2012 White Paper on the Overseas Territories states that any decision to sever the constitutional link should rest on the clear and constitutionally expressed wish of the people, and the Ordinance gives the Pitcairn electorate its own majority requirement.³⁰² Independence is authorised by Act of Parliament on the model of the Belize Act 1981, and the Constitution is made by Order in Council under it. The Treaty is concluded by the United Kingdom acting in its own right and in respect of Pitcairn, and confirmed by the Commonwealth of Ducie after independence, in the second form of the sequencing doctrine. Commonwealth membership would be sought under the criteria agreed at Edinburgh in 1997 and reviewed at Kampala in 2007, which Ducie's constitutional association with the United Kingdom satisfies. Appeals to the Judicial Committee would be provided by Order in Council, as the Pitcairn (Appeals to Privy Council) Order 2000 does for Pitcairn.

Three points of legal realism are recorded. A statutory entitlement such as the right of abode cannot be extinguished by private contract or ordinance, which is why section 6 of the Ordinance bars the acquisition of new status and requires no waiver. The law of the sea does not provide for the lease of maritime zones, and Article 5 of the Treaty accordingly grants none. And because Ducie was a dependent territory, the clean-slate rule governs its succession to treaties, subject to the express list in Annex 3.

APPENDIX B

Illustrative Instrument Suite: The Republic of Tern

This appendix reproduces the hypothetical instrument suite discussed in §XX.4 and §XX.5. The Grantor State is the Republic of the Southern Reaches and the new state the Republic of Tern, established on Aurel Atoll. All three names are fictional and identify no existing state, territory, or place. The material is speculative and has no connection to any proposal or government.

Background

The Republic of the Southern Reaches is a fictional Pacific island republic whose constitutional and treaty-ratification procedures are modelled on those found in Pacific island republics. Aurel Atoll is an uninhabited outlying atoll within its jurisdiction. Neither party is a permanent member of the Security Council. The arrangement includes a transitional Joint Commission, limited in time and renewable only by the new state.

Summary of mechanisms

Category	Mechanism	Function
Required	Constitutional amendment (Southern Reaches)	Empowers Parliament to establish special administrative regions, lease public land for up to 199 years, and conclude time-limited joint arrangements with a successor state

Category	Mechanism	Function
Required	Aurel Atoll Special Administrative Region Act	Establishes the region, authorises the lease, provides a conditional pathway to independence
Required	Referendum Act	Referendums in the Southern Reaches and in the region
Required	Constitutive Treaty	Constitutes the Republic of Tern; land; transitional Joint Commission; services
Required	Constitution of the Republic of Tern	Government; domestic effect of the Treaty
Required	Supermajority for ratification	Cross-party consent to an act of this magnitude
Safeguard	Arbitration clause	Disputes resolved without unilateral determination

Phase I: Legislation of the Republic of the Southern Reaches (Stage One)

Act 1. Constitution of the Republic of the Southern Reaches (Amendment) Act

1 to 6. New Part [Y]: Special administrative regions, long leases, and transitional arrangements. Parliament may, in each case by a two-thirds majority of all its members: (a) establish a special administrative region, the Republic retaining defence and foreign affairs until any treaty provides otherwise; (b) authorise the lease of public land, including uninhabited islands, to a private entity for up to 199 years, the Republic retaining title and the lease being terminable only for fundamental breach or by agreement; and (c) ratify a treaty constituting a successor state on the territory of a special administrative region, which may establish a transitional joint arrangement for a term not exceeding twenty years, renewable only by resolution of the successor state's own legislature for a further term not exceeding ten years. A Bill under this Part affecting the Republic's territory additionally requires approval by referendum.

7. Rights of citizens. This Part does not authorise the involuntary deprivation of any citizen's nationality or right of abode.

Act 2. Aurel Atoll Special Administrative Region Act

1. Short title. This Act may be cited as the Aurel Atoll Special Administrative Region Act.

2. Establishment. There is established the Aurel Atoll Special Administrative Region (“the Region”), comprising Aurel Atoll and its territorial sea.

3. Status. (1) The Region forms part of the territory of the Republic until any treaty concluded and ratified under Part [Y] of the Constitution provides otherwise. (2) The Region enjoys a high degree of autonomy, save in defence and foreign affairs. (3) The laws of the Republic apply in the Region only so far as extended by this Act or by ordinance of the Region’s legislature. (4) Nothing in this Act obliges the Republic to consider, or to agree to, any change in the status of the Region.

4 to 6. The lease. The Government may lease the land of Aurel Atoll to the Aurel Development Consortium for 199 years. The lease shall provide for an initial premium and an indexed annual rent payable to the public funds of the Republic and to no other person; certified sustainable construction; medical evacuation insurance for residents, subsidised for citizens of the Republic; an indemnity in favour of the Government; and a Due Diligence Board through which every prospective resident is vetted. The lease is assignable to a successor state on its independence and not otherwise without consent.

7. Governance. (1) The Region has its own legislature, with power to make ordinances consistent with this Act and the Constitution, and a Chief Executive chosen under its Basic Law. (2) The courts of the Republic exercise jurisdiction until the Region establishes its own. (3) Citizens of the Republic may enter, reside, and work in the Region, subject to vetting, adequate means, and insurance.

8 to 11. [Administrative provisions omitted.] **12 to 14. Pathway to independence.** The Government may negotiate a Constitutive Treaty with the Region’s authorities. The Treaty shall not bind the Republic until ratified by an Act supported by two-thirds of all members of Parliament, following referendums among the registered voters of the Republic and of the Region, each approving it by a majority of votes cast.

Act 3. Aurel Atoll Independence Referendum Act

The Electoral Commission of the Republic conducts both referendums. In the Republic the question is whether the voter approves the Constitutive Treaty, including its transitional arrangements; in the Region, whether the voter favours the independence of Aurel Atoll as the Republic of Tern in accordance with the Treaty. A majority of votes cast in each referendum suffices, and no date may be appointed for the Region's referendum until not fewer than [number] residents have resided there for [five] years.

Phase II: The Constitutive Treaty (Stage Two)

Preamble. The Republic of the Southern Reaches, acting in its own right and in respect of the Aurel Atoll Special Administrative Region, which is an administrative status under its law and not a subject of international law; recognising the will of the people of the Republic and of the Region, freely expressed by referendum; has agreed as follows, the Republic of Tern confirming its acceptance in accordance with Article 1(3).

Article 1. Constitution of the Republic of Tern. (1) The Republic of the Southern Reaches hereby constitutes the territory of the Region, with effect from the Effective Date, as the Republic of Tern, an independent state, and relinquishes in its favour all governmental authority over that territory, save as this Treaty provides. (2) This Article performs the constitutive act. The Republic of Tern is not a party at signature, since it does not yet exist. (3) The Government of the Republic of Tern, acting through those who first take office under its Constitution, shall confirm and accept this Treaty by an instrument deposited within thirty days of the Effective Date; the Treaty takes effect between the two states from the Effective Date. (4) "Effective Date" means the date on which the Republic of the Southern Reaches deposits with the Secretary-General of the United Nations notice that its ratification under Article 16(1) is complete.

Article 2. Head of State. The Republic of Tern determines its own head of state by its Constitution.

Article 3. Citizenship and movement. The Republic of Tern establishes its own citizenship. Citizens of the Republic of the Southern Reaches may enter, reside, and work in Tern without visa, subject to vetting, adequate means, and insurance, and receive preferential treatment second only to Tern's own citizens.

Article 4. Land. (1) Title to the land of Aurel Atoll remains vested in the Republic of the Southern Reaches as owner, without prejudice to the governmental authority of the Republic of Tern. (2) The lease granted under the Aurel Atoll Special Administrative Region Act is assigned to the Republic of Tern, which holds the land as lessee for the remainder of the 199-year term and pays the indexed rent it reserves, together with the indemnity in Annex A, to the public funds of the Republic of the Southern Reaches and to no other person. (3) The Parties may by Annex A instead provide for transfer of title to the Republic of Tern, in which event paragraphs (1), (2), and (4) do not apply. (4) The independence of the Republic of Tern is not conditional on the lease. No breach of the lease entitles the Republic of the Southern Reaches to re-enter the land, to forfeit the lease, or to resume governmental authority; unpaid rent is a debt of the Republic of Tern, secured as Annex A provides and recoverable under Article 18; and Tern shall register and protect the title of the Southern Reaches under its own land law. (5) Annex A gives the Republic of Tern an option to purchase the freehold at a price fixed by formula, exercisable after the twentieth anniversary of the Effective Date, and a right to renew the lease on its expiry.

Article 5. Maritime zones. The maritime entitlements of the Republic of Tern are those the law of the sea attributes to it. Nothing in this Treaty leases or transfers any maritime zone. The Republic of Tern shall permit no commercial fishing or extraction of minerals or hydrocarbons within its territorial sea during the transitional term, and the Parties shall consult on the management of any wider zone the law attributes to it.

Article 6. Neutrality. The Republic of Tern declares its permanent neutrality, will not enter military alliances, and will not permit the stationing of foreign forces, save as provided in Article 8.

Article 7. Criminal justice and policing. The Republic of Tern adopts the Criminal Code of the Republic of the Southern Reaches, subject to amendment by its legislature, and may contract with that Republic, at arm's length and for separate payment, for court administration and policing services under Tern's direction.

Article 8. Defence. At the request of the Republic of Tern, the Republic of the Southern Reaches provides for its defence against external armed attack, for separate payment. The arrangement is not an alliance, permits no other military use of Tern's territory, and is terminable by Tern on one year's notice.

Article 9. Joint Commission. (1) There is established a Joint Commission comprising the representatives of the Republic of the Southern Reaches in the Legislature of Tern, the heads of Tern's courts, police, and civil defence, and the two states' ambassadors. (2) The Commission may monitor compliance with this Treaty, certify environmental and safety standards for construction, receive reports, make recommendations, and resolve disputes about the Treaty by consensus. It has no other powers.

Article 10. Representation in the Legislature. (1) For the term in Article 11, the Republic of the Southern Reaches may send representatives to the Legislature of Tern, forming a minority of its membership, paid by Tern. (2) They shall not vote on matters of Tern's domestic policy unrelated to this Treaty. (3) Their presence is transitional and is not a transfer of governmental authority.

Article 11. Duration of the transitional arrangements. (1) Articles 9 and 10 have effect for twenty years from the Effective Date. (2) They then terminate automatically unless the Legislature of Tern, by its own resolution adopted after the Effective Date, renews them for a further term not exceeding ten years. (3) They cannot be extended by the Republic of the Southern Reaches, by the Joint Commission, or by agreement of the Parties in the absence of that resolution.

Articles 12 to 15. Diplomatic and financial arrangements; treaty succession. Each Party maintains an embassy in the other. All payments under this Treaty are made openly between the two treasuries. Annex B lists the treaties of the Republic of the Southern Reaches that the Republic of Tern assumes; no other treaty binds it by reason only of its prior application to the Region.

Article 16. Ratification and entry into force. (1) This Treaty is subject to ratification by the Republic of the Southern Reaches in accordance with its Constitution, including approval by two-thirds of all members of Parliament and favourable referendums. (2) It enters into force on the Effective Date, and binds the Republic of Tern from that date upon its confirmation under Article 1(3).

Article 17. Registration. This Treaty shall be registered with the Secretariat of the United Nations under Article 102 of the Charter.

Article 18. Disputes. Disputes not resolved by the Joint Commission within ninety days shall be submitted to arbitration, and failing agreement on the tribunal within sixty days either Party may refer the dispute to the International Court of Justice, which the Parties accept as having jurisdiction for this purpose.

Phase III: Domestic instruments of the Republic of Tern

Constitution. Tern is a republic, permanently neutral and demilitarised, whose sovereignty resides in its people. Its territory is Aurel Atoll and the maritime zones the law attributes to it. Its Legislature is elected by its citizens, together with the transitional minority provided by the Treaty; its Executive is chosen by the Legislature; its judiciary is independent. The Treaty has the force of law. Amendments require two-thirds of the Legislature, and amendments affecting neutrality, demilitarisation, or the transitional arrangements also require a referendum, save that renewal under Article 11 of the Treaty is by resolution of the Legislature.

Joint Commission Implementation Act. Gives the Commission legal personality in Tern's law, confines it to the powers conferred by the Treaty, and provides that nothing in it derogates from Tern's governmental authority.

Caveats

The Republic of Tern would need to satisfy the Montevideo criteria in fact, and its small population and reliance on the Republic of the Southern Reaches for defence and some services would invite questions about independence; those questions are answered, as far as drafting can answer them, by making every service arrangement terminable by Tern and the transitional arrangements self-executing in their expiry. The presence of another state's representatives in Tern's Legislature must be justified against the reasoning applied to the Ionian Islands and Danzig in Section VII, and §XX.5 sets out why it is a transitional limitation rather than a controlling power.

APPENDIX C

Model Instrument Template

This appendix is provided for educational and illustrative purposes only. It is not addressed to any government, party, or founder, and it does not supply a universal formula. §XX.7 explains the six design choices that distinguish it from the two hypotheticals. Every bracketed term is a placeholder to be supplied, and revised, according to the circumstances of a real transaction.

Part 1. Model consolidated Treaty of Constitution and Independence

Preamble. [Grantor State], acting in its own right and in respect of [Territory]; recording that the people of [Territory] have expressed a settled wish for independent statehood in the referendum of [date], conducted in accordance with the law of [Grantor State]; recording that [Grantor State] has determined that such independence is consistent with its constitution, its international obligations, and those wishes; and desiring to establish in a single instrument the constitutive act, the disposition of land and prior interests, and the transitional and continuing arrangements between [Grantor State] and the new state; has agreed as follows, [New State] confirming its acceptance in accordance with Article 1.

Article 1. Constitution of the new state. On the Effective Date, [Territory] is constituted as [New State], an independent state with a permanent population, a defined territory as set out in Annex 1 (which also delimits its maritime boundaries with [Grantor State] and constitutes its frontier, whatever any prior administrative line might otherwise imply), a government as established by the Constitution in Annex 2, and the capacity to enter into relations with other states. This Article performs the constitutive act; no prior instrument, including any interim administrative arrangement, shall be construed as having

constituted [New State], and any such arrangement lapses on the Effective Date. The first government of [New State] shall confirm this Treaty within thirty days of the Effective Date, and the Treaty takes effect between the two states from that date.

Article 2. Recognition. [Grantor State] recognises [New State] with effect from the Effective Date. That recognition is unconditional and irrevocable. [Grantor State] will support its application for membership of the United Nations and of such other organisations as it elects to join.

Article 3. Land and prior interests. Option A (landlord and tenant, the default): title to the land of [Territory] remains vested in [Grantor State] as owner, without prejudice to the governmental authority of [New State]; the Stage One lease is assigned to [New State], which holds the land as lessee on the terms in Annex 3 and pays the rent reserved to the treasury of [Grantor State]; the independence of [New State] is not conditional on the lease, no breach of it entitles [Grantor State] to re-enter the land or resume governmental authority, unpaid rent is a secured debt recoverable under Articles 12 and 12D, and [New State] registers and protects the title of [Grantor State] under its own land law; Annex 3 gives [New State] an option to purchase the freehold at a price fixed by formula after a stated period, and a right of renewal on expiry. Option B (transfer of title): title to the land vests in [New State] on the Effective Date, and every lease, licence, or concession subsisting immediately beforehand is assigned to [New State] as lessor or grantor, or replaced by an instrument concluded directly with it, as specified in Annex 3.

Article 4. Transitional joint arrangement (optional). (1) Where the referendum under the Preamble so approved, a Joint Transitional Commission may exercise the functions listed in Annex 4 for a term not exceeding [ten] years from the Effective Date. (2) Its functions end automatically on expiry unless the legislature of [New State], by its own resolution adopted after the Effective Date, renews them for a further term not exceeding [five] years. (3) They cannot be extended by [Grantor State] or by the Commission. (4) Nothing in this Article affects the governmental authority of [New State] over any matter not listed in Annex 4.

Article 5. Defence and security (optional). Any arrangement for the provision of defence or security services by [Grantor State] is set out in Annex 5, operates at the request of [New State], and is terminable by it on notice.

Article 6. Neutrality (if applicable). Where [New State] adopts a policy of neutrality, it does so as a unilateral undertaking recorded in its own Constitution, which it may revise through its own procedures, rather than as an obligation owed to [Grantor State].

Article 7. Maritime arrangements. The maritime entitlements of [New State] are those the law of the sea attributes to it. Any arrangement concerning its maritime zones shall be drafted as a grant of access or exercise rights consistent with the United Nations Convention on the Law of the Sea and shall not purport to lease or transfer those zones.

Article 8. Nationality and residence. Nothing in this Treaty deprives any person of a nationality or right of abode held under the law of [Grantor State], and no waiver of such a right shall be required of any person.

Article 9. Treaty succession. Annex 6 lists the treaties of [Grantor State] that [New State] assumes. No other treaty binds [New State] by reason only of its prior application to [Territory].

Article 10. Operation milestones. [New State] shall, with the assistance of [Grantor State], achieve within the periods specified from the Effective Date: (a) the first sitting of its legislature, within [thirty] days; (b) the appointment of its judiciary, within [ninety] days; (c) the conclusion, in its own name, of at least one international agreement with a state other than [Grantor State], within [one] year; and (d) an application for membership of the United Nations, within [one] year. The Parties shall record each milestone by joint communiqué.

Article 11. Payments. All payments under this Treaty are made openly between the treasuries of the Parties and to no other person.

Article 12. Disputes. (1) Any dispute concerning the interpretation, application, validity, suspension, or termination of this Treaty or of the instruments in Annex 3 shall, failing settlement by negotiation within ninety days, be referred at the request of either Party to arbitration under the Permanent Court of Arbitration Arbitration Rules 2012, the Secretary-General of the Permanent Court of Arbitration acting as appointing authority. (2) This Article applies from signature, binds the provisional authority of [Territory] pending the Effective Date, and survives any allegation of breach, suspension, or termination of this Treaty. (3) Pending resolution, neither Party shall act unilaterally to alter the position existing when the dispute arose, and neither shall threaten or use force.

Article 12A. Permanence of the constitutive provisions. Articles 1, 2, and 3 and Annex 1 are not subject to denunciation, withdrawal, or suspension. The termination or suspension of any other provision, including any provision of the lease in Annex 3, does not affect them. No breach of any obligation under this Treaty, by either Party, affects the existence of [New State] or its frontier.

Article 12B. Succession. (1) The rights and obligations of the Parties under Article 3 and Annex 3 attach to the territory of [New State] and bind any successor of either Party. (2) If [Grantor State] ceases to exist, its interest as owner under Annex 3 passes to [named successor, or the successors in the shares stated in Annex 3], and the rent is payable accordingly. (3) Before concluding any agreement for union with another state, [New State] shall consult [Grantor State]; on any such union, [Grantor State] may require the successor to purchase the freehold at the price fixed by the formula in Annex 3.

Article 12C. No military bases. Neither Party shall establish or permit foreign military bases on the territory of [New State].

Article 12D. Rent and security. (1) Rent under Annex 3 is payable [quarterly] in advance; a payment not made within [ninety] days of its due date bears interest at [rate] until paid. (2) Before the Effective Date the lessee shall fund with [independent trustee] a rent reserve equal to [three] years' rent, which [New State] shall maintain at that level from its public revenue, and the trustee shall pay from the reserve any rent unpaid after the period in paragraph (1) on the written demand of [Grantor State]. (3) [New State] allocates the rent reserve and [identified revenue] to the satisfaction of any award under Article 12 concerning rent, and expressly consents to measures of execution against that property, and against no other property, for that purpose. (4) If a natural disaster or pandemic, determined as provided in Annex 3 by reference to [an objective parametric measure], occurs, [New State] may defer rent falling due within the following [two] years; deferred rent is capitalised with interest and paid on the schedule in Annex 3. (5) Nothing in this Treaty entitles [Grantor State] to collect, administer, or supervise the revenue, customs, or budget of [New State], and no failure to pay rent affects the independence of [New State] or the frontier established by this Treaty.

Article 13. Entry into force. This Treaty enters into force on the Effective Date, being [date], upon the completion by [Grantor State] of its constitutional requirements, notified to the Secretary-General of the United Nations.

Annexes 1 to 6 (territory; Constitution; land and prior interests; transitional functions; defence arrangements; treaty succession) are to be drafted for the actual transaction.

Part 2. Model constitution: structural outline

The model constitution contemplated by Annex 2 is more jurisdiction-specific than the Treaty, and its form should answer to the founding population's own choices. Its required elements are: a declaration of statehood and a definition of territory by reference to Annex 1; a justiciable bill of rights with a derogation power confined to declared emergencies; a legislature, with its composition, franchise, and entrenched provisions; an executive, whatever form the population chooses; an independent judiciary, with any retained external appeal; a provision fixing the domestic legal status of the Treaty and of any transitional arrangement; and an amendment procedure, with higher thresholds for entrenched provisions.

Part 3. Model enabling legislation: structural outline

Where the Grantor State's constitution requires domestic legislation, it would address the Grantor State's authority to conclude the Treaty and to relinquish governmental authority over the territory; the Treaty's status in the Grantor State's own law; consequential amendment of nationality law that removes no right the legislation cannot lawfully remove; and the referendum evidencing the consent of the population of the territory to independence on the terms negotiated.

A closing caveat

Nothing in this appendix suggests that satisfying the method set out in Section III is a matter of drafting. Operation is the one variable no instrument, however well constructed, can supply in advance of the fact. The template is a benchmark for the drafting question, not a substitute for the whole inquiry.

APPENDIX D

Mandates, Protectorates, Internationalised Territories, and Condominia

The survey in Sections IV to XIV is supplemented here by a further body of arrangements often mentioned in discussion of treaty-made polities. Each is placed against the method set out in Section III. Most of these arrangements were instruments of supervision rather than creation, and the ladder records that distinction.

A mandate is a trust, not a grant. A protectorate is a delegation, not a disposition. Neither creates a state; each governs one that exists or may come to exist.

D.1 The League of Nations mandates

Article 22 of the Covenant applied the mandate system to territories detached from Germany and the Ottoman Empire after the First World War, in three classes: Class A territories, including Iraq, Syria, Lebanon, and Transjordan, whose existence as independent nations could be provisionally recognised subject to administrative advice and assistance; Class B territories, including Tanganyika; and Class C territories, including South West Africa and the former German Pacific possessions, administered as integral portions of the mandatory's territory.³⁰³ The mandatory's authority was a trust exercised on behalf of the League, not a transfer of title, a characteristic the Permanent Court and the International Court of Justice both treated as central.

The mandates themselves conjured nothing: they placed existing or recognisable communities under supervision, and the mandatory retained controlling authority over external relations and, for Class C territories, internal administration too. Where independence followed, the instrument that effected it belongs on the transformed rung. Iraq, whose mandate ended with the Anglo-Iraqi Treaty of 1930 and admission to the League in 1932, is the clearest example of a mandate transformed into a state by treaty.

D.2 Protectorates

France established protectorates over Tunisia by the Treaty of Bardo of 1881 and over Morocco by the Treaty of Fez of 1912, leaving the Bey and the Sultan in place while controlling external relations, defence, and much internal administration.³⁰⁴ Annam and Tonkin entered comparable arrangements in 1883 and 1884.³⁰⁵ Bhutan's external relations were guided by British India, and later India, under treaties of 1910 and 1949 revised in 2007, without its internal authority being extinguished.³⁰⁶ As the International Court of Justice held of Morocco in 1952, a protected state may retain its personality as a state throughout.³⁰⁷ When Morocco and Tunisia recovered full external capacity by agreement with France in 1956, the instruments belong on the restored

rung, alongside Brunei. The Maldives, examined in §X.3, sits on the boundary between the restored and transformed rungs for reasons given there.

The Anglo-Egyptian Condominium over Sudan, established by agreement in 1899, was formally a joint administration by two powers, although effective control rested with Britain until Sudan's independence in 1956.

D.3 Internationalised territories

The Saar Basin was placed under a League governing commission for fifteen years by the Treaty of Versailles, its mines ceded to France, and its status left to a plebiscite, which in January 1935 returned a large majority for reunion with Germany.³⁰⁸ The Tangier Zone was placed under international administration by conventions from 1923 and was reincorporated into independent Morocco in 1956.³⁰⁹ These arrangements created international administrations over existing territories rather than new polities, and the administering authorities held controlling power by design.

Memel was detached from Germany by the Treaty of Versailles, administered on the Allies' behalf, and transferred to Lithuania, subject to an autonomy statute, by the Klaipėda Convention of 1924, before Germany forcibly reincorporated it in March 1939.³¹⁰ The Convention transferred territory to an existing state, which is a cession, not the constitution of a polity, and Memel stands outside the ladder. Its reincorporation under an ultimatum belongs with the pre-1945 durability record in Section XV.

The Åland Islands settlement of 1921 confirmed Finnish sovereignty while requiring demilitarisation and a guaranteed measure of autonomy. No authority changed hands and none was created; what the settlement constituted was a durable international guarantee attached to an existing title.

D.4 Condominia and shared jurisdiction

Neutral Moresnet, about three and a half square kilometres, was placed under the joint administration of the Netherlands, later Belgium, and Prussia by the boundary settlement of 1816, because neither would concede a valuable zinc mine to the other; it persisted until German occupation in 1914 and passed to Belgium under the Treaty of Versailles.³¹¹ Pheasant Island in the Bidasoa, where the Treaty of the Pyrenees was signed in 1659, is held jointly by France and Spain, with administration alternating every six months under arrangements of 1856 and 1901.³¹² Condominia divide authority between existing states rather than creating a new one, and neither case constituted a polity. Abyei, on the disputed

frontier between Sudan and South Sudan, received an interim administrative status under the Comprehensive Peace Agreement of 2005 with its final status deferred to a referendum that has not been held more than two decades later; it is not yet a case.

D.5 The free cities and Western Samoa

Frankfurt, Hamburg, Bremen, and Lübeck, whose status as free cities of the German Confederation rested on the Final Act of Vienna, are examined in §VII.5 and placed on the restored rung.³¹³ Western Samoa, whose independence in 1962 was effected by New Zealand legislation implementing the termination of the trusteeship, with a treaty of friendship following seven months later, is examined in §X.5 and falls outside the threshold for the same reason as Botswana.³¹⁴

D.6 This appendix's contribution

The arrangements examined here confirm the distinctions the monograph draws. Mandates and protectorates supervised or governed polities rather than creating them, and where full independence followed, the instruments that effected it stand on the transformed or restored rungs. Internationalised territories placed existing territories under international administration. Condominia divided authority without creating a new holder of it. None of these arrangements supplies the conjuring instruments of Sections IV to IX, and their absence from the body of the monograph is an absence with a reason.

APPENDIX E

Table of Authorities

Authorities are grouped by category and listed chronologically within each group, with the sections in which they are principally discussed. Full citations appear in the endnotes.

Treaties, conventions, and other international instruments

Treaty of the Pyrenees (France and Spain), 7 November 1659: App D.4

Treaty of Paris (Great Britain and the United States), 3 September 1783: §II.1, §XIV.1

Treaty of Constantinople (Russia and the Ottoman Empire), 21 March (2 April) 1800: §VII.1

Treaties of Tilsit (France with Russia, 7 July 1807; France with Prussia, 9 July 1807): §VII.2

Final Act of the Congress of Vienna, 9 June 1815, including the Additional Treaty respecting Cracow of 3 May 1815: §VII.4, §VII.5

Treaty respecting the Ionian Islands, Paris, 5 November 1815: §VII.3

Treaty of Aachen (Netherlands and Prussia), 26 June 1816 (Neutral Moresnet): App D.4

Agreements of Stamford Raffles with the Temenggong and Sultan of Johor, 1819; Treaty of Friendship and Alliance, 2 August 1824 (Singapore): §XIII.10

Protocol of London (Britain, France, Russia), 3 February 1830; Treaty of London relative to the Sovereignty of Greece, 7 May 1832; Treaty of Constantinople, July 1832: §VIII.1

London conference of 1832 and Organic Statute of the Principality of Samos: §VIII.2

Treaty of London (Belgium), 19 April 1839: §XIV.1

Treaty of Bayonne (France and Spain), 1856: App D.4

Treaty of London relative to the Grand Duchy of Luxembourg, 11 May 1867: §VII.5

Treaty of Berlin, 13 July 1878, arts 1 and 13: §VIII.3, §XIV.1

Treaty of Bardo (France and Tunisia), 12 May 1881: App D.2

Royal Charter of the British North Borneo Company, 1 November 1881: §XIII.10

Declaration of the United States (22 April 1884) and conventions of Germany and other states with the International Association of the Congo (November 1884 to February 1885): §XIII.1

General Act of the Berlin Conference, 26 February 1885: §XIII.1

Second Convention of Peking (United Kingdom and China), 9 June 1898: §XII.2, §XIX.8

Anglo-Egyptian Agreement respecting the Sudan, 19 January 1899: §XI.1, §XVIII.8, App D.2

Agreement for the Lease of Coaling and Naval Stations (United States and Cuba), 16/23 February 1903; Treaty of Relations, 29 May 1934, art III: §XII.1, §XIX.7, §XIX.8

Hay-Bunau-Varilla Treaty (United States and Panama), 18 November 1903, art XIV; Panama Canal Treaties, 7 September 1977: §XII.2, §XIII.10, §XIX.7

Convention concerning the New Hebrides (Great Britain and France), 20 October 1906: §XVIII.8

Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (Hague II), 18 October 1907, art 1: §XIX.7

Treaty of Fez (France and Morocco), 30 March 1912: App D.2

Treaty of London (Balkan allies and the Ottoman Empire), 30 May 1913, arts 3 and 4: §VIII.4, §VIII.5

Decision of the Conference of Ambassadors on Albania, 29 July 1913; Protocol of Florence, 17 December 1913: §VIII.5

Thomson-Urrutia Treaty (United States and Colombia), 6 April 1914: §XIII.10

Danish-Icelandic Act of Union, 1 December 1918: §III.4, §X.1

Treaty between France and Monaco, 17 July 1918, arts 2 and 3; Treaty of 24 October 2002, arts 1 and 3: §XIX.9

Treaty of Versailles, 28 June 1919, arts 100 to 108 (Danzig) and provisions on the Saar, Memel, and Moresnet: §VII.6, App D.3, App D.4

Covenant of the League of Nations, art 22: App D.1

Treaty of Peace with Austria (Saint-Germain-en-Laye), 10 September 1919, art 88: §XIX.9

Convention between Poland and the Free City of Danzig, Paris, 9 November 1920: §VII.6

Treaty of Rapallo (Italy and the Kingdom of Serbs, Croats and Slovenes), 12 November 1920: §VI.2; Treaty of Rome, 27 January 1924: §VI.3

Anglo-Irish Treaty, 6 December 1921: §XIV.1

Klaipėda Convention, 8 May 1924: App D.3

General Treaty for Renunciation of War (Kellogg-Briand Pact), 27 August 1928: §XV.1

Lateran Treaty (Treaty of Conciliation) (Italy and the Holy See), 11 February 1929: §IV

Anglo-Iraqi Treaty, 30 June 1930: App D.1

Montevideo Convention on the Rights and Duties of States, 26 December 1933, arts 1, 3, and 6: §III.3, §XII.7, §XIV.5, §XVI.5, §XIX.4

General Treaty of Friendship and Cooperation (United States and Panama), 2 March 1936, art VII: §XIX.7

Moscow Declaration on Austria, 1 November 1943: §X.4

Charter of the United Nations, 26 June 1945, arts 2(4), 4, 27, 73, 74, and 102: §III.4, §XII.5, §XIV.4, §XV.3, §XVI.6, §XVIII.8

Treaty of Peace with Italy, 10 February 1947, art 21, art 23, and Annexes VI, VII, and XI: §V, §IX.1

State Treaty for the Re-establishment of an Independent and Democratic Austria, 15 May 1955, arts 1, 2, and 4: §X.4

Zurich and London Agreements, February 1959; Treaties of Establishment, Guarantee, and Alliance (Cyprus), 16 August 1960: §IX.3

Vienna Convention on Diplomatic Relations, 18 April 1961, arts 21 and 22: §XVIII.8

Agreement between the United Kingdom and the Maldives Islands, Colombo, 26 July 1965: §X.3

Independence of Singapore Agreement, 7 August 1965, art II: §III.4, §X.2

Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 18 March 1965, art 72: §XIX.2

International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, 16 December 1966, art 1: §XVI.5

International Covenant on Civil and Political Rights, art 25: §XVIII.10

Vienna Convention on the Law of Treaties, 23 May 1969, arts 2, 6, 18, 25, 26, 31, 34, 42, 46 to 53, 54, 56, 60, 62, 63, 65 to 68, 70, and 75: §II.1, §III.2, §III.4, §V.3, §VI.2, §XVII.2, §XVII.5, §XVIII.2, §XVIII.6, §XIX.3 to §XIX.5

Vienna Convention on Succession of States in respect of Treaties, 23 August 1978, arts 11, 12, 15, 16, 17, 31, 34, and 35: §XVIII.9, §XIX.8, §XIX.9

Treaty of Friendship and Co-operation (United Kingdom and Brunei), 7 January 1979: §X.4

United Nations Convention on the Law of the Sea, 10 December 1982, arts 2, 33, 56, and 121: §XX.1

Vienna Convention on Succession of States in respect of State Property, Archives and Debts, 8 April 1983 (not in force), arts 8, 14, 17, and 18: §XIX.8

Treaty amending the Treaties establishing the European Communities with regard to Greenland, 13 March 1984: §XVIII.6

Joint Declaration of the United Kingdom and the People's Republic of China on the Question of Hong Kong, 19 December 1984, paras 3(1), 3(2), and 3(12): §XII.6

Agreement between the United Kingdom and the USSR concerning the Settlement of Mutual Financial and Property Claims, 15 July 1986: §XIX.8

Joint Declaration of the People's Republic of China and Portugal on the Question of Macau, 13 April 1987: §XII.6

Treaty on the Establishment of German Unity (Unification Treaty), 31 August 1990, arts 11 and 12: §XIX.8

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Nouméa Accord, 5 May 1998: §X.6

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Algiers Agreement (Eritrea and Ethiopia), 12 December 2000, arts 4 and 5; Joint Declaration of Peace and Friendship, 9 July 2018: §XIX.6

Bougainville Peace Agreement, 30 August 2001: §X.6

Constitutional Charter of the State Union of Serbia and Montenegro, 4 February 2003, art 60: §I.5, §X.5, §XVII.6

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Comprehensive Peace Agreement (Sudan), 9 January 2005: §X.5, App D.4

Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland (Edinburgh Agreement), 15 October 2012: §XVII.6

Agreement between the United Kingdom and Mauritius concerning the Chagos Archipelago including Diego Garcia, 22 May 2025: §I.3, §XII.3, §XVIII.8

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General Assembly resolution 289 (IV), 21 November 1949 (Libya and Italian Somaliland): §IX.1, §IX.2

General Assembly resolution 390 A (V), 2 December 1950 (Eritrea): §IX.2

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General Assembly resolution 1514 (XV), 14 December 1960: §XVI.6

Security Council resolution 169 (1961), 24 November 1961 (Katanga): §XIII.10

General Assembly resolution 2758 (XXVI), 25 October 1971: §XIV.4

General Assembly resolution 3203 (XXIX), 17 September 1974 (admission of Bangladesh): §XVI.4

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Security Council resolution 1272 (1999), 25 October 1999 (East Timor): §X.5

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General Assembly resolution 60/264, 28 June 2006 (admission of Montenegro): §XVII.6

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Royal Charter of the Hudson's Bay Company, 2 May 1670; Rupert's Land Act 1868: §XIII.4

Charter of Pennsylvania, 4 March 1681: §XII.4

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Declaration of Independence of the Republic of Liberia, 26 July 1847: §XIII.5

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Newfoundland Act 1933 (United Kingdom): §XIX.7

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Constitution of France, 4 October 1958, arts 76 and 77: §X.6

Botswana Independence Act 1966: §III.4, §X.5

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Status of the Transkei Act 1976 (South Africa): §XVIII.5

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Clarity Act, SC 2000, c 26 (Canada): §XVII.6

Reform (Sark) Law 2008: §XIII.7

Pitcairn Constitution Order 2010: §XX.2, App A

Scotland Act 1998 (Modification of Schedule 5) Order 2013, SI 2013/242: §XVII.6

Constitution of Honduras, arts 294, 303, and 329 as amended in 2013; Organic Law of the Zones for Employment and Economic Development (Decree 120-2013): §XV.4

Constitution of the Republic of Cuba 2019, art 12: §XIX.8

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Endnotes

SECTION I. EXECUTIVE SUMMARY

1. Lateran Treaty (Italy–Holy See) (signed 11 February 1929, entered into force 7 June 1929) 23 Am J Int'l L Supp 187 (1929) (official English translation), art 3. <https://www.uniset.ca/nold/lateran.htm>
2. Treaty of Peace with Italy (signed 10 February 1947, entered into force 15 September 1947) 49 UNTS 3, art 21 and Annex VI (Permanent Statute of the Free Territory of Trieste). <https://treaties.un.org/doc/publication/unts/volume%2049/v49.pdf>
3. Final Act of the Congress of Vienna, General Treaty (signed 9 June 1815), incorporating the Additional Treaty respecting Cracow concluded between Austria, Prussia, and Russia on 3 May 1815, art VI. https://en.wikisource.org/wiki/Final_Act_of_the_Congress_of_Vienna/General_Treaty
4. UNGA Res 181(II) (29 November 1947); Declaration of Establishment of the State of Israel (14 May 1948); UNGA Res 273(III) (11 May 1949). <https://www.un.org/unispal/document/auto-insert-181/>
5. See Section XI.
6. See Section XII.
7. See Section XIII.
8. See §XIII.9.
9. See §XIII.1 and §XIII.9.
10. *Frontier Dispute (Burkina Faso/Republic of Mali)* (Judgment) [1986] ICJ Rep 554, 565, para 20: “It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power.” <https://www.icj-cij.org/case/69>; <https://www.icj-cij.org/sites/default/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>. See also Arbitration Commission of the Conference on Yugoslavia, Opinion No 3 (11 January 1992) 31 ILM 1499, applying the principle to internal administrative boundaries; Alain Pellet, “The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples” (1992) 3 EJIL 178 <https://www.ejil.org/pdfs/3/1/1175.pdf>.

SECTION II. THE QUESTION PRESENTED

11. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 2(1)(a). https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
12. S.S. Lotus (France v Turkey) (1927) PCIJ Series A No 10, 18–19. <https://www.icj-cij.org/permanent-court-of-international-justice>

SECTION III. METHOD: THE LADDER OF CONSTITUTIVE POWER

13. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31(1) <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>; https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.
14. Convention on Rights and Duties of States (Montevideo Convention) (signed 26 December 1933, entered into force 26 December 1934) 165 LNTS 19, arts 1 and 3 <https://www.oas.org/juridico/english/treaties/a-40.html>.
15. James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) 37–95, treating the Montevideo criteria as indicative factors relevant to statehood rather than an exhaustive or self-executing test. <https://global.oup.com/academic/product/the-creation-of-states-in-international-law-9780198257420>
16. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 51–52 (coercion of a representative of a State; coercion of a State by the threat or use of force). https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
17. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 34 ('A treaty does not create either obligations or rights for a third State without its consent'), reflecting the customary principle *pacta tertiis nec nocent nec prosunt* https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.
18. James Crawford, *The Creation of States in International Law*, n 15.
19. David Raič, *Statehood and the Law of Self-Determination* (Kluwer Law International 2002) <https://www.degruyterbrill.com/document/isbn/9789047403388/html?lang=en>.
20. Michael J Strauss, *Territorial Leasing in Diplomacy and International Law* (Brill Nijhoff 2015) <https://brill.com/display/title/25063>.
21. Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice* (Hart Publishing 2013) <https://www.bloomsburycollection.com/book/democratic-statehood-in-international-law-the-emergence-of-new-states-in-post-cold-war-practice/chr-democracy-and-statehood-in-international-law>.
22. Matthew Craven, *The Decolonization of International Law: State Succession and the Law of Treaties* (Oxford University Press 2007) <https://academic.oup.com/book/8834>.

23. Brad R Roth, *Sovereign Equality and Moral Disagreement: Premises of a Pluralist International Legal Order* (Oxford University Press 2011) <https://doi.org/10.1093/acprof:oso/9780195342666.001.0001>.

SECTION IV. VATICAN CITY AND THE LATERAN TREATY OF 1929

24. John R Morss, “The International Legal Status of the Vatican/Holy See Complex” (2015) 26 *European Journal of International Law* 927, 927–930, describing the Holy See’s continued exchange of diplomatic representatives and conclusion of agreements between 1870 and 1929. <https://academic.oup.com/ejil/article/26/4/927/2599610>
25. *ibid.* <https://academic.oup.com/ejil/article/26/4/927/2599610>
26. The Lateran settlement was concluded with the Fascist government of Benito Mussolini. The argument makes no claim that the political circumstances of any historical example examined here were normatively exemplary; its interest is confined to the juridical mechanism employed. For the text, see Treaty between the Holy See and Italy (Lateran Treaty) (signed 11 February 1929) <https://spcp.prf.cuni.cz/dokument/latern.htm>.
27. Lateran Treaty (Italy–Holy See) (signed 11 February 1929, entered into force 7 June 1929) (“Treaty of Conciliation”). <https://www.uniset.ca/nold/latern.htm>
28. *ibid* arts 1–2. <https://www.uniset.ca/nold/latern.htm>
29. *ibid* art 3. <https://www.uniset.ca/nold/latern.htm>
30. *ibid* art 24. <https://www.uniset.ca/nold/latern.htm>
31. Lateran Treaty (Treaty of Conciliation), art 26. <https://www.uniset.ca/nold/latern.htm>
32. Lateran Treaty arts 3 and 4 <https://www.uniset.ca/nold/latern.htm>.
33. Universal Postal Union, member countries (Vatican, member since 1 June 1929) <https://www.upu.int>; International Telecommunication Union, member states (Vatican) <https://www.itu.int>.
34. Morss 946. <https://academic.oup.com/ejil/article/26/4/927/2599610>
35. Tinoco Arbitration (Great Britain v Costa Rica) (1923) 1 RIAA 369 (Taft CJ, sole arbitrator). https://legal.un.org/riaa/cases/vol_I/369-399.pdf

SECTION V. THE FREE TERRITORY OF TRIESTE AND THE TREATY OF PEACE WITH ITALY OF 1947

36. Treaty of Peace with Italy. <https://treaties.un.org/doc/publication/unts/volume%2049/v49.pdf>
37. Treaty of Peace with Italy. <https://treaties.un.org/doc/publication/unts/volume%2049/v49.pdf>
38. *ibid* art 21. <https://treaties.un.org/doc/publication/unts/volume%2049/v49.pdf>
39. *ibid* art 21. <https://treaties.un.org/doc/publication/unts/volume%2049/v49.pdf>
40. *ibid* Annex VI (Permanent Statute of the Free Territory of Trieste) arts 1–5. <https://treaties.un.org/doc/publication/unts/volume%2049/v49.pdf>
41. *ibid* Annex VII (Instrument for the Provisional Regime of the Free Territory of Trieste) art 1. <https://treaties.un.org/doc/publication/unts/volume%2049/v49.pdf>
42. UNSC Res 16 (1947), UN Doc S/RES/16 (10 January 1947). <https://digitallibrary.un.org/record/111954>
43. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 52 and 75 <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>. Article 52 provides that a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter; Article 75 provides that the Convention is without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter with reference to that State's aggression.

SECTION VI. THE FREE STATE OF FIUME AND THE TREATY OF RAPALLO OF 1920

44. *Corpus separatum* status of Fiume dating to the diploma of the Empress Maria Theresa of 1779, as invoked by Fiume's own representatives in their diplomatic correspondence of 1918–1919. <https://history.state.gov/historicaldocuments/frus1919Parisv02/d232>
45. Proclamation of the Italian National Council of Fiume, 30 October 1918, as reported in the Ambassador in Italy (Page) to the Secretary of State, 14 November 1918. <https://history.state.gov/historicaldocuments/frus1919Parisv02/d210>
46. The President of the Italian National Council of Fiume (Grossich) to the Acting Secretary of State, No. 314, confirming the telegram of 19 December 1918. <https://history.state.gov/historicaldocuments/frus1919Parisv02/d255>
47. *ibid*; see also the Ambassador in Italy (Page) to the Secretary of State, 14 November 1918, recording the Council's own stated object as annexation to Italy rather than continuing independence. <https://history.state.gov/historicaldocuments/frus1919Parisv02/d210>
48. The Commander of United States Naval Forces in the Eastern Mediterranean (Bullard) to Admiral W. S. Benson, recording the rival National Council of Slovenes, Croats and Serbs' claim to Fiume-Susak, constituted 29 October 1918. <https://history.state.gov/historicaldocuments/frus1919Parisv02/d254>

49. Treaty of Rapallo (Italy and the Kingdom of Serbs, Croats and Slovenes) (signed 12 November 1920) art 4, Italian text at https://www.isgrec.it/dossier_confine_orientale/materiali/trattato%20di%20rapallo.pdf.
50. “Memorandum on the Clauses of the Draft Peace Treaty Concerning Fiume and Zara (Art. 11)”, Paris Peace Conference Doc No 35 (G), reproduced in *Foreign Relations of the United States, 1946*, vol IV, *Paris Peace Conference: Documents*, doc 16 <https://history.state.gov/historicaldocuments/frus1946vo4/d16>.
51. Vienna Convention on the Law of Treaties, n 17.
52. The joint administration of the port of Fiume contemplated by the Rapallo settlement was never established.
53. Riccardo Zanella was forced to resign the presidency following a coup engineered with Fascist backing on 3 March 1922; the Free State of Fiume was formally extinguished by the Treaty of Rome of 27 January 1924, under which Fiume passed to Italy and the adjacent port of Sušak to the Kingdom of Serbs, Croats and Slovenes. For the text of the 1924 agreements, see <http://www.forost.ungarisches-institut.de/pdf/19240127-1.pdf>; and see “Fighting and dying for autonomy: Fiume’s realistic alternative to Italy, 1918–1924” 31(1) *Journal of Modern Italian Studies* <https://doi.org/10.1080/1354571X.2025.2571281>.

SECTION VII. POLITICS CONJURED BY THE POWERS, 1800 TO 1919

54. Treaty of Constantinople (Russia and the Ottoman Empire) (signed 21 March 1800 Old Style, 2 April 1800 New Style), establishing the Republic of the Seven United Islands; constitution of 1800. See Valeriy Morkva, “Fathoming the warm waters: The Russian Mediterranean adventure in the age of the Napoleonic wars, 1798–1807” (2022) 4(1) *Cappadocia Journal of Area Studies* <http://dx.doi.org/10.38154/cjas.24>.
55. The Republic paid a tribute of 75,000 piastres every three years to the Ottoman Porte in acknowledgement of nominal suzerainty, notwithstanding de facto Russian protection and garrison. See Valeriy Morkva, “Fathoming the warm waters: The Russian Mediterranean adventure in the age of the Napoleonic wars, 1798–1807” (2022) 4(1) *Cappadocia Journal of Area Studies* <http://dx.doi.org/10.38154/cjas.24>. Much of the secondary literature describes the tribute as annual; Morkva’s reading, taken from the text of the Convention as printed in the *Polnoe sobranie zakonov Rossiiskoi Imperii*, vol XXVI, is followed here.
56. Treaty of Peace between France and Russia (Tilsit, 7 July 1807); Treaty of Peace between France and Prussia (Tilsit, 9 July 1807) arts XV (Duchy of Warsaw) and XIX (Danzig), English text at <https://www.napoleon.org/en/history-of-the-two-empires/articles/treaty-between-prussia-and-france-tilsit-9-july-1807/>.
57. Treaty respecting the Ionian Islands (Great Britain, Austria, Prussia and Russia) (Paris, 5 November 1815), preamble and art I, reproduced in Edward Hertlet, *The Map of Europe by Treaty*, vol I (Butterworths 1875) <https://archive.org/details/mapofeuropbytreoihertuoft>.
58. Constitutional Charter of the United States of the Ionian Islands (1817), vesting executive authority in a Lord High Commissioner appointed by the British Crown. See

- King's College London, "Sir Thomas Maitland" <https://kingscollections.org/exhibitions/specialcollections/greece/ionian-islands-a-british-protectorate/maitland>.
59. Final Act of the Congress of Vienna, General Treaty, n 3.
 60. *ibid* art IX. https://en.wikisource.org/wiki/Final_Act_of_the_Congress_of_Vienna/General_Treaty
 61. On the Free City's constitutions of 1815 and 1818, the restrictive constitution imposed by the three protecting powers in 1833, the Austrian occupation of 1836 to 1841, and the annexation of November 1846 with the agreement of Russia and Prussia, see Norman Davies, *God's Playground: A History of Poland*, vol II: 1795 to the Present (rev edn, Oxford University Press 2005) https://books.google.com/books/about/God_s_Playground_A_History_of_Poland.html?id=9Tbed6iMNLEC, and Piotr S Wandycz, *The Lands of Partitioned Poland, 1795 to 1918* (University of Washington Press 1974) <https://www.jstor.org/stable/j.ctvcwnsrp>. For the Convention between Austria, Prussia and Russia on the annexation of Cracow (6 November 1846), see Edward Hertslet, *The Map of Europe by Treaty*, vol II (Butterworths 1875) No 201 https://archive.org/stream/mapeuropebytrear12hertgoog/mapeuropebytrear12hertgoog_djvu.txt.
 62. Final Act of the Congress of Vienna (signed 9 June 1815) art XLVI (Frankfurt), and arts LIII to LXIV (constitution of the Germanic Confederation, listing Frankfurt, Lübeck, Bremen, and Hamburg among its members) <https://worldjpn.net/documents/texts/docs/18150609.T1E.html>; English text also in Charles Oakes and RB Mowat (eds), *The Great European Treaties of the Nineteenth Century* (Clarendon Press 1918) <https://archive.org/download/greateuropeantreo0oakeiala/greateuropeantreo0oakeiala.pdf>.
 63. Final Act of the Congress of Vienna (signed 9 June 1815) arts LXVII to LXXI (Grand Duchy of Luxembourg) <https://worldjpn.net/documents/texts/docs/18150609.T1E.html>; English text also in Charles Oakes and RB Mowat (eds), *The Great European Treaties of the Nineteenth Century* (Clarendon Press 1918) <https://archive.org/download/greateuropeantreo0oakeiala/greateuropeantreo0oakeiala.pdf>.
 64. Treaty relative to the Grand Duchy of Luxembourg and the Duchy of Limburg (London, 11 May 1867) art II (perpetual neutrality under the collective guarantee of the signatory powers), English text in Charles Oakes and RB Mowat (eds), *The Great European Treaties of the Nineteenth Century* (Clarendon Press 1918) <https://archive.org/download/greateuropeantreo0oakeiala/greateuropeantreo0oakeiala.pdf>; approved in Luxembourg by the Loi du 21 juin 1867 <https://legilux.public.lu/eli/etat/leg/loi/1867/06/21/n1/jo>. See also HL Deb 4 July 1867, "Grand Duchy of Luxembourg: Treaty of 1867: The Collective Guarantee" <https://api.parliament.uk/historic-hansard/lords/1867/jul/04/grand-duchy-of-luxembourg-treaty-of-1867>.
 65. Treaty of Versailles (signed 28 June 1919, entered into force 10 January 1920) arts 100 to 108 <https://avalon.law.yale.edu/imt/partiii.asp>.
 66. Treaty of Versailles (signed 28 June 1919, entered into force 10 January 1920) arts 100 to 108, available at <https://avalon.law.yale.edu/imt/partiii.asp>; Convention between Poland and the Free City of Danzig (Paris, 9 November 1920).

SECTION VIII. THE EASTERN QUESTION: POLITIES MADE FROM OTTOMAN
TERRITORY, 1830 TO 1914

67. Protocol of the Conference of London (Britain, France, Russia) (3 February 1830) art 1; Convention between Great Britain, France and Russia, on the one part, and Bavaria, on the other, relative to the Sovereignty of Greece (London, 7 May 1832), reproduced in Edward Hertslet, *The Map of Europe by Treaty*, vol II (Butterworths 1875) No 157 https://archive.org/stream/mapeuropebytreai2hertgoog/mapeuropebytreai2hertgoog_djvu.txt; Treaty of Constantinople (Great Britain, France, Russia and the Ottoman Empire) (21 July 1832) https://www.mfa.gr/images/docs/diethneis_symvaseis/1832_constantinople_treaty.doc. The 1830 Protocol and 1832 Convention are also printed in Charles Oakes and RB Mowat (eds), *The Great European Treaties of the Nineteenth Century* (Clarendon Press 1918) <https://archive.org/download/greateuropeantreooooakeiala/greateuropeantreooooakeiala.pdf>. See Hellenic Republic, Ministry of Foreign Affairs, “International Treaties and Protocols” <https://200years.mfa.gr/en/international-treaties-en/>; King’s College London, “The London Protocol of 3 February 1830” <https://kingscollections.org/exhibitions/specialcollections/greece/british-involvement-in-the-war/london-protocol>.
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69. Treaty between Great Britain, Austria-Hungary, France, Germany, Italy, Russia, and Turkey for the Settlement of Affairs in the East (Berlin, 13 July 1878) arts I (Bulgaria) and XIII (Eastern Rumelia), English text in Charles Oakes and RB Mowat (eds), *The Great European Treaties of the Nineteenth Century* (Clarendon Press 1918) <https://archive.org/download/greateuropeantreooooakeiala/greateuropeantreooooakeiala.pdf>, and (1908) 2 AJIL Supplement 401 https://archive.org/stream/jstor-2212670/2212670_djvu.txt; Organic Statute of Eastern Rumelia (14 April 1879); Tophane agreement (Bulgaria and the Ottoman Empire, 24 March 1886 Old Style, 5 April 1886 New Style).
70. On the establishment of the Cretan State under the four occupying powers (1898), the High Commissionership of Prince George of Greece, and the Treaty of London (30 May 1913) art 4, see generally Robert Holland and Diana Markides, *The British and the Hellenes: Struggles for Mastery in the Eastern Mediterranean 1850 to 1960* (Oxford University Press 2006) <https://global.oup.com/academic/product/the-british-and-the-hellenes-9780199249961>.
71. Treaty of Peace between the Balkan Allies and the Ottoman Empire (London, 30 May 1913) art 3.
72. Decision of the Conference of Ambassadors on the organisation of Albania (London, 29 July 1913) art 1, as translated in Interdisciplinary Journal of Research and Development 5(4) (2018) 69 <https://pdfs.semanticscholar.org/66bf/f3197de6747ce0f8f567be398ace725fdbb.pdf>; Protocol of Florence (17 December 1913); Decision of the Conference of Ambassadors (9 November 1921).

SECTION IX. AFTER 1945: LIBYA AND SOMALIA BY RESOLUTION, CYPRUS BY
TREATY

73. Treaty of Peace with Italy (signed 10 February 1947, entered into force 15 September 1947) 49 UNTS 3, art 23 and Annex XI (Joint Declaration by the Governments of the Soviet Union, the United Kingdom, the United States, and France concerning Italian Territorial Possessions in Africa) para 3 <https://treaties.un.org/doc/Publication/UNTS/Volume%2049/v49.pdf>.
74. UNGA Res 289 (IV), “Question of the disposal of the former Italian colonies” (21 November 1949), part A (Libya) and part B (Italian Somaliland); summarised in *Foreign Relations of the United States, 1949*, vol IV, Editorial Note, doc 345 <https://history.state.gov/historicaldocuments/frus1949v04/d345>; UNGA Res 995 (X) (14 December 1955) (admission of Libya among sixteen new members).
75. UNGA Res 289 (IV), n 74.
76. Conference on Cyprus, Documents signed and initialled at Lancaster House on 19 February 1959 (Cmnd 679, 1959) <https://searchworks.stanford.edu/view/5642149>; see also HC Deb 19 February 1959, Cyprus (Agreement) <https://api.parliament.uk/historic-hansard/commons/1959/feb/19/cyprus-agreement>; Treaty concerning the Establishment of the Republic of Cyprus (Nicosia, 16 August 1960) 382 UNTS 8 <https://peacemaker.un.org/sites/default/files/document/files/2024/05/cy600816treatynicosia.pdf>; Treaty of Guarantee (Nicosia, 16 August 1960) 382 UNTS 3, arts I to IV <https://peacemaker.un.org/sites/default/files/document/files/2024/05/cy20gr2otr600816treaty20of2oguarantee.pdf>; both also in <https://treaties.un.org/doc/Publication/UNTS/Volume%20382/v382.pdf>; Treaty of Alliance (Nicosia, 16 August 1960) 397 UNTS 287.
77. Conference on Cyprus, Documents signed and initialled at Lancaster House on 19 February 1959, n 76.

SECTION X. TRANSFORMATION AND RESTORATION: ICELAND, SINGAPORE, THE
MALDIVES, BRUNEI, AND AUSTRIA

78. Danish-Icelandic Act of Union (entered into force 1 December 1918) arts 1, 7, 18, and 19; Icelandic referendum of 19 October 1918 (92.6 per cent in favour). See Law Library of Congress, “Centennial of the Danish-Icelandic Union Act of 1918”, *In Custodia Legis* (November 2018) <https://blogs.loc.gov/law/2018/11/centennial-of-the-danish-icelandic-union-act-of-1918/>.
79. Independence of Singapore Agreement (signed 7 August 1965, entered into force 9 August 1965) 563 UNTS 89, arts II and IV <https://treaties.un.org/doc/publication/unts/volume%20563/volume-563-i-8206-english.pdf>; on the Federation of Malaysia, established 16 September 1963, see the Agreement relating to Malaysia (London, 9 July 1963).
80. Agreement relating to the separation of Singapore from Malaysia as an independent and sovereign State (Independence of Singapore Agreement 1965) (Kuala Lumpur, 7 August 1965) 563 UNTS 89, art IV and Annex B (Constitution and Malaysia (Singapore Amendment) Act 1965) s 6; Annex A (Proclamation of Singapore) <https://treaties.un.org/doc/Publication/UNTS/Volume%20563/volume-563-I->

- 8206-English.pdf; see also Independence of Singapore Agreement 1965 (2020 Rev Ed) <https://sso.agc.gov.sg/Act/ISA1965>.
81. Agreement between the Sultan of the Maldiv Islands and the Governor of Ceylon on behalf of the United Kingdom respecting the Maldiv Islands (16 December 1887, establishing the protection relationship).
 82. Agreement between Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of the Maldiv Islands (signed at Colombo, 26 July 1965) 548 UNTS 223 (UN Treaty Series No. 7980). <https://treaties.un.org/doc/publication/unts/volume%20548/volume-548-i-7980-english.pdf>
 83. Agreement between Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of the Maldiv Islands (signed 26 July 1965, registered 24 November 1965) 548 UNTS 224, art 2; see Volume 548, I-7980 <https://treaties.un.org/doc/publication/unts/volume%20548/volume-548-i-7980-english.pdf>.
 84. *Case concerning Rights of Nationals of the United States of America in Morocco (France v United States of America)* (Judgment) [1952] ICJ Rep 176, 188 <https://www.icj-cij.org/case/11>.
 85. James Crawford, *The Creation of States in International Law*, n 15.
 86. Protectorate Agreement of Brunei (signed 17 September 1888); Brunei Constitution of 1959, restoring internal self-government subject to continuing British responsibility for defence and external affairs.
 87. Treaty of Friendship and Co-operation (United Kingdom–Brunei) (signed 1979, taking effect 1 January 1984); United States recognition of Brunei's independence, 1 January 1984. <https://history.state.gov/countries/brunei>
 88. Brunei Darussalam was admitted to the United Nations by UNGA resolution on 21 September 1984, some months after the restoration of full sovereignty on 1 January 1984 and accession to ASEAN in the same month; UN membership is treated throughout the analysis as corroborative evidence rather than as itself the source of statehood. <https://www.un.org/en/about-us/growth-in-un-membership>
 89. State Treaty for the Re-establishment of an Independent and Democratic Austria (adopted 15 May 1955, entered into force 27 July 1955) 217 UNTS 223, No 2949. <https://treaties.un.org/doc/Publication/UNTS/Volume%20217/v217.pdf>
 90. Declaration on Austria, Annex 6 to the Secret Protocol of the Moscow Conference (1 November 1943), in *Foreign Relations of the United States, 1943*, vol I, doc 684. <https://history.state.gov/historicaldocuments/frus1943vol1/d684>; see also <https://avalon.law.yale.edu/wwii/moscow.asp>
 91. State Treaty art 2 ("Maintenance of Austria's Independence"). <https://treaties.un.org/doc/Publication/UNTS/Volume%20217/v217.pdf>
 92. State Treaty art 4(1) ("Prohibition of Anschluss"); art 4(2) extends the prohibition to any agreement, act or measure "likely, directly or indirectly, to promote political or economic union with Germany". <https://treaties.un.org/doc/Publication/UNTS/Volume%20217/v217.pdf>

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SECTION XI. TERRITORIAL AVAILABILITY, BIR TAWIL, AND THE LIMITS OF TERRA NULLIUS

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SECTION XII. THE LEASE AND THE SEPARATION OF TITLE FROM AUTHORITY

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120. Convention for the Construction of a Ship Canal (Hay–Bunau-Varilla Treaty) (United States–Panama) (signed 18 November 1903), art III https://avalon.law.yale.edu/20th_century/pano01.asp; Panama Canal Treaty (United States–Panama) (signed 7 September 1977) 1280 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume%201280/volume-1280-I-21086-English.pdf> and related instruments.
121. Convention for the Extension of Hong Kong Territory (Second Convention of Peking) (United Kingdom–China) (signed 9 June 1898); see US Department of State, Office of the Geographer, *China – Hong Kong Boundary* (International Boundary Study No 13, 13 April 1962) <https://library.law.fsu.edu/Digital-Collections/LimitsinSeas/pdf/ibso13.pdf>.
122. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) [2019] ICJ Rep 95, paras 172–174. <https://www.icj-cij.org/case/169>
123. *ibid* para 183. <https://www.icj-cij.org/case/169>
124. Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago including Diego Garcia (London, 22 May 2025) CS Mauritius No 1 (2025) https://assets.publishing.service.gov.uk/media/682f25afco54883884bff42a/CS_Mauritius_1.2025_Agreement_Chagos_Diego_Garcia.pdf; House of Commons Library, “2025 treaty on the British Indian Ocean Territory/Chagos Archipelago”, Research Briefing CBP-10273 (updated 8 July 2026) <https://commonslibrary.parliament.uk/research-briefings/cbp-10273/>; Marc Weller, “UK ratification of the Chagos Archipelago treaty will not violate international law” (Chatham House, 26 January 2026) <https://www.chathamhouse.org/2026/01/uk-ratification-chagos-archipelago-treaty-will-not-violate-international-law>. On the Bill’s progress, UK Parliament, “Diego Garcia Military Base and British Indian Ocean Territory Bill” <https://bills.parliament.uk/bills/4004> (at consideration of amendments, 30 April 2026); on the pause, Robert Midgley, “The UK’s Chagos Islands ‘Deal’: Where are We Now?” (RUSI, 10 April 2026) <https://www.rusi.org/explore-our-research/publications/commentary/uks-chagos-islands-deal-where-are-we-now>, and “UK to hold off on deal ceding Chagos Islands amid US opposition”, Al Jazeera (11 April 2026) <https://www.aljazeera.com/news/2026/4/11/uk-to-hold-off-on-deal-ceding-chagos-islands-amid-us-opposition>.
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128. Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 102(1) <https://www.un.org/en/about-us/un-charter/full-text>.
129. 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 (signed Beijing, 19 December 1984; entered into force 27 May 1985; registered 12 June 1985) 1399 UNTS 33, No 23391 <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d4d6e>.
130. Joint Declaration on the Question of Hong Kong, paras 3(1), 3(2), 3(12); see also Annex I, s I. English text as printed in 1399 UNTS 33 <https://treaties.un.org/doc/publication/unts/volume%201399/v1399.pdf>.
131. Constitution of the People's Republic of China (adopted 4 December 1982, as amended 11 March 2018) art 31; see also art 62(14), official English translation https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6dob3foe9499913.html.
132. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (adopted 4 April 1990, in force 1 July 1997) art 12 <https://www.basiclaw.gov.hk/en/basiclaw/chapter2.html>; English text of arts 1, 2, 5 and 12 also at <https://www.cecc.gov/resources/legal-provisions/basic-law-of-the-hong-kong-special-administrative-region-of-the-peoples>.
133. Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macau (signed Beijing, 13 April 1987; entered into force 15 January 1988; registered 22 March 1988) 1498 UNTS, No 25805, paras 1, 2(1), 2(2), 2(12) <https://treaties.un.org/doc/Publication/UNTS/Volume%201498/volume-1498-I-25805-English.pdf>.
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- declaration. The release identifies the first breach as occurring in 2016 and the second as the national security legislation of June 2020.
136. Foreign, Commonwealth and Development Office, *The Six-Monthly Report on Hong Kong: 1 January to 30 June 2021* (14 December 2021) <https://assets.publishing.service.gov.uk/media/61b7c053d3bf7f0557065435/49th-Six-monthly-Report-on-Hong-Kong.pdf>.
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SECTION XIII. PRIVATE TERRITORIAL POWER AND THE EMPTY INTERSECTION

139. Declaration of the Secretary of State of the United States (22 April 1884) recognising the flag of the International Association as that of a friendly government; Convention between Germany and the International Association of the Congo (8 November 1884); and the conventions and declarations of the United Kingdom (16 December 1884), Italy, Austria-Hungary, the Netherlands, Spain, France, Russia, Sweden and Norway, Portugal, Denmark, and Belgium (December 1884 to February 1885). See James Crawford, *The Creation of States in International Law* (2nd edn, Oxford University Press 2006) <https://doi.org/10.1093/acprof:oso/9780199228423.001.0001>; Matthew Craven, "Between law and history: the Berlin Conference of 1884 to 1885 and the logic of free trade" (2015) 3 *London Review of International Law* 31 <https://doi.org/10.1093/lril/lrv002>.
140. General Act of the Berlin Conference on West Africa (signed 26 February 1885) 165 CTS 485; the United States recognised the flag of the International Association of the Congo in April 1884, the first such recognition extended. <https://loc.gov/law/help/us-treaties/bevans/m-ustoo0001-0128.pdf>
141. Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Houghton Mifflin 1998).
142. The Congo Free State was annexed by the Kingdom of Belgium as a state colony under the Colonial Charter of 18 October 1908, following international criticism of the administration's conduct.
143. On the grant of 1841 by Sultan Omar Ali Saifuddin II, and recognition of Sarawak's independence by the United States in 1850 and by Britain in 1864, see Steven Runciman, *The White Rajahs: A History of Sarawak from 1841 to 1946* (Cambridge University Press 1960) <https://archive.org/details/whiterajahshistoo000runc>.
144. Sarawak became a British protectorate in 1888 and was ceded to the British Crown by the third Rajah, Sir Charles Vyner Brooke, in 1946, becoming a Crown Colony: Runciman chs 8-9.

145. Letters patent of Queen Victoria, 1886, granting the Cocos (Keeling) Islands to the Clunies-Ross family in perpetuity; the islands were annexed to the British Crown in 1857 and transferred to Australian administration in 1955.
146. The Clunies-Ross family's commercial and proprietary interests were purchased by the Commonwealth of Australia in 1978; the Cocos (Keeling) Islands Act of Self-Determination referendum was held on 6 April 1984 and observed by the United Nations.
147. Royal Charter of the Hudson's Bay Company (2 May 1670), granting trade, governmental, and judicial authority over the drainage basin of Hudson Bay; the territory, named Rupert's Land, was transferred to the Dominion of Canada by the Deed of Surrender of 1869, given effect by the Rupert's Land Act 1868 (31 & 32 Vict c 105) and an Imperial Order in Council of 23 June 1870, effective 15 July 1870.
148. On the more than 15,000 African Americans who settled in Liberia between 1822 and the Civil War, and on manumission conditioned on emigration, see History of Liberia: A Time Line, 1820–1847 <https://www.loc.gov/item/af000009/>, Library of Congress, Maps of Liberia 1830–1870 digital collection.
149. American Colonization Society, founded 1816; settlement at Cape Mesurado, 1821–22, on land the Society's agents acquired from local rulers; see Founding of Liberia, 1847 <https://history.state.gov/milestones/1830-1860/liberia>, US Department of State Office of the Historian, recording the coercion of a local ruler by US Navy Lieutenant Robert Stockton during the land negotiation.
150. On Mississippi-in-Africa (1837 to 1842), see Alan Huffman, *Mississippi in Africa* (Gotham Books 2004). Kentucky in Africa was founded in 1828 and absorbed into Liberia by about 1847.
151. On Maryland in Africa (1834 to 1857), independence declared in 1854 and union with Liberia in 1857 (sources differ on the exact days), see Richard L Hall, *On Africa's Shore: A History of Maryland in Liberia, 1834 to 1857* (Maryland Historical Society 2003) https://www.si.edu/object/siris_sil_902042; Maryland State Archives, "The Maryland State Colonization Society" https://slavery.msa.maryland.gov/html/casestudies/mscs_overview.pdf.
152. Declaration of Independence of the Republic of Liberia (26 July 1847). The American Colonization Society had relinquished control of the colony's government in 1846 and encouraged the declaration. See Library of Congress, "Today in History: July 26" <https://www.loc.gov/item/today-in-history/july-26/>; Library of Congress, "Colonization", *The African-American Mosaic* <https://www.loc.gov/exhibits/african/afam002.html>.
153. United States recognition of Liberia, 23 September 1862; several European states had already recognised Liberia in 1848–56; see A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations: Liberia <https://history.state.gov/countries/liberia>, US Department of State Office of the Historian.
154. The Sierra Leone Company was chartered in 1791 (Sierra Leone Company Act 1791 (31 Geo 3 c 55)) <https://vlex.co.uk/vid/sierra-leone-company-act-861208826> and governed the settlement at Freetown from 1792; Parliament transferred the settlement to the Crown by the Sierra Leone Company Act 1807, with effect from 1 January 1808.

- See Richard Anderson, "Abolition's Adolescence: Apprenticeship as 'Liberation' in Sierra Leone, 1808–1848" (2022) 137 *English Historical Review* 763 <https://academic.oup.com/ehr/article/137/586/763/6608829>.
155. Libreville was founded by French naval authorities in 1849 as a settlement for Africans freed from the slave ship *Elizia*; see "Libreville, Gabon (1848-)", BlackPast.org <https://blackpast.org/global-african-history/libreville-gabon-1848/>.
 156. Grant of the diwani of Bengal, Bihar, and Orissa to the English East India Company by Mughal Emperor Shah Alam II, 12 August 1765, in the settlement concluded at Allahabad (the Treaty of Allahabad); see Ministry of Culture (India), Indian Culture portal, "Treaty of Allahabad (1765)" <https://www.indianculture.gov.in/digital-district-repository/district-repository/treaty-allahabad-1765>; C U Aitchison (ed), *A Collection of Treaties, Engagements and Sanads relating to India and Neighbouring Countries*, vol 1 <https://archive.org/details/in.ernet.dli.2015.274688>. The Company's governmental functions were dissolved by the Government of India Act 1858 (21 & 22 Vict c 106) <https://www.legislation.gov.uk/ukpga/Vict/21-22/106/contents/enacted>.
 157. Government of India Act 1833 (3 & 4 Will 4 c 85) s 112 (short title of the surviving provisions, Saint Helena Act 1833, conferred by the Statute Law Revision Act 1948), vesting Saint Helena in the Crown with effect from April 1834 <https://www.legislation.gov.uk/ukpga/Will4/3-4/85/contents/data.html>; Company forces were disbanded on the arrival of British Army units in 1836. See Families in British India Society, "St. Helena" https://wiki.fibis.org/w/St._Helena.
 158. Letters Patent of Elizabeth I granting the fief of Sark to Helier de Carteret (6 August 1565); text at Wikisource, "Sark Letters Patent of 1565" https://en.wikisource.org/wiki/Sark_Letters_Patent_of_1565.
 159. Reform (Sark) Law 2008 <https://www.guernseylegalresources.gg/laws/sark/g/government-constitution-and-elections/reform-sark-law-2008/>, replacing the hereditary membership of Chief Pleas with an elected assembly of twenty-eight Conseillers with effect from January 2009; see Royal Court of Guernsey, "Parliament: The Chief Pleas" <https://www.guernseyroyalcourt.gg/article/3424/Parliament---The-Chief-Pleas>.
 160. *R (Barclay) v Secretary of State for Justice* [2009] UKSC 9, [2010] 1 AC 464 <https://www.supremecourt.uk/cases/uksc-2009-0119>.
 161. On the 1440/1441 boundary settlement between the Papal States and the Republic of Florence and the resulting Cospaia anomaly, see Angelo Ascani, *Cospaia: storia inedita della singolare Repubblica* (2nd edn, Istituto Professionale di Stato per l'Industria e l'Artigianato 1965) <https://search.worldcat.org/title/cospaia-storia-inedita-della-singolare-repubblica/oclc/27890784>; a later printing appeared from Tipografia Sabbioni, Città di Castello, in 1977.
 162. Act of submission of the fourteen heads of the families of Cospaia, 26 June 1826, dividing the territory between the Grand Duchy of Tuscany and the Papal States; see Sistema Archivistico Nazionale, "Comunità di Cospaia, San Giustino (Perugia), 1828 - 1860" <https://inventari-san.cultura.gov.it/inventari/iii/sp/771>.
 163. Sandler Report, League of Nations Council, 27 January 1937, establishing the autonomous statute of the Sanjak of Alexandretta as 'distinct but not separated' from the French Mandate of Syria, the Statute and Fundamental Law of the Sanjak being

- adopted by the Council on 29 May 1937 (HC Deb 19 July 1937, vol 326, cols 1788–89W) <https://api.parliament.uk/historic-hansard/written-answers/1937/jul/19/sanjak-of-alexandretta-status>; UN Archives Geneva, “Map of the Sandjak of Alexandretta, Annex to the report of the committee of experts responsible for drawing up the statute and the fundamental law of the Sandjak” <https://archives.ungeneva.org/map-of-the-sandjak-of-alexandretta>; Franco-Turkish Treaty of Friendship, 1938, permitting Turkish military presence and political involvement. See Majid Khadduri, “The Alexandretta Dispute” (1945) 39 AJIL 406 <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/alexandretta-dispute/1D64EDD6555A7403E0F301FAFB17DA3D>.
164. The Republic of Hatay was proclaimed on 2 September 1938 by an assembly elected after Turkey had arranged for tens of thousands of Turks from outside the Sanjak to register and vote; the Hatay assembly voted to join Turkey on 29 June 1939, in a process some accounts describe as a referendum and others as an assembly vote; annexation was complete on 23 July 1939. See Sarah D Shields, *Fezzes in the River: Identity Politics and European Diplomacy in the Middle East on the Eve of World War II* (Oxford University Press 2011) ch 5, “Transition to Independence” <https://academic.oup.com/book/3682/chapter-abstract/145045205>; Anadolu Agency, “Turkish Republic’s diplomatic victory: Hatay” <https://www.aa.com.tr/en/100th-anniversary-of-republic-of-turkiye/turkish-republics-diplomatic-victory-hatay/3032994>.
 165. *R v Bates*, Essex Assizes, Chelmsford (25 October 1968, unreported), holding that the acts alleged occurred outside the territorial sea then in force. No official report exists; a transcript is reproduced on a website associated with the Principality of Sealand, <https://www.benvenutiasealand.it/documenti/1968-sealand-in-tribunale-sealand-british-court-case/>, and should be read with that provenance in mind.
 166. Sealand’s claim rests on HM Fort Roughs, a decommissioned Second World War anti-aircraft platform occupied from 1967; the United Kingdom’s Territorial Sea Act 1987 (c 49) <https://www.legislation.gov.uk/ukpga/1987/49> extended British territorial waters to twelve nautical miles, encompassing the platform’s location. Liberland was proclaimed 13 April 2015 on a parcel of land subject to an unresolved Croatia–Serbia boundary dispute; Croatian authorities have consistently prevented settlement of the site.
 167. On the Republic of Rose Island (1968 to 1969), see Martina Calabrese, “La Repubblica Esperantista dell’Isola delle Rose. Storia di una Micronazione”, CRIO Papers No 74 (University of Catania 2024) https://www.lex.unict.it/sites/default/files/crio/papers/CRIO_Papers_74-2024_Calabrese.pdf; Giovanni Comoglio, “Isola delle Rose: an Esperanto republic”, *Domus* (2020) <https://www.domusweb.it/en/from-the-archive/gallery/2020/01/29/isola-delle-rose-an-esperanto-republic-on-domus.html>.
 168. On the Republic of Minerva and Tonga’s proclamation of June 1972, see “The Curious History of the Minerva Reefs: Tracing the Origin of Tongan and Fijian Claims Over the Minerva Reefs” (2019) 54 Journal of Pacific History <https://www.tandfonline.com/doi/full/10.1080/00223344.2019.1573664>.
 169. Agreements of 30 January and 6 February 1819 between Sir Stamford Raffles, for the East India Company, and the Temenggong and the Sultan of Johor; Treaty of Friend-

- ship and Alliance between the East India Company and the Sultan and Temenggong of Johor (2 August 1824). See C M Turnbull, *A History of Modern Singapore, 1819–2005* (NUS Press 2009) ch 1 <https://nuspress.nus.edu.sg/products/a-history-of-modern-singapore-1819-2005>.
170. Royal Charter of the British North Borneo Company (1 November 1881); Agreement between the British Government and the British North Borneo Company for the protection of North Borneo (12 May 1888). See K G Tregonning, *Under Chartered Company Rule: North Borneo, 1881–1946* (University of Malaya Press 1958).
171. US Department of State, Office of the Historian, “A Guide to the United States’ History of Recognition, Diplomatic, and Consular Relations: Panama” <https://history.state.gov/countries/panama> (recognition on 6 November 1903; credentials of Philippe Bunau-Varilla accepted on 13 November 1903); Office of the Historian, “Building the Panama Canal, 1903–1914” <https://history.state.gov/milestones/1899-1913/panama-canal>; Convention for the Construction of a Ship Canal (Hay-Bunau-Varilla Treaty) (signed 18 November 1903) https://avalon.law.yale.edu/20th_century/panoor.asp; Treaty between the United States and Colombia (Thomson-Urrutia Treaty) (signed 6 April 1914, ratified 1921). See also David McCullough, *The Path between the Seas: The Creation of the Panama Canal, 1870–1914* (Simon & Schuster 1977).
172. UNSC Res 169 (24 November 1961) [https://docs.un.org/S/RES/169\(1961\)](https://docs.un.org/S/RES/169(1961)); Jules Gérard-Libois, *Katanga Secession* (Rebecca Young tr, University of Wisconsin Press 1966).

SECTION XIV. RECOGNITION, UNION, AND ADJACENT MECHANISMS

173. Treaty of Paris (Great Britain–United States) (signed 3 September 1783), recognising the independence of the United States following the Declaration of Independence of 4 July 1776. https://avalon.law.yale.edu/18th_century/paris.asp
174. Belgian Revolution, 1830; Treaty of London (the Treaty of the XXIV Articles) (signed 19 April 1839), to which Belgium became a party; text in BYU Library, World War I Document Archive, “Treaties and Documents Relative to the Neutrality of the Netherlands and Belgium” https://wwi.lib.byu.edu/index.php/Treaties_and_Documents_Relative_to_the_Neutrality_of_the_Netherlands_and_Belgium.
175. Treaty of Berlin (signed 13 July 1878), recognising the independence of Serbia, Montenegro, and Romania, each of which had exercised substantial autonomous or de facto independent governance before the Treaty. [https://en.wikisource.org/wiki/Treaty_of_Berlin_\(1878\)](https://en.wikisource.org/wiki/Treaty_of_Berlin_(1878))
176. Treaty of Saint-Germain-en-Laye (signed 10 September 1919) and Treaty of Trianon (signed 4 June 1920), confirming the post-1918 territorial settlement of Austria and Hungary following the dissolution of Austria-Hungary and the domestic proclamation of Czechoslovakia and the Kingdom of Serbs, Croats and Slovenes in 1918. https://avalon.law.yale.edu/subject_menus/versailles_menu.asp
177. Estonian Declaration of Independence (24 February 1918) <https://riigikantselei.ee/en/national-holiday> and Tartu Peace Treaty (Estonia–Soviet Russia) (signed 2 February 1920) <https://vm.ee/en/tartu-peace>; Latvian Declaration of Independence (18 November 1918) and Treaty of Riga (Latvia–Soviet Russia) (signed 11 August 1920)

- <https://www.mfa.gov.lv/en/article/centenary-signing-latvia-russia-peace-treaty-be-marked-riga>, text at <http://gis.nacse.org/tfdd/tfdddocs/archiveApril2010/24ENG.htm>; Act of Independence of Lithuania (16 February 1918) and Treaty of Moscow (Lithuania–Soviet Russia) (signed 12 July 1920), text at <https://gis.nacse.org/tfdd/tfdddocs/archiveApril2010/25ENG.htm>.
178. Sultan Mohammed III's decree of 20 December 1777, opening Moroccan ports to American shipping; the Moroccan–American Treaty of Peace and Friendship, concluded 1786 and ratified 1787, remains the longest unbroken treaty relationship in United States history. See Treaty of Peace and Friendship (Morocco–United States) (sealed 23 June 1786, ratified by the United States 18 July 1787) https://avalon.law.yale.edu/18th_century/bar1786t.asp; US Embassy and Consulates in Morocco, “History of the U.S. and Morocco” <https://ma.usembassy.gov/history-of-the-u-s-and-morocco/>.
 179. Treaty of Amity and Commerce and Treaty of Alliance (France–United States) (both signed 6 February 1778) https://avalon.law.yale.edu/18th_century/fr1788-1.asp; https://avalon.law.yale.edu/subject_menus/fitreaty.asp.
 180. On Somaliland's self-government since 1991 and its electoral record, see International Crisis Group, *Somaliland: The Strains of Success*, Africa Briefing No 113 (5 October 2015) <https://www.crisisgroup.org/africa/somaliland-somalia/bri13-somaliland-strains-success>.
 181. Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) 2158 UNTS 3, art 4(b) (respect of borders existing on achievement of independence) <https://au.int/en/treaties/constitutive-act-african-union>; <https://treaties.un.org/doc/Publication/UNTS/Volume%202158/Part/volume-2158-I-37733.pdf>.
 182. Prime Minister's Office (Israel), “PM Netanyahu announced the official recognition of the Republic of Somaliland as an independent and sovereign state” (26 December 2025) <https://www.gov.il/en/departments/news/event-somaliland261225>; “Somaliland: Israel becomes first country to formally recognize region as independent state”, CNN (26 December 2025) <https://www.cnn.com/2025/12/26/africa/israel-recognizes-somaliland-latam-intl>; Washington Institute for Near East Policy, “Recognizing Somaliland: Israel's Return to the Red Sea” <https://www.washingtoninstitute.org/policy-analysis/recognizing-somaliland-israels-return-red-sea>; Joshua Keating, “The Iran War Might Be Somaliland's Chance for Recognition”, Foreign Policy (23 September 2026) <https://foreignpolicy.com/2026/09/23/somaliland-israel-state-recognition-somalia-iran-war-irro-united-states-trump/>.
 183. UN General Assembly Resolution 2758 (XXVI), Restoration of the Lawful Rights of the People's Republic of China in the United Nations, adopted 25 October 1971 (76 in favour, 35 against, 17 abstentions) <https://digitallibrary.un.org/record/192054?ln=en>.
 184. On the continuing dispute over the resolution's scope, compare the People's Republic's position that the resolution resolved Taiwan's status as part of China, Permanent Mission of the People's Republic of China to the UN, “China's Position Paper on the United Nations General Assembly Resolution 2758” https://un.china-mission.gov.cn/eng/zgyw/202509/t20250930_11721842.htm, with the position, shared by Taiwan and stated repeatedly by the United States and the European Union,

- that the resolution addressed only UN representation and is silent on Taiwan's status; see European Parliament resolution of 24 October 2024 on the misinterpretation of UN resolution 2758 by the People's Republic of China and its continuous military provocations around Taiwan, P10_TA(2024)0030 https://www.europarl.europa.eu/doceo/document/TA-10-2024-0030_EN.html; "EU Clarifies UN Resolution 2758 Did Not Mention Taiwan", *Modern Diplomacy* (7 October 2025) <https://moderndiplomacy.eu/2025/10/07/eu-clarifies-un-resolution-2758-did-not-mention-taiwan/>.
185. James Crawford, *The Creation of States in International Law*, n 15.
 186. Charter of the United Nations, arts 4 (admission of new members on Security Council recommendation) and 27(3) (non-procedural Security Council decisions require the concurring votes of the permanent members, the basis of the veto) <https://www.un.org/en/about-us/un-charter/full-text>.
 187. On Haiti: Security Council Press Release SC/6300, "Security Council extends Haiti mission until 31 May 1997" (5 December 1996) <https://press.un.org/en/1996/19961205.sc6300.html>, recording China's statement that it treated Haiti's request "as a unique case"; Department of National Defence (Canada), "Operation STANDARD" <https://www.canada.ca/en/department-national-defence/services/military-history/history-heritage/past-operations/caribbean/standard-1996.html>, noting that "China particularly objected to the mission due to Haiti's public recognition of Taiwan" and that Canada funded 700 troops beyond the 1,200 the Council approved; Global Policy Forum, "The Veto: A Case Study" <https://archive.globalpolicy.org/security-council/39935-the-veto-a-case-study.html>. On Guatemala: draft resolution on the dispatch of military observers, vetoed by China on 10 January 1997 (UN Doc S/1997/18), Security Council Press Release SC/6311 (10 January 1997) <https://press.un.org/en/1997/19970110.sc6311.html>, and UNSC Res 1094 (20 January 1997), Security Council Press Release SC/6314 <https://press.un.org/en/1997/19970120.sc6314.html>. On Macedonia: draft resolution on the extension of the United Nations Preventive Deployment Force, vetoed by China on 25 February 1999 (UN Doc S/1999/201), Security Council Press Release SC/6648 (25 February 1999) <https://press.un.org/en/1999/19990225.sc6648.html>. On Palestine: draft resolution recommending the admission of the State of Palestine, vetoed by the United States on 18 April 2024 (UN Doc S/2024/312) <https://www.un.org/unispal/wp-content/uploads/2024/04/n2410712.pdf>, Security Council Press Release SC/15670 <https://press.un.org/en/2024/sc15670.doc.htm>; on the United Kingdom's recognition of 21 September 2025 and France's of 22 September 2025, House of Commons Library, "UK, Canada, France statements on recognising a Palestinian state 2025", Research Briefing CBP-10323 <https://commonslibrary.parliament.uk/research-briefings/cbp-10323/>.
 188. Dates of admission to the United Nations: Liechtenstein 18 September 1990; San Marino 2 March 1992; Monaco 28 May 1993; Andorra 28 July 1993; Kiribati, Nauru, and Tonga 14 September 1999; Tuvalu 5 September 2000; Switzerland 10 September 2002; see United Nations, "Growth in United Nations membership" <https://www.un.org/en/about-us/growth-in-un-membership>. On the Holy See, UNGA Res 58/314 (1 July 2004), "Participation of the Holy See in the work of the United Nations".

189. Hersch Lauterpacht, *Recognition in International Law* (Cambridge University Press 1947) <https://www.cambridge.org/9781107609433>.
190. Convention on Rights and Duties of States, n 14.

SECTION XV. DURABILITY BEFORE AND AFTER 1945

191. General Treaty for Renunciation of War as an Instrument of National Policy (Kellogg–Briand Pact) (signed 27 August 1928, entered into force 24 July 1929) 94 LNTS 57. https://avalon.law.yale.edu/20th_century/kbpact.asp
192. Charter of the United Nations art 2(4). <https://www.un.org/en/about-us/un-charter/full-text>
193. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14, paras 187–190, holding that the prohibition on the use of force reflected in UN Charter art 2(4) also exists as a rule of customary international law binding independently of the Charter. <https://www.icj-cij.org/case/70>
194. Tanisha M Fazal, *State Death: The Politics and Geography of Conquest, Occupation, and Annexation* (Princeton University Press 2007) <https://press.princeton.edu/books/paperback/9780691134604/state-death>; Mark W Zacher, “The Territorial Integrity Norm: International Boundaries and the Use of Force” (2001) 55 International Organization 215 <https://www.cambridge.org/core/journals/international-organization/article/abs/territorial-integrity-norm-international-boundaries-and-the-use-of-force/15BFtA39481DB3C8FoAE546938355CB4>.
195. UNSC Res 660 (2 August 1990) UN Doc S/RES/660(1990) [https://docs.un.org/S/RES/660\(1990\)](https://docs.un.org/S/RES/660(1990)); UNSC Res 662 (9 August 1990) UN Doc S/RES/662(1990) para 1 <https://digitallibrary.un.org/record/94573?ln=en>; UNSC Res 678 (29 November 1990) UN Doc S/RES/678(1990) para 2 [https://docs.un.org/en/S/RES/678\(1990\)](https://docs.un.org/en/S/RES/678(1990)).
196. Constitution of the Republic of Honduras, arts 294, 303, and 329 as amended in 2013, and the Organic Law of the Zones for Employment and Economic Development (Decree 120-2013); repeal of that law by the National Congress (April 2022); judgment of the Supreme Court of Justice declaring the zones unconstitutional (20 September 2024). See “Honduran government praises repeal of the ZEDE law as investors denounce ‘lies’ and ‘abuse’”, Contra Corriente (28 September 2024) <https://contracorriente.red/en/2024/09/28/honduran-government-praises-repeal-of-the-zede-law-as-investors-denounce-lies-and-abuse/>; *Honduras Próspera Inc and others v Republic of Honduras* (ICSID Case No ARB/23/2).
197. Financial Action Task Force, “Jurisdictions under Increased Monitoring”, updated at each FATF plenary <https://www.fatf-gafi.org/en/topics/high-risk-and-other-monitored-jurisdictions.html>; Council of the European Union, “EU list of non-cooperative jurisdictions for tax purposes”, revised periodically in Council conclusions <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>.

SECTION XVI. SELF-DETERMINATION AND THE LIMITS OF STATE CONSENT

198. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, n 122.
199. Western Sahara (Advisory Opinion) [1975] ICJ Rep 12. <https://www.icj-cij.org/index.php/node/103758>
200. *ibid* paras 85–97, 162, holding that Western Sahara was not terra nullius at the time of Spanish colonisation because nomadic peoples of the territory possessed legal ties, including ties to the land itself, notwithstanding the absence of fixed settlement. <https://www.icj-cij.org/index.php/node/103758>
201. UNGA Res 3203 (XXIX) (17 September 1974) (admission of the People's Republic of Bangladesh to membership in the United Nations) <https://digitallibrary.un.org/record/189825?ln=en>.
202. *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403, paras 79 to 84 and 122 <https://www.icj-cij.org/case/141>.
203. *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, n 202.
204. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 1 <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 1 https://treaties.un.org/pages/viewdetails.aspx?mtdsq_no=iv-3&chapter=4; Human Rights Committee, General Comment No 12: Article 1 (Right to Self-determination) (13 March 1984) <https://www.refworld.org/legal/general/hrc/1984/11735>.
205. Falkland Islands Government, Referendum on the Political Status of the Falkland Islands (10 and 11 March 2013), result: 1,513 votes (99.8 per cent) in favour of remaining a British Overseas Territory; reported to the House of Commons in HC Deb 12 March 2013 (Hugo Swire MP, Minister of State, Foreign and Commonwealth Office) <https://hansard.parliament.uk/commons/2013-03-12/debates/13031261000002/FalklandIslandsReferendum>.
206. Charter of the United Nations, Chapter XI (arts 73 and 74); UNGA Res 1514 (XV) (14 December 1960), “Declaration on the Granting of Independence to Colonial Countries and Peoples”, para 6; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 95, paras 160 and 172. On Pitcairn’s listing, United Nations, “Non-Self-Governing Territories” <https://www.un.org/dppa/decolonization/en/nsgt>.
207. United Nations, Report of the United Nations Visiting Mission to the Gilbert and Ellice Islands, 1974, in Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc A/9623/Rev.I, vol V, ch XXI, annex I; the Tuvalu Order 1975 gave effect to the separation from 1 October 1975; Tuvalu became independent on 1 October 1978. See also Barrie Macdonald, *Cinderellas of the Empire: Towards a History of Kiribati and Tuvalu* (Australian National University Press 1982)

<https://openresearch-repository.anu.edu.au/items/244b12aa-79a9-47c8-89b5-de8228564206>.

SECTION XVII. THE STRONGEST CASE AGAINST THE THESIS

208. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 46 (provisions of internal law regarding competence to conclude treaties), 47 (specific restrictions on authority), 48 (error), 49 (fraud), 50 (corruption of a representative), 51 (coercion of a representative), 52 (coercion of a state by the threat or use of force), and 53 (conflict with a peremptory norm) <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>.
209. *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, n 202.
210. Constitutional Charter of the State Union of Serbia and Montenegro (4 February 2003) art 60 <https://www.refworld.org/legal/legislation/natlegbod/2003/en/36611>; Decision of the National Assembly of the Republic of Serbia (5 June 2006) <https://www.srbija.gov.rs/vest/en/23938/serbia-inherits-state-and-legal-continuity-of-serbia-montenegro.php>; UNGA Res 60/264 (28 June 2006) (admission of the Republic of Montenegro to membership in the United Nations) <https://www.refworld.org/legal/resolution/unga/2006/10651>.
211. Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland (Edinburgh, 15 October 2012) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/313612/scottish_referendum_agreement.pdf
212. Scotland Act 1998 (Modification of Schedule 5) Order 2013, SI 2013/242, art 3, inserting Scotland Act 1998, Sch 5, Pt 1, para 5A <https://www.legislation.gov.uk/uksi/2013/242/contents/made>
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294. Treaty between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity (Berlin, 31 August 1990) arts 11 and 12, official English translation https://www.cvce.eu/content/publication/1997/10/13/2c391661-db4e-42e5-84f7-bd86108cob9c/publishable_en.pdf.
295. Letter dated 19 May 1990 from the Ministers of Foreign Affairs of the Yemen Arab Republic and the People's Democratic Republic of Yemen to the Secretary-General,

- as recorded in *Multilateral Treaties Deposited with the Secretary-General*, Historical Information, “Yemen”, note 1 <https://treaties.un.org>.
296. Treaty of Peace between the Allied and Associated Powers and Austria (Saint-Germain-en-Laye, 10 September 1919) art 88 <https://history.state.gov/historicaldocuments/frus1919Parisv13/ch12subch6>; State Treaty for the Re-establishment of an Independent and Democratic Austria (Vienna, 15 May 1955) 217 UNTS 223, art 4; Treaty of Guarantee (Nicosia, 16 August 1960) 382 UNTS 3, arts I, II, and IV https://mfa.gr/media/2024/04/treaty_of_guarantee.pdf.
297. *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://ap.i.cj-cij.org/sites/default/files/permanent-court-of-international-justice/serie_AB/A_B_41/02_Regime_douanier_Opinion_Anzilotti.pdf.
298. Traité établissant les relations de la France avec la Principauté de Monaco (17 July 1918) arts 2 and 3; Traité destiné à adapter et à confirmer les rapports d'amitié et de coopération entre la République française et la Principauté de Monaco (Paris, 24 October 2002, in force 1 December 2005) arts 1 and 3, texts reproduced by J Leclerc, *L'aménagement linguistique dans le monde*, Université Laval <https://axl.cefal.ulaval.ca/europe/france-monaco-traite-1918.htm> and <https://axl.cefal.ulaval.ca/europe/france-monaco-traite-2002.htm>; French Senate, Projet de loi n° 327 (2006 to 2007) <https://www.senat.fr/leg/pjlo6-327.html>.
299. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar v Bahrain) (Jurisdiction and Admissibility) [1994] ICJ Rep 112, para 29; Charter of the United Nations, art 102.

SECTION XX. TWO HYPOTHETICALS AND A MODEL

300. Pitcairn Islands Marine Reserve, designated by the United Kingdom in September 2016; see The Pew Charitable Trusts, “The Pitcairn Islands Marine Reserve” <https://www.pew.org/en/research-and-analysis/fact-sheets/2015/03/the-pitcairn-islands>.
301. United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, arts 2, 33, 56, and 121 https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf; *The South China Sea Arbitration (Philippines v China)* (Award, 12 July 2016) PCA Case No 2013-19, paras 473 to 553 <https://docs.pca-cpa.org/2016/07/PH-CN-20160712-Award.pdf>.

SECTION XXI. CONCLUSION

APPENDIX A. ILLUSTRATIVE INSTRUMENT SUITE: THE COMMONWEALTH OF DUCIE

302. Foreign and Commonwealth Office, *The Overseas Territories: Security, Success and Sustainability* (Cm 8374, June 2012) <https://www.gov.uk/government/publications/the-overseas-territories-security-success-and-sustainability>.

APPENDIX B. ILLUSTRATIVE INSTRUMENT SUITE: THE REPUBLIC OF TERN

APPENDIX C. MODEL INSTRUMENT TEMPLATE

APPENDIX D. MANDATES, PROTECTORATES, INTERNATIONALISED TERRITORIES,
AND CONDOMINIA

303. Covenant of the League of Nations (1919) art 22; International Status of South-West Africa (Advisory Opinion) [1950] ICJ Rep 128, 132, describing the mandate system as resting on ‘two principles’, non-annexation and tutelage for the well-being of the peoples concerned. <https://www.icj-cij.org/case/10>
304. Treaty of Bardo (France–Tunisia) (signed 12 May 1881); Treaty of Fez (France–Morocco) (signed 30 March 1912), text in (1912) 6 AJIL Supplement 207 <http://archive.org/details/jstor-2212598>; see also *Papers Relating to the Foreign Relations of the United States, 1914*, doc 1628 <https://history.state.gov/historicaldocuments/frus1914/d1628>.
305. Treaty of Huế (France–Annam) (signed 25 August 1883, revised 6 June 1884); Sino-French Treaty of Tientsin (signed 9 June 1885), recognising French authority over Tonkin.
306. Treaty between the United Kingdom and Bhutan (Treaty of Punakha) (signed 8 January 1910); Treaty of Friendship between India and Bhutan (signed 8 August 1949, revised 8 February 2007). On the Anglo-Egyptian Condominium over Sudan, see the Anglo-Egyptian Agreement respecting the Sudan (signed 19 January 1899); Sudan achieved independence on 1 January 1956.
307. *Case concerning Rights of Nationals of the United States of America in Morocco (France v United States of America)*, n 84.
308. Treaty of Versailles arts 45–50 and Annex, establishing the Saar Basin’s governing commission; plebiscite of 13 January 1935 returning a 90.7 per cent majority in favour of reunification with Germany.
309. Convention Regarding the Organization of the Statute of the Tangier Zone (signed 18 December 1923) <http://www.worldlii.org/int/other/LNTSer/1924/187.html>; revised by Agreement of 25 July 1928 <http://www.worldlii.org/int/other/LNTSer/1929/68.html>, establishing international administration under a Committee of Control; the Zone was reincorporated into independent Morocco in 1956 by the Final Declaration of the International Conference in Tangier and annexed Protocol (29 October 1956) <http://www.worldlii.org/int/other/treaties/UNTser/1957/130.html>.
310. Treaty of Versailles art 99, detaching the Memel Territory from Germany; Klaipėda Convention (Convention concerning the Territory of Memel) (signed Paris, 8 May 1924) 29 LNTS <http://www.worldlii.org/int/other/treaties/LNTSer/1924/194.pdf>, transferring sovereignty to Lithuania subject to an autonomy statute; forcible German reincorporation followed an ultimatum of 20 March 1939. On the Åland Islands, see the Convention Relating to the Non-Fortification and Neutralisation of the Åland Islands (signed 20 October 1921) and the League of Nations Council decision of 24 June 1921 confirming Finnish sovereignty subject to the autonomy and demilitarisation guarantees.

311. Boundary Treaty of Aachen (Netherlands–Prussia) (signed 26 June 1816), establishing the Neutral Territory of Moresnet as a Netherlands (later Belgian)–Prussian condominium; German occupation from August 1914 and purported Prussian annexation of 27 June 1915, never internationally recognised.
312. Treaty of the Pyrenees (France and Spain) (signed 7 November 1659); Treaty of Bayonne (signed 2 December 1856); agreement of 27 March 1901 on the alternating exercise of jurisdiction over Pheasant Island. On Abyei, see the Comprehensive Peace Agreement (Sudan) (signed 9 January 2005), Abyei Protocol (signed 26 May 2004), providing for a referendum on Abyei’s final status that has not been held.
313. Final Act of the Congress of Vienna (signed 9 June 1815), incorporating the German Federal Act (signed 8 June 1815) establishing the German Confederation; Constitution of the German Empire (16 April 1871) art 1, listing Lübeck, Bremen, and Hamburg among the constituent states, and art 6 (allocation of votes in the Bundesrat) <https://www.verfassungen.de/de67-18/verfassung71-i.htm>; Frankfurt’s free-city status ended with Prussian annexation in 1866.
314. Tripartite Convention (Germany–United States–United Kingdom) (signed Washington, 2 December 1899), partitioning the Samoan Islands; Treaty of Friendship (New Zealand–Western Samoa) (signed 1 August 1962), following Western Samoa’s independence on 1 January 1962 as a former Class C mandate and United Nations trust territory.

APPENDIX E. TABLE OF AUTHORITIES