



THE UNIVERSITY *of* EDINBURGH
Edinburgh Law School

'Statehood & Atlantis: Can Atlantis be a State?'

Dissertation in Law

Programme of Study: LLM in Global Environment and Climate Change Law

Exam Number: [REDACTED]

Word Count: 9991

Statehood & Atlantis: Can Atlantis be a State?

Introduction

Over the last decade or so, there has been growing concern in relation to the plight of so-called “sinking [S]tates”.¹ These States, the most vulnerable of which are: Tuvalu, Kiribati, the Maldives, and the Marshall Islands,² face a threat which ‘is nothing short of existential.’³ Rising sea levels are diminishing the territories of these island States, to the extent that some may be ‘uninhabitable, perhaps as early as 2050.’⁴ However, the international legal consequences of loss of territory pertaining to the statehood of these sinking States are unclear. International law is facing a novel dilemma, one which this dissertation seeks to illuminate.

For clarity, this dissertation shall refer to sinking States as ‘Atlantis’ throughout, as seen in the work of Jain.⁵ Whilst Mitra and Sanghi dispute the accuracy of the term ‘Atlantis’, proposing instead what they describe as ‘a more accurate fictional optimisation’: “New Asgard”,⁶ use of the term ‘Atlantis’ remains pertinent to the issues discussed herein. Atlantis shall be used to refer to any State - present or future - that loses its *land* territory in its entirety, or to an extent that renders any remaining *land* territory uninhabitable, or to the extent that this loss of territory brings into question its ability to function as a State.

Whilst recent publications such as those of Stewart and Jain, have discussed Atlantis and statehood at length, their primary function has been to explore the consequences to its population as well as its international legal personality. Yet, distinctly, this dissertation answers the singular question of whether Atlantis can be a

¹ see Melissa Stewart, ‘Cascading Consequences of Sinking State’ (2023) 59 Stan J Int’l L (forthcoming) 4.

² Alejandra Torres Camprubí, *Statehood Under Water: Challenges of Sea-Level Rise to the Continuity of Pacific Island States* (Brill 2016) 1 and 103.

³ Stewart (n 1) 3.

⁴ Maxine Burkett, ‘The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era’ (2011) 2 Climate Law 345, 351.

⁵ Abhimanyu George Jain, ‘The 21st Century Atlantis: The International Law of Statehood and Climate Change-Induced Loss of Territory’ (2014) 50 Stan J Int’l L 1.

⁶ Ryan Mitra and Sanskriti Sanghi, ‘The Small Island States in the Indo-Pacific: Sovereignty Lost?’ (2023) 31 APLR 428, 428-429.

State. In essence, therefore, the question at hand is not one of the consequences of territorial loss for Atlantis and its people - Atlanteans - for there are many, residing in a variety of forms: environmental, legal, political, physical, emotional, cultural (and a combination of any and all of these).⁷ Instead, the primary question is wholly and simply whether the consequence of territorial loss on the statehood of Atlantis is the loss of this statehood and its position as a State.

This loss would be significant. Statehood can be seen as the pinnacle of international legal personality. It permits the 'ultimate rights of participation in both the creation of international law and in the construction and operation of the international legal system.'⁸ Furthermore, from an internal perspective, statehood enables sovereignty and thus 'the right to exercise supreme, independent authority or jurisdiction over a piece of territory.'⁹ Therefore, whilst there are burdens to statehood and situations where it may not be desired and is 'wrong',¹⁰ it remains the pinnacle of polity. As section two shall explore, statehood is hard to unwillingly lose, and accordingly statehood can be sought as a guarantee of a place or standing within the international legal order, and guarantee of sovereign rights therein.

With these considerations in mind, the question posed by this dissertation demands an initial evaluation of two key questions: what is a State? And, if Atlantis were not already a State could it be a new State - New Atlantis? If New Atlantis, as a theoretical polity without territory, could become a State then Atlantis need not fear the loss of its statehood for it could simply regain this statehood. However, the ultimate unlikelihood of New Atlantis' acceptance as a State will demand the consideration of further questions pertaining to the continuation and destruction of statehood. As such, the dissertation shall move in its second section to answer the questions of: when are States destroyed? And, will Atlantis be destroyed? The conclusions reached herein, and their suggestion that Atlantis may well not be

⁷ see Stewart (n 1) for the latest discussion on these consequences; consideration of consequences will necessarily take place but in a secondary capacity.

⁸ Emily Crawford and Rosemary Rayfuse, 'Climate Change and Statehood' in Rosemary Rayfuse and Shirley V Scott (eds), *International Law in the Era of Climate Change* (Elgar 2012) 245.

⁹ *ibid.*

¹⁰ see Colin Warbrick, 'The New British Policy on Recognition of Governments' (1981) 30 ICLQ 568, 569.

destroyed shall give rise to the third and fourth sections of the dissertation. Therein the consequences of, as well as justifications for, Atlantis' continuation on international law's understanding of statehood and the State shall be explored. Section three will explore how the erosion of the traditional concept of the State is ripe for reform. Section four shall go on to explore how Atlantis may be able to exist within this reform as a State in novel but not necessarily unprecedented form, and the consequences its existence may have for both itself and international law.

Marek argues it 'can be taken for granted' that 'a State would cease to exist... if its territory were to disappear (e.g. an island which would become submerged)'.¹¹ However, this dissertation will argue the opposite. It will argue that Atlantis' loss of statehood cannot be taken for granted, and international law's propensity for State continuity could not only result in Atlantis' continuation as a State but could support novel considerations of statehood and the form of States, as well as the supposed necessity of uniformity in their form. Whilst the consequences of Atlantis' continuation may require further examination and could ultimately prove detrimental to the perpetual existence of Atlantis, Atlantis can be a State.

1. The Creation of States: What is a State & Could Atlantis Become a State?

1.1. Defining the State & Statehood

Historically, theories of statehood have evolved over time. Hobbes, Grotius and Pufendorf all theorised States as persons, anthropomorphising the State in similar yet distinct ways.¹² Around the middle of the 18th century Vattel instigated a deviation, or an evolution, from these preceding theories and their Natural Law ideologies, favouring instead a theory that better encapsulated the expanding realm of international relations and the necessity of States to work collaboratively and even compromise: The Law of Nations.¹³ Herein, the State was characterised more by its

¹¹ Krystyna Marek, 'Identity and Continuity of States in Public International Law' (2nd edn, Librairie Droz 1968) 7.

¹² Ben Holland, *The Moral Person of the State: Pufendorf, Sovereignty and Composite Politics* (CUP 2017) 13-14; see also James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) 6-10.

¹³ see Peter Schroder, *Concepts and Contexts of Vattel's Political and Legal Thought* (CUP 2021).

role in the international community than its own personal anatomy.¹⁴ Later still, at the start of the 20th century, Oppenheim built upon Vattel's Law of Nations, and proposed conditions for a State's existence: '[t]here must, first, be a *people*'; '[t]here must, secondly, be a *country*'; '[t]here must, thirdly be a *Government*', and; '[t]here must, fourthly and lastly, be a *Sovereign Government*' - a 'supreme authority'.¹⁵ As shall become apparent, Oppenheim's conditions fit relatively neatly within what has become the codified and most commonly accepted definition of a State - Article 1 of the Montevideo Convention on the Rights and Duties of States.¹⁶ Presently, despite its somewhat shaky foundations and extensive criticism,¹⁷ it is 'common knowledge'¹⁸ that the most commonly used and widely accepted *legal* definition of a State is that found in Article 1 of the Convention:¹⁹

*'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 other States.'*²⁰

Grant highlights the utility of Article 1 as it purports to provide a legal source of defining a state,²¹ as opposed to the plethora of academic sources and their 'wealth of guidance on the matter.'²² As '[a] codified definition of the state,' Article 1 'is

¹⁴ *ibid.*

¹⁵ Lassa Oppenheim, *International Law: A Treatise* (Longmans, Green and Co. 1905) 100-101.

¹⁶ (adopted 26 December 1933) 165 LNTS 19 (the Convention).

¹⁷ as will be discussed in sections 2 and 3.

¹⁸ Inger Österdahl, 'Relatively Failed: Troubled Statehood and International Law' (2003) 50.

¹⁹ see 'the Article 1 criteria are widely quoted as representing a codification of the customary international law requirements of statehood', Jain (n 5) 15; see also 'best known formulation', Crawford, *The Creation of States* (n 12) 45; see also description of the four criteria 'accepted as law' Louis Henkin, 'International Law: Politics and Values' (1995) 18 *Developments in International Law* 1, 13; see also, depiction of the Montevideo Convention as 'the generally accepted formulation of [the criteria for statehood]', Crawford and Rayfuse (n 8) 246; And 'The Normative understanding of Statehood and sovereignty has most often been linked to the Montevideo Convention', Mitra and Sanghi (n 6) 428.

²⁰ (n 16) art 1.

²¹ even if this legal source is relatively weak, see Thomas D Grant, 'Defining Statehood: The Montevideo Convention and its Discontents' (1998) 37 *Colum J Transnat'l L* 403, 455-456.

²² *ibid.*, 413-414.

reassuring and convenient.²³ Furthermore, in the eyes of its drafters, the Convention and Article 1 therein demonstrated ‘an immense accomplishment’ following ‘a more than thirty years long effort’ towards codification.²⁴ It also depicts ‘a definite departure from classical international law,’²⁵ removing colonial considerations of civilisation,²⁶ serving to cement the statehood of States we take for granted today - particularly those in South America.²⁷ With a distinct lack of alternative definitions from authoritative sources, such as the International Law Commission (ILC),²⁸ fulfilling the requirements of Article 1 would be the principal item on the agenda of a polity seeking to become a State. In this respect, Article 1 provides a set of criteria that New Atlantis should aspire to fulfil in order to become a State.

Whether satisfaction of Article 1’s criteria alone is sufficient for statehood has been the subject of significant legal debate.²⁹ On one side of the debate sits the constitutive theory, and the declaratory theory on the other. The constitutive theory requires that a ‘competent’ ‘organ’ of the international legal system - States - ‘acting individually or collectively’, recognises a polity’s existence as a State.³⁰ In other words, new States attained ‘their existence’ subject to ‘the will of those already established’ members of such a society.³¹ This ensured that States could not come into being without the express consent of European powers, self-proclaimed as

²³ *ibid*, 455.

²⁴ Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842 - 1933* (CUP 2014) 306.

²⁵ *ibid*, 306.

²⁶ *ibid*, 307; see a first-hand discussion of the criteria of civilisation see Oppenheim (n 15) 148; and see more on the historic civilisation criteria in James Crawford, ‘The Criteria for Statehood in International Law’ (1976) 48 BYIL 93, 98 and 141.

²⁷ see Milena Sterio, ‘Grotian Moments and Statehood’ (2022) 54 Case W Res J Int’l L 71, 75.

²⁸ see Jain (n 5) 16; also Grant (n 21) 449; note, however, that the ILC is currently undertaking review of their understanding of statehood and its relation to sinking States. However, whilst their most recent meeting has concluded, their final findings remain to be published. For updates see <<https://legal.un.org/ilc/sessions/74/docs.shtml>>.

²⁹ see for instance the differing views of Lauterpacht and Oppenheim relating to the duty of recognition. cf Hersch Lauterpacht, *Recognition in International Law* (CUP 1947), and Oppenheim (n 15).

³⁰ Crawford, *The Creation of States* (n 12) 20; see also Lauterpacht (n 29) 6.

³¹ Anthony J Carroll and B Rajagopal, ‘The Case for the Independent Statehood of Somaliland’ (1992) 8 Am U J Int’l L & Pol’y 653, 677.

“civilized society”.³² At the time, the constitutive theory supported an effective mechanism of colonial expansion as, no matter their fulfilment of Article 1’s criteria, communities, polities, or purported states could be ‘treated as terra nullius’ and their territories forfeited to the expansion of states already established.³³

Supported by ‘substantial state practice’,³⁴ the declaratory theory offers a more accurate reflection of the present understanding of statehood. This theory suggests that recognition ‘has no legal effect.’³⁵ Instead it ‘is a political act,’ and exists, ‘in principle,’ outside of considerations of a State ‘as a subject of international law.’³⁶ The modern conception of recognition is therefore that it is ‘*status-confirming*’ as opposed to ‘*status-creating*’.³⁷ For New Atlantis to be considered a State it should, therefore, fulfil each criterion of Article 1 so far as it can.

1.2. Flexibility & Article 1

It is readily apparent that New Atlantis will struggle to satisfy Article 1 from a ‘black letter’³⁸ interpretation of its criteria. New Atlantis, as defined in the introduction, is definitively without territory and, thus, also without a permanent population residing upon its territory. However, Article 1 and its legacy suggest that each criterion has an inherent flexibility. The text of the Convention implies that its criteria should be a guide: ‘[t]he State as a person of international law *should* possess the following

³² see use of the term in Crawford, ‘The Criteria for hood’ (n 26) 98.

³³ Grant (n 21) 422; note, however, this is not to say that this was the sole method of land grabbing, as treaties, secessions and surrenders did also play a role in colonial expansion. Cf Grant (n 21) 423-424.

³⁴ James Crawford, *Brownlie’s Principles of Public International Law* (9th edn, OUP 2019) 136.

³⁵ Henkin (n 19) 14; see also the use of ‘no legal significance’ in Carroll and Rajagopal (n 31) 677.

³⁶ Crawford, *The Creation of States* (n 12) 22; see also ‘Recognition is still in the language of diplomats but it does not belong in the language of law.’ Henkin (n 19) 14; as well as ‘statehood and recognition: the former is legal, whereas the latter is political.’ In Sterio (n 27) 75.

³⁷ Stefan Talmon, ‘The Constitutive Versus The Declaratory Theory of Recognition: Tertium Non Datur?’ (2004) 75 BYIL 101.

³⁸ see the use of the term ‘black letter interpretations’ in Freya Bliss, ‘Exploring the criteria for Statehood in international law in respect to climate change induced migration’ (2019) 137 Chain Reaction 17, 18.

qualifications'.³⁹ It does not state that States *must* possess its qualifications. Furthermore, State practice and international custom illustrates that each criterion has been interpreted with flexibility to a significant extent.

With respect to the territorial requirement, territory need not be precisely defined, nor need it be of any minimum value. Lauterpacht discusses the need for a 'well-defined territory'.⁴⁰ However, Wong highlights the propensity of international law to accept States with 'ill-defined' territory.⁴¹ Similarly, Crawford and Rayfuse identify the lack of Israel's defined borders.⁴² Furthermore, the acceptance of the variation between sizes of territories, from The Vatican City to Russia, indicates an inherent flexibility in the requirement of territory. Indeed, in discussions of decolonisation, the United Nations General Assembly asserted that 'questions of territorial size, geographical isolation and limited resources should in no way' be used to 'delay' the transition of former colonies to independent States.⁴³ For the Convention, there must merely be '*some* territory'.⁴⁴

Whilst arguments have been made for requirements of no territory, they are unsuitable for analogy to New Atlantis' circumstance. Grant proposes one such argument. Poland (as well as Czechoslovakia), Grant posits, had 'no realistic claim' to territory owing to a lack of State continuity since 1815 and a government, in the form of the Polish National Committee, that 'had never had a seat in Poland'.⁴⁵ However, in the example of Poland, the territory was present and the question was instead who could exercise exclusive authority over it? For New Atlantis, as a

³⁹ the Convention (n 16) art 1 (emphasis added).

⁴⁰ Lauterpacht (n 29) 31.

⁴¹ Derek Wong, 'Sovereignty Sunk? The Position of 'Sinking States' at International Law' (2013) 14 MJIL 346, 355.

⁴² see Crawford and Rayfuse (n 8) 247.

⁴³ United Nations General Assembly (UNGA), 'Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, New Hebrides, Niue, Pitcairn, St Helena, St Kitts-Nevis-Anguilla, St Lucia, St Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands' UNGA Res 2709 (XXV) (14 December 1970) GAOR 25th session 1929th plenary meeting, Agenda Item 23, UN Doc A/RES/2709(XXV) para 4.

⁴⁴ Crawford, *The Creation of States* (n 12) 48.

⁴⁵ Grant (n 21) 436.

landless polity, there is no territory over which authority can be exercised. In this regard, the current understanding of a State still requires 'some territory'.⁴⁶

Population need not be of any minimum value. Comparisons of The Vatican City with Russia, China, or India serve to illustrate this fact. As Franck and Hoffman conclude, 'infinitesimal smallness has never been seen as a reason to deny self-determination to a population.'⁴⁷ Indeed, Crawford highlights that the 'ecclesiastical character' of The Vatican City's population is more controversial than the size of its population.⁴⁸ In other words, there must be some people.

Momentarily skipping the third criterion to discuss the fourth, it remains important to consider that the capacity to enter into relations with States is not the sole prerogative of States.⁴⁹ Accordingly Crawford describes that, whilst States do 'pre-eminently possess' this capacity, it 'is not a criterion and is instead 'merely a consequence, of statehood'.⁵⁰ This is not, however, to say that because other entities exercise legal personality they must be States, as would be the suggestion if capacity were a mere consequence of statehood. Instead, as Crawford and Rayfuse discuss, this capacity 'is an amalgam of government and independence'.⁵¹ It is essentially 'the ability to operate as an independent entity on the global stage,'⁵² 'producing consequences relevant to the international legal order.'⁵³ Herein the flexibility of such a capacity becomes apparent as it is clear that non-State entities such as Non-Governmental Organisations (NGOs) and international bodies possess and interact with this capacity as well. As such, the criterion is flexible to the extent that it becomes an obsolete criterion to a great extent.

⁴⁶ Crawford, *The Creation of States* (n 12) 48.

⁴⁷ Thomas M Franck and Paul Hoffman, 'The Right to Self-Determination in Very Small Places' (1976) 8 NYU J Int'l L & Pol 331, 383.

⁴⁸ Crawford, *The Creation of States* (n 12) 52.

⁴⁹ Crawford, 'The Criteria for Statehood' (n 26) 119; Crawford, *The Creation of States* (n 12) 61.

⁵⁰ Crawford, 'The Criteria for Statehood' (n 26) 119.

⁵¹ Crawford and Rayfuse (n 8) 246.

⁵² *ibid.*

⁵³ Davorin Lapaš, 'Climate Change and International Legal Personality: "Climate Deterritorialized Nations" as Emerging Subjects of International Law?' (2022) 59 Can YBIL 1, 10.

Conversely, the third criterion, government, exists as a lynchpin for territory and population from which statehood can blossom, and is 'the most important single criterion of statehood'.⁵⁴ However, this does not mean that this requirement is any less flexible than its predecessors. Indeed, Crawford highlights the case of the Republic of the Congo's creation in 1960, and how the Congo failed to exercise, or was not permitted to exercise, any form of effective government to the extent that 'it would be hard to imagine' something 'less like effective government'.⁵⁵ As such, despite its role as a lynchpin of statehood, the criterion of effective government still possesses the inherent flexibility of other criteria.

Whilst there is evidently a significant amount of flexibility possibly afforded to considerations of statehood, New Atlantis, as a polity without territory, remains unlikely to be granted statehood. Crawford highlights that there is a 'close relation between the concepts of government and statehood',⁵⁶ and discusses the existence of the territory criterion as a 'constituent of government and independence' as opposed to 'a distinct criterion of its own'.⁵⁷ Furthermore Lowe suggests that 'the concept of the State is rooted in the concept of control of territory',⁵⁸ and goes on to suggest that the 'purpose and role' of the State is 'to ensure that activities within its borders are not regulated by any other State'.⁵⁹ Similarly, US Ambassador Jessup discusses the 'insistence' of an exclusive exercise of authority as the defining characteristic of the criterion of territory.⁶⁰ Apparent, therefore, is the use of territory as a means of ascertaining and perpetrating independence and exercising of

⁵⁴ Crawford, *The Creation of States* (n 12) 56.

⁵⁵ *ibid.*, 57; see also the examples of both Croatia and Bosnia and Herzegovina as discussed by Christoforos Ioannidis, 'Are the Conditions of Statehood Sufficient? An Argument in Favour of Popular Sovereignty as an additional Condition of Statehood' (2014) 21 *Jurisprudencija* 974, 976.

⁵⁶ Crawford, *The Creation of States* (n 12) 34.

⁵⁷ Crawford, *The Creation of States* (n 12) 52.

⁵⁸ Vaughan Lowe, *International Law* (OUP 2007) 138.

⁵⁹ *ibid.*

⁶⁰ UN Security Council Official Records (SCOR), 383rd meeting (2 December 1948) 11.

exclusive authority. In this sense, territory, as well as population, are a tool to achieve the key concept of sovereignty and statehood - 'governing power'.⁶¹

An exercise of exclusive authority must have something to exercise this authority over. Whilst it may appear that this exclusive exercise of authority could be over either territory or a population in theory, it is the combination of the two that provide the exclusive authority. In other words, a national of one State cannot freely conduct themselves in the exclusive manner prescribed by their own State when on the territory of another State. They must act in accordance with the rules of the State they find themselves within; their home State cannot exclusively exercise authority over them. Similarly and fundamentally, if there is no population there is no State. Quite apart from having no one to exercise authority over, there will be no one to exercise this authority. It is only when the population is present upon the territory of a State that an exercise of exclusive authority can take place. It is for this reason that Grant's example of Poland is un-analogous with New Atlantis. As such, despite significant flexibility across all the Convention criteria, potentially so far as to not require individual criterion, it remains unlikely that Atlantis could be considered a new State - New Atlantis.

1.3. The Caveat, Recognition & The Sacrosanct Incidence of Statehood

Whilst it is highly unlikely that Atlantis would be considered a new State, the prevailing role of recognition suggests that it is impossible to rule out its potential attainment of statehood entirely. 'Statehood is a legal status',⁶² yet it remains inextricable from politics and international relations.⁶³ As a political concept, recognition remains legally influential. Crawford, assuring of recognition's limitations to politics and not law, highlights recognition's importance in matters of contention, stating the propensity of recognition to 'resolve uncertainties'.⁶⁴ As Crawford alludes to, and Jain directly states, recognition could also be useful if not necessary in

⁶¹ Crawford (n 12) 56.

⁶² Jure Vidmar, 'Territorial Integrity and the Law of Statehood' (2013) 44 Geo Wash Intl L Rev 101, 149.

⁶³ Sterio (n 27); Vidmar (n 62).

⁶⁴ Crawford, *The Creation of States* (n 12) 27.

situations of novel circumstance.⁶⁵ It creates 'an inescapable incidence of statehood'⁶⁶ in circumstances where the *de facto* criteria of the Convention may not be met. Furthermore, in our modern world, with the disappearance of *terra nullius*, the reality is that a new State's ascension to statehood is achieved through 'the political process' of defeating any 'counterclaim to territorial integrity.'⁶⁷ The political recognition of Kosovo, as a UN member for instance, would therefore serve to confirm the dominance of its territorial claim over that of Serbia, confirming the former's statehood. Furthermore, referring again to Grant's example, 'an extensive set of [S]tate-like competencies' as well as the recognition of France, a super-sovereign State, quashed the uncertainty of Poland's statehood and confirmed its existence as a State.⁶⁸ Recognition can therefore be used to 'erode'⁶⁹ barriers to State creation. As such, whilst recognition is not an essential element of statehood, and does not constitute a fifth criteria,⁷⁰ it remains a useful and influential indicator of statehood, ready to return 'by the back door.'⁷¹ The specific context within which New Atlantis seeks to become a State must therefore be assessed before its inability to be a State is declared absolute.

1.4. Section Conclusion: Atlantis as a New State - New Atlantis

New Atlantis does not readily satisfy the requirements of the Convention owing to its lack of territory. Whilst the absence of individual criterion is not terminal to claims of statehood, the absence of such a fundamental criterion suggests that it is unlikely that Atlantis would be able to achieve statehood again if it were to lose statehood. The political role of recognition proffers hope to Atlantis and New Atlantis, but should not be relied upon as a method of attaining statehood on account of its subjectivity.

⁶⁵ more on novelty shall be discussed in sections 3 and 4. See for now Jain (n 5) 45-46; see also Crawford, *The Creation of States* (n 12) 27.

⁶⁶ Thomas M Franck, *Fairness in International Law and International Institutions* (OUP 1998) 29.

⁶⁷ Vidmar (n 62) 149.

⁶⁸ Grant (n 21) 436.

⁶⁹ see the use of the word in Grant (n 21) 436.

⁷⁰ the declaratory theory remains the prevailing theory.

⁷¹ Crawford, *The Creation of States* (n 12) 28.

Atlantis, as a State, must therefore retain its statehood or else risk losing it irrecoverably.

2. The Destruction of States: When is Statehood Destroyed & Can Atlantis Retain Its Statehood?

This section shall explore when and why States lose their statehood. In doing so it will assess whether the submergence of territory and subsequent loss of territory will result in the destruction of Atlantis as a State already in existence. The section shall argue that State practice indicates a propensity for State continuity, and that statehood is not easily extinguished. In support of this argument, the section shall firstly define what is meant by the destruction of a State, acknowledging the possibility of statehood ceasing, but will continue to explore how the loss of convention criteria does not necessitate a loss of statehood *per se*.

2.1. Defining Destruction

History highlights that it is possible for statehood to be destroyed. However, it is important to consider what destroying, or extinguishing, statehood actually means. Crawford highlights the political, legal, and terminological complexity of this matter illustrating that multiple viewpoints of the dissolution of the Union of Soviet Socialist Republics (USSR) have been construed.⁷² For the purposes of this piece, statehood will be considered extinguished or destroyed when the international legal personality of a State is dispelled rather than evolved, whether voluntarily or involuntarily. Such a stance would correlate positively with the view of 'the majority of States',⁷³ and their explicit or implicit acceptance of the continuation of the USSR's legal personality through Russia.⁷⁴ In this sense, the statehood of the USSR has continued and evolved to reside within Russia, its successor State. It would also explain the destruction of Yugoslavia's statehood, with Slovenia, Croatia, Serbia, Bosnia and

⁷² see Crawford, *The Creation of States* (n 12) 705.

⁷³ Konrad G Bühler, 'State Succession, Identity/Continuity and Membership in the United Nations' in Pierre Michel Eisemann and Martti Koskenniemi (eds), *State Succession: Codification Tested against the Facts* (Nijhoff 2000) 263.

⁷⁴ *ibid*, 249-263.

Herzegovina, Montenegro and Macedonia having their own independent legal personality and no proverbial stalwart State, such as Russia in the case of the USSR, or Pakistan following its dissolution into Pakistan and Bangladesh,⁷⁵ seeking to retain the international legal personality of the former State.⁷⁶ The dissolution of Czechoslovakia into Slovakia and the Czech Republic would therefore be an example of a voluntary version of the same destruction of statehood.⁷⁷ The interpretation of the merger of Yemen herein is therefore, not as the process of ‘both [North and South Yemen] becoming extinct and their union generating one new State’⁷⁸ but instead, in line with the view of Article 1 of the agreement: ‘the international personality of each... shall be integrated in a single international person’.⁷⁹ Accordingly, in such circumstance, there would be no destruction of international legal personality and no loss of statehood. Instead, there would be an evolution of statehood into a new form, a new personality. As such, history highlights few examples of when statehood has been entirely lost, as opposed to simply evolved.

Whilst the destruction of Atlantis’ statehood will not be faced with the terminological problems of dissolution, the possibility of State merging, unlikely as it may be,⁸⁰ does remain a possibility. For the purposes of this section and for clarity, if Atlantis were to merge with another State or group of States, its international legal personality would have evolved and would not be considered to be destroyed. In other words, the State would not be destroyed, it would have instead evolved.

⁷⁵ see Jain (n 5) 30.

⁷⁶ *ibid*; Crawford, *The Creation of States* (n 12) 705.

⁷⁷ of the use of the term ‘dismemberment’ and the absence of Czechoslovakia from the singleton voluntary or involuntary destruction list offered in Crawford and Rayfuse (n 8) 247-248.

⁷⁸ Crawford, *The Creation of States* (n 12) 705.

⁷⁹ The Agreement on the Establishment of the Republic of Yemen (1991) 30 ILM 820, 822. As cited in Crawford, *The Creation of States* (n 12) 705.

⁸⁰ as section 4.1. discusses.

2.2. Extinguishing the Flames of Statehood

Particularly following introduction of the Charter of the United Nations,⁸¹ as alluded to above, there are few examples of when a genuine loss or destruction of statehood has occurred. However, loss of statehood is possible. Perhaps the simplest or least controversial method of destroying statehood is voluntary destruction. Statehood is not an irrevocable title or obligation and can be voluntarily extinguished. Whilst voluntary destruction is rare, the dissolution of Czechoslovakia illustrates that it is possible. However, it remains important to consider that, whilst the dissolution of Czechoslovakia resulted in the destruction of Czechoslovakia's international legal personality and statehood, it created the international legal personality of Slovakia and the Czech Republic. In this regard destruction of the State did not serve to strip the protections of statehood from a polity, instead it enhanced the independence of two polities to the point at which they became States. In this respect it is possible for the destruction of international legal personality to be a desirable construct.⁸² However, as history informs, occasions where destruction is desired and voluntarily undertaken, whilst possible, are rare.

Due to the sparsity of circumstances in which voluntary destruction might occur it is important to consider other possibilities of State destruction. A more controversial form of State destruction is the involuntary destruction of statehood. Yet, as with voluntary destruction and thus destruction of States in general, such circumstances are rare. Jain describes the case of Yugoslavia as '[t]he one possible example of involuntary dissolution leading to extinction of the original [S]tate'.⁸³ Compared alongside the lack of precedent relating to the destruction of statehood through forceful occupation, particularly since the introduction of the UN-Charter, the difficulty in effectively achieving involuntary destruction of statehood becomes apparent, with

⁸¹ (24 October 1945) 1 UNTS XVI (UN Charter); see Jain (n 5) 11; and see Crawford, *The Creation of States* (n 12) 715.

⁸² or at least as desirable an outcome as political turmoil can offer. For information on the political history of the dissolution of Czechoslovakia see Edita Boasák, 'Slovaks and Czechs: An Uneasy Coexistence' in H Gordon Skilling (ed), *Czechoslovakia 1918-88: Seventy Years From Independence* (Palgrave 1991); see also Lee Blackwood, 'Czech and Polish National Democracy at the Dawn of Independent Statehood, 1918-1919' (1990) 3 *East European Politics and Societies* 469.

⁸³ Jain (n 5) 30.

little to no success in previous occurrences of forceful occupation.⁸⁴ As such, whilst the case of Yugoslavia demonstrates that involuntary destruction must be somewhat possible, the lack of alternative examples suggest that involuntary destruction is uncommon, and 'almost impossible'.⁸⁵ Furthermore, the distinction between dissolution and loss of territory is significant. Dissolution, as Jain acknowledges, whilst classifiable as involuntary does hold an inherent implication of 'some element of self-determination and conscious will of the peoples'.⁸⁶ The plight of Atlantis and its loss of territory, on the other hand, 'is completely involuntary'.⁸⁷ Resultantly, and as Jain states, this 'makes it very difficult' to ascertain and form analogies between Atlantis and its closest and only predecessor - the former Yugoslavia.⁸⁸ The conclusions that can be drawn from State practice, and the recent history of States more broadly, are that it is possible to voluntarily lose statehood. However, in the absence of voluntary loss, there is only one post-UN Charter example of involuntary loss that, whilst demonstrating that involuntary loss can occur, highlights how the situation of Atlantis presents a form of unprecedented involuntary loss.

2.3. Failed States

2.3.1. Defining Failure & Collapse

The lack of suitable precedent offers little indication of whether Atlantis will involuntarily lose its statehood upon the loss of its territory. However, it does suggest that statehood is inherently difficult to destroy involuntarily. A *de facto* perspective of statehood predicated on a rigid black letter interpretation of Article 1 of the Convention would suggest that statehood could not be present without the satisfaction of all criteria. However, a presumption of continuity prevails following a State's creation,⁸⁹ birthing the few examples of State destruction and the more

⁸⁴ see discussion of Tibet and Hyderabad, *ibid.*

⁸⁵ Jain (n 5) 31; see also Crawford and Rayfuse (n 8) 247-248.

⁸⁶ Jain (n 5) 30.

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ *ibid.*, 27-30; Crawford, *The Creation of States* (n 12) 715; Sterio (n 27) 76-77.

numerous examples of State continuation. Whilst presumptions of continuity can serve to preserve statehood, they cannot protect the 'prime function' of the State 'security'.⁹⁰ This is where the 'under-researched' notion of failed States exists.⁹¹

Where States, during their lifetime, fail to satisfy a criterion of Article 1, they do not automatically become destroyed and instead may be considered a failed State. A failed State is a State that 'is no longer able or willing to perform the fundamental jobs of a nation-[S]tate in the modern world.'⁹² The distinction between a failed and destroyed State is important and significant, as it illustrates that the loss of Article 1 criterion does not trigger the destruction of statehood *per se*.⁹³ Instead loss of convention criteria encapsulates this 'phenomenon'⁹⁴ of a failed State. Whilst historical - often colonial - circumstance of failed States has a part to play in their failure,⁹⁵ these States are characterisable through: their propensity to 'prey on their own constituents';⁹⁶ the occurrence of 'violence' of an 'enduring character',⁹⁷ and; the preceding and presiding character of 'unscrupulous rulers and their cronies' operating to '[suck] dry' any '[S]tate competencies'.⁹⁸ The most 'extreme' cases of failed States, Rotberg suggests, could be classified as 'collapsed'.⁹⁹ Yet, significantly

⁹⁰ 'security - to prevent cross-border invasions... loss of territory... domestic threats... attacks upon national order... crime... and to enable citizens to resolve their disputes', whether 'with the state' or 'their fellow inhabitant' in a peaceful manner 'without recourse to arms or other forms of physical coercion.' Robert I Rotberg, Failed States, 'Collapsed States, Weak States: Causes and Indicators' in Robert I Rotberg (ed), *State Failure and State Weakness in a Time of Terror* (Brookings Institution Press 2003) 3.

⁹¹ *ibid*, 2.

⁹² *ibid*, 6; see Bliss's use of a similar definition - a state that 'can no longer enact its duties to protect its citizens.' Bliss (n 38) 18; cf Crawford's criticism and comparison of attempts to define failed states in Crawford, *The Creation of States* (n 12) 719-723.

⁹³ this shall become evident, forthwith, as examples are explored; for now see Grants comment that 'the Montevideo Convention was concerned with whether an entity became a state, not with how an entity might cease to be a state.' Grant (n 21) 435.

⁹⁴ Rotberg (n 90) 2.

⁹⁵ see Crawford, *The Creation of States* (n 12) 721-723.

⁹⁶ Rotberg (n 90) 6.

⁹⁷ Rotberg highlights the cases of Angola, Burundi and Sudan to illustrates this point. See Rotberg (n 90) 5.

⁹⁸ *ibid*, 9.

⁹⁹ *ibid*, 9.

these States remain States, even whilst in the midst of failure and collapse,¹⁰⁰ and neither lose their statehood naturally nor have it destroyed.¹⁰¹

2.3.2. Continuity & Criteria

The existence, or continuation, of failed States serves to support the assertions of numerous academics: Article 1 of the Convention applies only to States at the point of their creation.¹⁰² As the ILC discussed, it has been ‘suggested’ that the Convention is ‘not relevant to the question of the continuation of statehood’.¹⁰³ Failed States may not hold a stable population. Characterisable through its ‘weak support networks’, a failed State may be unwilling and unable to support its population to the point that an absence of ‘safety nets’ prompts ‘an endless cycle of migration and displacement.’¹⁰⁴ Non-permanent populations have previously been visible in States such as Syria, Iraq, the Congo, and Sudan, due to ‘enormous migration and refugee crises’.¹⁰⁵ Yet statehood was not revoked on account of these circumstances, despite the inability of the State to satisfy the black letter requirements of statehood.

Failed States may not hold territory and may lack governmental control over territory, challenging the criteria of Article 1 (b) and Article 1 (c). Indeed, the relationship between loss of territory and lack of governmental control over territory is a significant one. In addition to the importance of territory and ‘governing power’¹⁰⁶ discussed in section one, Kelsen explores the concept of a State as a ‘coercive

¹⁰⁰ see specifically Jane McAdam, ‘Disappearing States’, *Statelessness and the Boundaries of International Law* in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart 2010) 111.

¹⁰¹ see Crawford and Rayfuse (n 8) 247; McAdam (n 100) 111; Burkett (n 4) 357.

¹⁰² see Sterio (n 27) 76-77; Crawford, *The Creation of States* (n 12) 701; Jain (n 5) 14; Grant (n 21) 435; Marek (n 11) 548; Bliss (n 38) 18.

¹⁰³ ILC, ‘Report of the International Law Commission on the work of its seventy-third session (2022)’ (24 April–2 June and 3 July–4 August 2023) UN Doc. A/CN.4/755, para 52.

¹⁰⁴ Rotberg (n 90) 9; See further, Rotberg’s description of how this ‘endless cycle’ possesses the capacity to further decline as ‘the homeless and the destitute become fodder for anyone who can afford food and cause’ - ‘unscrupulous rulers’, ‘their cronies’, and ‘upstart warlords’. Rotberg (n 90) 5-9.

¹⁰⁵ Sterio (n 27) 76.

¹⁰⁶ Crawford, *The Creation of States* (n 12) 56.

order' whose territory exists only of the 'sphere' within which such an order remains 'permanently effective'.¹⁰⁷ Herein resides 'the principle of effectiveness, so important throughout international law', from which States derive their validity, independence and sovereignty.¹⁰⁸ These notions of independence, and sovereignty in and of themselves are considered fundamental constructs if not criteria of statehood by association or definition of other constituent elements.¹⁰⁹ They are integral to a State's ability to exist as itself.¹¹⁰ In this sense, territory, and 'territorial supremacy', offers not just a criterion of statehood but a fundamental and 'real defining characteristic'.¹¹¹ Indeed, in addition to 'black letter interpretations' of Article 1,¹¹² if one is to accept Rotberg's posit that the 'prime function' of a State is security,¹¹³ supported somewhat by the theories of Vattel,¹¹⁴ the State must become non-existent at the point at which it is unable to guarantee the security of both its population and territory, however this might occur. Yet, plainly, this is not the case. Where 'lawful government' is dispossessed of its territory by an 'invader *pendente bello*', any challenge that this may cause to the dispossessed's statehood is brushed aside as 'no more than an incident of military operations'.¹¹⁵ For instance Iraq, 'militarily invaded and its government overthrown in 2003,' did not cease to be a State on account of this dispossession.¹¹⁶ Furthermore, where territorial borders are disputed, and a defined territory unidentifiable for extended or even indeterminable

¹⁰⁷ Hans Kelsen, 'The Pure Theory of Law and Analytical Jurisprudence' (1941) 55 HLR 44, 71.

¹⁰⁸ *ibid.*

¹⁰⁹ see Crawford and Rayfuse's inclusion of independence within Article 1(d). Crawford and Rayfuse (n 8) 246; see also Crawford's inclusion of independence within Article 1(b). Crawford, *The Creation of States* (n 12) 52.

¹¹⁰ see Grant (n 21) 438; Lauterpacht (n 29) 28; Oppenheim (n 15) 171-172; Crawford and Rayfuse (n 8) 246; Georg Schwarzenberger, *International Law as applied by International Courts and Tribunals* (vol 3, Stevens 1976) 249.

¹¹¹ Grant (n 21) 410.

¹¹² Bliss (n 38) 18.

¹¹³ Rotberg (n 90) 3.

¹¹⁴ see Crawford's classification of Vattel's political argument as ideas of 'mutual welfare and security.' Crawford, *The Creation of States* (n 12) 7.

¹¹⁵ see evidence of this in Lauterpacht (n 29) 30; see also ILC (n 103) para 51.

¹¹⁶ Jain (n 5) 45.

epochs, continuation of statehood remains unchallenged once again.¹¹⁷ Significantly, this is seemingly without the need for recognition.¹¹⁸ The conclusion and reality of territory and governance is therefore illuminating. Despite its apparent fundamental importance to the existential fibres of statehood itself, as illustrated by failed States and governments in exile, loss of control over territory does not lead to the destruction of the State *per se*.

Finally, on this particular discussion of continuity and criteria, a State's capacity to enter into relations with other States must be addressed. Briefly discussed in section one, Crawford, as well as Crawford and Rayfuse, highlight the inescapable linkage between the capacity to enter into international relations and government. Both sets of academics discuss the existence of this capacity as 'an amalgam of government and independence,'¹¹⁹ or 'a conflation of the requirements of government and independence.'¹²⁰ This in turn lends itself to Crawford's interpretation of this capacity as a consequence of statehood rather than a criterion.¹²¹ Therefore its use for States, as opposed to non-State entities such as international charitable organisations and other NGOs, is predicated on the existence of government and independence. Whilst it is true that a dispossessed State may passively enter into relations with other States, such as through the arrival of aid into regions outside of government control, such circumstance would more likely be a supporting argument for the capacity of the occupier to enter into international relations, rather than the dispossessed. Nevertheless, if it is possible to lose government and governmental control but retain statehood, it follows that the subsequent potential loss or even automatic loss of capacity to enter into relations with other States shall, as with the loss of effective government, not prove terminal to statehood.

¹¹⁷ see Sterio's use of 'South Korea and North Korea, Armenia and Azerbaijan, and Croatia and Slovenia' in Sterio (n 27) 76-77.

¹¹⁸ more on recognition's role, or lack thereof, in continuation of statehood shall be discussed in section 2.4.

¹¹⁹ Crawford and Rayfuse (n 8) 246.

¹²⁰ Crawford, *The Creation of States* (n 12) 62.

¹²¹ see section one, but also Crawford, 'The Criteria for Statehood' (n 26) 119; Crawford, *The Creation of States* (n 12) 61.

The propensity of States to retain their statehood in the face of losing fundamental criteria, the very criteria of their establishment and foundations of their existence, is therefore evident. States may lose one or more of these criteria without losing their statehood, and furthermore without their statehood being brought into question. As such, the general consensus of the academic community,¹²² as well as the suggestion of the ILC,¹²³ is supported and confirmed by international practice and the existence of failed States. The criteria of the Convention, as seen in Article 1, does indeed appear to refer only to the creation of States. The loss or absence of criteria should, therefore, not trigger the destruction of statehood *per se*. Atlantis' loss of territory, contrary to the assertion of Marek, *cannot* 'be taken for granted.'¹²⁴

2.4. Protecting States: Recognition, Incidence & Time

So why are States protected and presumed to continue even when they are incapable or unwilling to operate as States? The simple answer is so as to ensure the best possible chance of stability within the international community and international legal order. Burson, Kälin and McAdam posit that the continuation of States 'is foundational to our current international order.'¹²⁵ Linking the principles of 'stability, certainty, predictability and security', they present the 'presumption of continuing statehood' as a desirable construct.¹²⁶ Marek delves further still into theories of stability and posits that 'abrupt discontinuity' in the case of State destruction can lead to difficulties in the fulfilment of rights and obligations.¹²⁷ Furthermore, it is unsurprising that existing States, as members and stakeholders in this international order, confirm and advocate for this presumption of continuance -

¹²² see Sterio (n 27); Jain (n 5); Crawford, *The Creation of States* (n 12); Crawford, 'The Criteria for Statehood' (n 26); Grant (n 21); Marek (n 11); Bliss (n 38).

¹²³ ILC (n 103) para 52.

¹²⁴ Marek (n 11) 7.

¹²⁵ Bruce Burson, Walter Kälin and Jane McAdam, 'Statehood, Human Rights and Sea-Level Rise' (2023) 4 Yearbook of International Disaster Law Online 265, 268.

¹²⁶ *ibid*, 268.

¹²⁷ Marek (n 11) 548.

with island States being the most vocal.¹²⁸ It has also been suggested that the loss of criterion or criteria are solely temporary.¹²⁹ As such, continuity as opposed to fluctuation would not only be desirable but also practicable.¹³⁰ A fluctuating State serves to disrupt international commercial, legal and political intentions. State's such as Somalia, who has 'not had stable governments in place for the past several decades', at best pose an interesting anomaly, and at worst a fundamental flaw in this theory of limited temporality.¹³¹ In other words, Somalia's failings appear permanent.¹³² Its ability to effectively control its territory is not fluctuating, it is non-existent. Accordingly, Somalia illustrates the international order's propensity for stability. It can be concluded, therefore, that the presumed continuity of States is backed by State practice to promote the ideas of stability and a workable notion of international legal order. Whilst it has been suggested that this is due to the temporary nature of disruptions or failures, even in the face of seemingly permanent failings, continuity remains the presumption.

As opposed to a temporal characterisation of the international order's presumption of State continuity - one based upon arguments that the loss of criterion or criteria be only temporary - a more apt characterisation is one of hope. It is the hope of the international community that Somalia will recover from its failed statehood, as to presume it will appears illogical based upon the persistence of its failure. Arguments for Atlantis' destruction based upon the perceived irrevocability of its plight are distinctly weakened by this reality of hope. There remains hope for Atlantis. For

¹²⁸ see the Solomon Islands, Cuba and Tuvalu as well as others in ILC, 'Sea-Level Rise in relation to International Law: Second Issues Paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on Sea-Level Rise in relation to International Law' (18 April–3 June and 4 July–5 August 2022) UN Doc A/CN.4/752, para 183-196.

¹²⁹ see international law's use of 'pragmatic solutions used to overcome a temporary status that could otherwise result in irreversible and unjust consequences' Lapaš (n 53) 12; see further the use of 'temporary and reversible in nature' ILC (n 103) para 51; also 'a temporary breakdown of governmental organisation' Crawford and Rayfuse (n 8) 251; and Jain (n 5) 31.

¹³⁰ see 'the protection afforded to States by international law is not only in their own interest, but in that of the international community as a whole' Marek (n 11) 548.

¹³¹ see Sterio (n 27) 76-77.

¹³² see Österdahl's discussion of how this permanence may even be desirable for Somalia. Österdahl (n 18); cf Crawford, *The Creation of States* (n 12) 722.

instance, there may come a time where advancements in ‘artificial protections’¹³³ enable Atlantis to reclaim its territory from the sea. Whilst ‘artificial islands cannot form the basis for territorial States any more than can ships’,¹³⁴ preservation or reclamation of lost territory can be a form of potentially difficult but still possible adaptation.¹³⁵ As such, international law’s propensity toward continuation and hope should also apply to the plight of Atlantis.

Whilst this concept of hope proffers an optimistic view of international law and international relations, such a viewpoint is supported by the role of recognition, which once again must be explored. The relationship between States and recognition varies dependent upon the time or circumstance of their interaction, but not to the detriment of Atlantis’ claim to statehood. As discussed above, at the point of State creation, recognition can presently prove invaluable to purported States where there is uncertainty surrounding their suitability for statehood and satisfaction of Article 1’s criteria.¹³⁶ The incidence of recognition, at the point of State creation, becomes integral to the existence of the State in question. As such, its absence becomes terminal. Conversely, at the point of a State’s failure and potential destruction, there is no comparable recognition required to preserve or confirm the continued existence of this State despite uncertainty over its subsequent ability to satisfy Article 1’s criteria. Recognition is therefore not an ongoing exercise. From this perspective, it works to promote statehood, not destroy it. Indeed, recognition traditionally has referred to the confirmation of one State’s claim to territory and sovereignty over the claim of another.¹³⁷ As such, at State creation recognition is required in order to overcome uncertainty. However, no such recognition is required to keep a State from being destroyed due to the presumption of State continuity. This is significant for two interrelated reasons. First, on account of this, assertions that there is one rule for the

¹³³ Antonio Joseph Del Grande, ‘Statelessness in the Context of Climate Change: the Applicability of the Montevideo Criteria to “Sinking States”’ (2021) 53 Int’l L & Pol 153, 156.

¹³⁴ James Crawford, ‘Islands as Sovereign Nations’ (1989) 38 ICLQ 277, 279; see also ‘a wholly artificial construction will not suffice’ Wong (n 41) 355; and, ‘only structures which make use of a specific piece of the earth’s surface can be recognized as State territory’ in *Re Duchy of Sealand* (1978) 80 ILR 683, 685 (Administrative Court of Cologne). as cited by Wong (n 41) 355.

¹³⁵ see Stewart (n 1) 14-16.

¹³⁶ section 1.3.

¹³⁷ see for instance the discussion of Kosovo and Serbia in section 1.3.

creation of States and another for the continuity of States are proven once again. Second, for Atlantis, the significance of this is great. As a State already in existence, its inability to satisfy Article 1(b) does not demand a supporting incidence of recognition. Instead, the continuation of Atlantis is supported by the presumption of State continuity and does not fail through the absence of recognition.

2.5. Section Conclusion: Atlantis as a State

In a practical sense, this therefore confirms that Marek's pithy assertion - 'a State would cease to exist... if its territory were to disappear (e.g. an island which would become submerged) can be taken for granted'¹³⁸ - is incorrect. There exists a prevailing presumption of State continuity within international law, evidenced through both State practice and the distinct lack of historical precedent concerning the destruction of States. Furthermore, in relation to historical precedent, there is no suitable analogy between previous instances of State destruction, or for that matter State evolution. It cannot be taken for granted that Atlantis' loss of territory must result in the cessation of its statehood.

3. Atlantis & The Dawn of a Grotian Moment

Sections one and two have both highlighted how international law's understanding of statehood and the concept of the State has evolved over time. This understanding continues to evolve and the novel situations caused by climate change and international law's reliance upon a fragile definition of the State has pushed international law toward a 'Grotian Moment'.¹³⁹

3.1. Overcoming the Conventional

Perhaps overdue, the plight of Atlantis and international law more broadly requires a 'Grotian Moment'. Scharf defines a 'Grotian Moment' as 'a term that denotes a paradigm-shifting development in which new rules and doctrines of customary

¹³⁸ Marek (n 11) 7.

¹³⁹ Sterio (n 27); see also Stephan Hobe, 'Global Challenges to Statehood: The Increasingly Important Role of Nongovernmental Organizations' (1997) 5 Ind J Global Legal Studies 191.

international law emerge with unusual rapidity and acceptance.’¹⁴⁰ Sterio discusses the possibility, necessity and desirability of such a moment occurring with regards to statehood.¹⁴¹ For instance, whilst codependent international relationships are common-place today, such notions would not correspond with historic interpretations of statehood and their firm stand on independence and self-sustainability.¹⁴² Further still, Sterio highlights how modern interventions of ‘super-sovereign States’ such as UN Security Council members in the affairs of ‘weaker’ States ‘signals an erosion of the traditional concept of State sovereignty’.¹⁴³ International law therefore sits on the precipice of a Grotian Moment even before the consideration of the novel situation of sinking States.

The novelty of climate change at large, as well as the unprecedented nature of the plight of Atlantis with regards to considerations of statehood, cannot be understated. Whilst law attempts to achieve a relative ‘[c]oherency and consistency’ through classification or the recognition of patterns,¹⁴⁴ climate change and ‘debates about climate change’ possess an inherent and ‘recurrent element’ of ‘uncertainty.’¹⁴⁵ Where it was once possible to ‘seek legal solace in the insistence on classification, consistency and settled expectations’ the ‘post-climate era’, as Burkett describes, ‘itself defined by inconsistency, demands a rethinking of deeply held legal precepts.’¹⁴⁶ Focussing explicitly on the plight of Atlantis, Woodward states that it is apparent that the ‘unprecedented threat of [deterritorialisation]... poses novel questions of international law and relations.’¹⁴⁷ Once again, therefore, contrary to the

¹⁴⁰ Michael P Scharf, ‘Seizing the Grotian Moment: Accelerated Formation of Customary International Law in Times of Fundamental Change’ (2010) 43 Cornell Int’l LJ 439, 440.

¹⁴¹ Sterio (n 27).

¹⁴² see *ibid*, 79.

¹⁴³ Sterio (n 27) 80-81; see also the analysis of Newman and his criticism of the state-centred Westphalian system ‘as a world where notions of inviolable and equal state opportunity - never actually reality but often respected as a norm - are breaking down’, in Edward Newman, ‘Failed States and International Order: Constructing a Post-Westphalian World’ (2009) 30 Contemp Sec Pol’y 421, 423.

¹⁴⁴ see Burkett (n 4) 372.

¹⁴⁵ Crawford and Rayfuse (n 8) 253.

¹⁴⁶ Burkett (n 4) 372.

¹⁴⁷ Erik Woodward, ‘Promoting the Continued Sovereign Status of Deterritorialized Island Nations’ (2019) 14 Yale J Int’l Aff 49, 55.

suggestion of Marek, the necessity to strip Atlantis of statehood cannot be considered a foregone conclusion. Instead, the novelty and unprecedented nature of Atlantis should be appreciated for what it is. Accordingly, what steps will be required to achieve a sensible, satisfactory, conclusion to its plight should be discussed. One must suggest or perhaps state the obvious, as it has already begun,¹⁴⁸ that this will give rise to a fundamental questioning of international law and policy's understanding of the State and the existence and role of the State going forward. Already it is apparent that Atlantis threatens to push the extremities of conventional understandings of territory and, in turn, the State beyond previously established boundaries.

This novelty pushes the already fragile definition of a State toward a breaking point that should not be present. As section one highlighted, conceptions of the State have evolved over time. They should also continue to evolve. However, historically rigid definitions have served to create an unsuitable bedrock. Wheatley highlights this early-on in her recent publication, *The Life and Death of States*.¹⁴⁹ Herein, the damage done by '[I]ables like "provisional" or "irregular"' that rendered many potentially viable options of statehood and definitions of a State 'irrelevant for doctrine,' enabling the 'classical definitions' as 'reasoned from Western European experiences' to continue, leaving a 'chasm' between theory and fact in its wake, is laid plain.¹⁵⁰ Wheatley's analysis serves to exemplify the criticism of definitions. Whilst definitions hold a purpose, and perhaps a useful one as Jain appears to suggest,¹⁵¹ they remain a human construct. This should not be forgotten. Wheatley, citing Kelsen, highlights the significance of this and states that:

'[t]o ask whether the [S]tate existed was like asking whether God existed, Kelsen explained. If you believed in it, then it existed; if you act on that basis, then "there is" a [S]tate as reality, the [S]tate becomes a reality.'"¹⁵²

¹⁴⁸ this dissertation itself as well as publications cited within its footnotes are evidence of this.

¹⁴⁹ Natasha Wheatley, *The Life and Death of States* (PUP 2023).

¹⁵⁰ *ibid*, 6.

¹⁵¹ see the mention of territory as 'a desirable barrier' Jain (n 5) 26-27.

¹⁵² Wheatley (n 149) 287. citing Hans Kelsen, *Der soziologische und der juristische Staatsbegriff: Kritische Untersuchungen des Verhältnisses von Staat und Recht* (Tübingen: J. C. B. Mohr, 1922) 90n1.

The definition of a State in Article 1 remains 'just a definition'.¹⁵³ In this sense, and as Henkin alludes to,¹⁵⁴ a definition of the State represents a snapshot of what was understood to constitute a State at the time of the definition's conception. Defining the State serves to create a temporal conception of what a State is. This is readily apparent for the first three criteria: population, territory and government, which Henkin specifically draws attention to as illustrations of what States are perceived to be in and leading up to the definition found within Article 1.¹⁵⁵ In other words, the criteria for States can be seen and have been seen as a 'description of [S]tates as we know them'.¹⁵⁶ As such, they should not necessarily form 'requisite qualifications'¹⁵⁷ for fear of limiting the utility of a definition of States to the time at which it was created. For example, Article 1's temporal conception of a State is derived from States as seen at the turn of the 20th century, up until the final draft of the Convention as utilised in 1933.¹⁵⁸ Accordingly, its criteria for statehood reflects ideas of the State within this time period.¹⁵⁹ Failure to consider the possibility of an outdated definition would be to ignore the fact that international law's evolution 'will require' a proportionate development of 'any such definitional enterprise' that remains 'open to revision and reassessment' throughout.¹⁶⁰ With only a rigid interpretation of the State, and a temporally restricted idea of the State, there is the potential for the present meaning of a State to be lost. The result of this, as Vidmar illustrates in relation to defining cats and dogs, could be the classification of a non-State as a State or the omission of select examples of States from classification as a

¹⁵³ Grant (n 21) 454.

¹⁵⁴ see Henkin (n 19) 13.

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.*

¹⁵⁸ see Lorca (n 24) 306.

¹⁵⁹ as well as the intentions of Latin American States to confirm and preserve their own statehood. See Milena Sterio, 'A Grotian Moment: Changes in the Legal Theory of Statehood' (2011) 39 *Denv J Int'l L & Pol'y* 209, 216.

¹⁶⁰ Grant (n 21) 457.

State altogether.¹⁶¹ Resolute failure to evolve the definition of the State, whilst attempting to preserve any 'desirable barrier to statehood' or 'source of functional utility',¹⁶² must *per se* be undesirable. In this regard, Atlantis offers an opportunity for re-assessment, and an opportunity for considerations of what the State is presently.

On-going assessment or a re-assessment of the definition of the State does not necessitate a loss of safeguards. Atlantis neither requires desirable barriers to statehood to be taken down, nor demands that an exception be made for itself. The loss of the territory criterion does not necessitate destruction of the State, as section two discussed. And significantly, the inability of Atlantis to satisfy this criterion does not necessitate the removal of the criterion from the definition of the State used to assess the presence of a State at the point of its purported creation. Atlantis is already a State. As such its continued existence does not threaten the 'validity' of territory 'as a barrier to the creation of [S]tates.'¹⁶³ Acceptance of the barrier's ineffectuality for continuation does not detriment its significance at creation. Therefore, it is possible to have an evolving understanding of statehood whilst still retaining desirable safeguards. The possibility of Atlantis' continuation should therefore not be labelled as an attempt to open the proverbial floodgates to unsuitable applications of statehood.

3.2. The Desirability of a Grotian Moment

Whilst Atlantis' plight does not necessitate a radical re-conceptualisation of the State to the detriment of safeguards, its continuation would demand acknowledgement of alternative forms of the State. Through its continuation Atlantis could serve to promote the illumination of international law's failed acknowledgements. This in turn could perpetuate further 'erosion of the traditional concept' of the State,¹⁶⁴ and greater emphasise the reality and possibility of 'a broader transformation to a post-

¹⁶¹ see how relying solely on the criteria of a definition may cause the classification of a cat as a dog, or the omission of select samples of dogs from classification as a dog altogether in Vidmar (n 62) 102-103.

¹⁶² Jain (n 5) 27.

¹⁶³ *ibid.*

¹⁶⁴ Sterio (n 27) 81.

Westphalian world.’¹⁶⁵ Österdahl explores a number of different interpretations of statehood and the State in their discussion of failed States.¹⁶⁶ Herein, Österdahl dispels the ‘binary’ distinction between the State and the non-State, and illuminates the ‘fiction of the uniform concept of the [S]tate’.¹⁶⁷ In doing so, somewhat rhetorically, Österdahl remarks of the potential of a more accurate discussion of ‘full [S]tates, half-[S]tates, quarter-[S]tates and ‘entities formally known as [S]tates’.¹⁶⁸ In a more serious manner Österdahl goes on to suggest a potential ‘gradation of the [S]tates into A-[S]tates, B-[S]tates, semi-[S]tates, or quasi-[S]tates’, each group differentiated by ‘their degree of success or failure’ and interactions with ‘different international rules’.¹⁶⁹ Brons and Hippel, as Österdahl discusses, go further still and propose the potential for radically different ideologies of the State to surpass the effectiveness of the conventional State theory.¹⁷⁰ Somalia becomes a case study for both academics. Hippel highlights how ‘Somalis are willing to pay for local services’ where these services ‘directly impact their lives,’ and are not paid to ‘some nebulous ‘central authority’.¹⁷¹ In this sense, the lack of centralised authority - the lack of national government - has enabled Somalia to achieve greater levels of ‘accountability’, as well as greater levels of development, than some of its more conventional and “intact” neighbours, ultimately leading to Somalia being ‘better-off’ in some respects at least.¹⁷² Similarly, Brons suggested that the unconventional nature of Somalia’s governance could be considered ‘adequately modern’ structures of ‘political authority’ that still remain ‘rooted within the traditional set-up of Somali society’.¹⁷³ In other words, whilst Somalis may seemingly not desire a central authority, Somalia’s lack of a central authority has not resulted in an impossible

¹⁶⁵ Newman (n 143) 423.

¹⁶⁶ Österdahl (n 18).

¹⁶⁷ *ibid*, 49.

¹⁶⁸ *ibid*.

¹⁶⁹ *ibid*, 87.

¹⁷⁰ Maria H Brons, *Society, Security, Sovereignty and the State in Somalia: From Statelessness to Statelessness?* (International Books 2001); Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World* (CUP 2000).

¹⁷¹ Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World* (CUP 2000) 200.

¹⁷² see von Hippel’s example of street lights and the neighbouring state of Kenya. *ibid*.

¹⁷³ Brons (n 170) 284.

sense of national pride. Brons highlights that the ‘Somali people are eager to regain their pride’ and a ‘sense of national identity’.¹⁷⁴ Yet, importantly, ‘[t]his does not necessarily’ correlate to a situation where Somalis ‘are eager to rebuild a central [S]tate.’¹⁷⁵ A reality, therefore, is the potential for alternative options to the conventional theory of the State to foster some form of shared cultural identity akin to identity felt under more traditional concepts of the State. Contrary to conventional understandings - the fiction of the binary State and non-State - it appears that alternative forms of statehood can exist and indeed, one must suggest, should be permitted to exist as they possess the potential to succeed where conventional ideals have thus far failed and appear unattainable or undesirable - such as in the case of Somalia. Whilst Atlantis is not responsible for the existence of Somalia in the form of a State non-conforming to a conventional State theory, innovative solutions to its plight could promote and enhance the acceptance of alternative views of Statehood.

A lack of clarity in law regarding Atlantis’ ability to exist as a State will give rise to uncertainty and thus the politicisation of the issue. Above, it has been discussed that uncertainty gives rise to the role of recognition and greater emphasis placed on ideals of a political nature, as opposed to legal ideals or rules.¹⁷⁶ This could be termed the traditional dealings of uncertainty and statehood: uncertainty gives rise to greater political input. Jain, in their valiant defence of legal solutions to the plight of Atlantis, does ultimately succumb to a conclusion that, as the law stands, ‘international relations of recognition’ shall play a key role in the outcome for Atlantis. However, the present erosions of traditional concepts of the State,¹⁷⁷ and unprecedented nature of climate change, could promote the existence and continuation of a Grotian Moment toward a fundamental or radical change in modern understanding of the State and international law surrounding statehood, State creation, and State continuation. This Grotian Moment presents a more desirable, and perhaps even more likely, circumstance. For instance, Österdahl’s key point,

¹⁷⁴ *ibid.*

¹⁷⁵ *ibid.*

¹⁷⁶ see section 1.3.

¹⁷⁷ as discussed within this section.

shared by other critics of the traditional concept of the State such as Bruns, is that '[i]t seems untenable to continue with a concept of statehood that so badly matches what goes on in reality.'¹⁷⁸ At present, it would appear that the plight of Atlantis goes beyond uncertainty into obscurity and enigma that will only become fathomable at the point of reckoning - submergence of Atlantis, or the complete abandonment of it - whenever this may be. For this reason, it goes beyond the bounds of traditional uncertainty and in turn beyond the scope of recognition, not least as recognition exists most powerfully as a tool of creation not a tool of cessation or other obstruction of continuation. Law offers a solution that can be reasoned and clarified. As such, not only does the plight of Atlantis appear to precipitate a Grotian Moment, it demands it, for the failure of international law to capitalise on a Grotian Moment would serve to further the politicisation of statehood. In this sense, the international law surrounding statehood must evolve or risk falling into (further) disrepute.

4. Atlantis' Continuation & New Theories

4.1. Capability of Continuation

Discussions of the ILC thus far recognise the idea of novel interpretations of statehood and a potential willingness to accept such ideas for the purposes of Atlantis' continuation. Within discussions, the ILC noted that there was reasonable support for 'the assumption that, once a State was created... it had an inalienable right to take measures to remain a State.'¹⁷⁹ Significantly this is not a novel interpretation as stoic traditionalists, such as Oppenheim, discuss the ability of a State to demand that it be able to 'arrange its administration in a way it thinks fit'.¹⁸⁰ This could therefore be taken to mean that, so long as novel interpretations can be reached with reason and without recourse to violence,¹⁸¹ Atlantis is at liberty to devise novel solutions to retaining its statehood. The novelty of these solutions does

¹⁷⁸ Österdahl (n 18) 87.

¹⁷⁹ ILC (n 103) para 53.

¹⁸⁰ Oppenheim (n 15) 171.

¹⁸¹ see Crawford's discussion of 'illegal use of force' Crawford, *The Creation of States* (n 12) 132.

not however require them to be incomparable to the presently conventional understandings of international law.

One such solution, ex-situ statehood, could see Atlantis' statehood preserved alongside the retainment of existing rights pertaining to its Exclusive Economic Zone (EEZ). Burkett, using her own term - 'ex-situ nationhood' - describes this solution as 'a status that allows for the continued existence of a sovereign [S]tate, afforded all the rights and benefits of sovereignty' belonging to statehood.¹⁸² In this capacity the ex-situ State would serve 'as a political entity that remains constant' whilst its population '[establishes] residence in other [S]tates.'¹⁸³ Burkett continues this description and highlights how the State continues to exist beyond this period of relocation. Here it operates so as to facilitate the 'holding of resources' of the State and preserving the 'well-being of its citizens'¹⁸⁴ within 'the care of an entity acting in the best interest of its people.'¹⁸⁵ This continued existence of the State in the absence of its territory would be permitted through the conceptual separation of the State and sovereignty from the territory itself.¹⁸⁶ Burkett highlights the possibility of this permission through their advocacy for the ex-situ State on account of the 'clear precedent' not only of governments in exile, but also 'countries governed without a territory', failed States, as well as 'economic entities that serve quasi-governmental roles.'¹⁸⁷ Further still, Crawford and Rayfuse conceptualise this link between the potential of a "deterritorialised [S]tate", Burkett's 'nation-ex situ',¹⁸⁸ and the concept

¹⁸² Maxine Burkett, 'The Nation Ex-Situ' in Michael B Gerrard and Gregory E Wannier (eds), *Threatened Island Nations: Legal Implications of Rising Seas and A Changing Climate* (CUP 2013) 90; Burkett (n 4) 346.

¹⁸³ Burkett (n 4) 346; Burkett, in *Threatened Island Nations* (n 182) 90.

¹⁸⁴ now 'in new and disparate locations' Burkett (n 4) 346; Burkett, in *Threatened Island Nations* (n 182) 90.

¹⁸⁵ Burkett (n 4) 346; Burkett, in *Threatened Island Nations* (n 182) 90.

¹⁸⁶ see Jacquelynn Kittel, 'The Global Disappearing Act: How Island States Can Maintain Statehood in the Face of Disappearing Territory' (2014) 2014 Mich St L Rev 1207, 1228; see also Burkett's discussion of this concept in relation to citizenship in Burkett, in *Threatened Island Nations* (n 182); and also Fiona McConnell, 'De Facto, Displaced, Tacit: The Sovereign Articulations of the Tibetan Government-In-Exile' (2009) 28 Political Government 343.

¹⁸⁷ Burkett (n 4) 356.

¹⁸⁸ see Burkett, in *Threatened Island Nations* (n 182).

of a “government in exile”,¹⁸⁹ as the State’s ability to ‘continue to exist as an international legal person’ in spite of ‘its physical disappearance.’¹⁹⁰ The ultimate suggestion of Crawford and Rayfuse, as well as Burkett, Kittel and Woodward, is that a form of trust be established for the benefit of the State as well as its populous stemming from the continued use of its own submerged territory to include the area that previously constituted its EEZ and other territorial waters.¹⁹¹ Such trusts would not be entirely novel.¹⁹² Furthermore, as Bliss discusses, this could serve to be effective even if the former population was dispersed beyond one central focal point.¹⁹³ With the present unlikelihood of States ceding land or committing to facilitation of mass immigration of Atlanteans, this ability to deal with a disbursed population becomes significant.¹⁹⁴ For example, Knight suggests that ‘for whom the State exists’ is an integral consideration for statehood.¹⁹⁵ By continuing as a State ex-situ Atlantis retains its ability to function for the benefit of Atlanteans. As such, the functional utility of the State is not defeated by this loss of territory.

Retention of its EEZ and territorial waters also promotes the retention of Atlantis’ independence, itself so significant in discussions of statehood.¹⁹⁶ The EEZ remains Atlantis’ EEZ. However, it should be clarified that acceptance of Atlantis’ retention of its EEZ and territorial waters as independent territory should not be considered a contradiction to the principle that ‘the land dominates the sea’,¹⁹⁷ but instead a reconceptualisation of submerged territory as a form of quasi-territory for international legal purposes. Burson, Kälin and McAdam propose the possibility of arguing for the recognition of ‘aquatic space immediately above submerged land’ as

¹⁸⁹ Crawford and Rayfuse (n 8) 250.

¹⁹⁰ *ibid.*

¹⁹¹ *ibid.*; Burkett (n 4) 356-371; Kittel (n 186) 1228-1229; Woodward (n 147) 56.

¹⁹² see UN Trusteeship System as mentioned by Woodward (n 147) 56.

¹⁹³ see Bliss (n 38) 19.

¹⁹⁴ see Kittel (n 186) 1229; see also Burkett (n 4) 368.

¹⁹⁵ David B Knight, ‘Statehood: A Politico-Geographic and Legal Perspective’ (1992) 28 *GeoJournal* 311, 313.

¹⁹⁶ as discussed in sections 1.2. and 2.3.2.

¹⁹⁷ see discussion of this fundamental principle in Jenny Grote, *Disappearing Island States in International Law* (Brill 2015) 187-195.

a distinct form of territory such as that already seen in international law's current recognition of territory in the form of 'airspace adjacent to the land'.¹⁹⁸ Finding further analogy, the recognition of submerged territory in a distinct capacity would also be supported by the ability of adaptation strategies to preserve existing territory. This is to say that the presently acceptable practice of retaining territory, as opposed to the artificial construction of entirely new territory, already differentiates between types of territory, as too does the UN Convention on the Law of The Sea and its assessment of baselines with regards to rocks and islands.¹⁹⁹ As a new form of territory, this 'aquatic space immediately above submerged land'²⁰⁰ would have the capacity to preserve the independence of Atlantis but not establish it and thus exists as a desirable construct that does not damage international law's fundamental understandings of territory.

4.2. Consequences of Continuation

Briefly, before continuing to a final conclusion, it is important to consider the consequences of ex-situ statehood and this novel category of territory, both on the wider international community of States as well as Atlantis itself.

Acceptance of this new form of submerged territory would require extensive discussion and international agreement regarding the understanding of this territory within the confines of UNCLOS, as well as its potential for wider international legal ramifications. Readily apparent is the necessity to discuss newly submerged territory's capacity to influence provisions concerning the calculation of baselines and delimitations of territorial waters.²⁰¹ Such consideration may also involve a retrospective calculation of baselines returning territorial waters and EEZs to their extent at an agreed upon point in time. Failure to retrospectively apportion delimitations could result in renewed and rushed efforts at adaptation attempts to

¹⁹⁸ Burson, Kälin and McAdam (n 125) 272.

¹⁹⁹ see Stewart (n 1) 189; (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, art 121 (UNCLOS). See also the effect of UNCLOS art 121 on the calculation of baselines such as in art 47.

²⁰⁰ Burson, Kälin and McAdam (n 125) 272.

²⁰¹ see for instance UNCLOS (n 199), arts 47 and 121.

maximise the retention of territory, and may prove time consuming and costly in both any calculation and implementation. For instance, if a deadline were set for baselines to be calculated, any State being eroded by the Sea would likely attempt to preserve as much of its territory as it physically and financially can up until that date. Such attempts may come with undesired financial and ecological consequences.

The acceptance of Atlantis' existence with a dispersed population, whilst enabling its continuation in the short term, may eventually prove terminal to Atlantis' statehood. This is not on account of ex-situ statehood's inability to function but is instead due to the effect of separating Atlanteans from Atlantis and its disruption to their topophilia - 'the affective bond between people and place or setting.'²⁰² In support of overcoming this cultural tie to territory, Kitara highlights the potential for Atlanteans to have a less traditional, and more 'fluid', perception of cultural identity based upon their ancestral conduct as seafarers.²⁰³ Burkett also highlights the potential for 'some semblance of community and culture' to be taken to and nurtured within communities of Atlanteans that settle elsewhere, enabling cultural bonds to 'be passed down through generations' and remain strong.²⁰⁴ However, the relationship between territory and cultural identity is profound and inescapable. People have an inherently personal connection to land.²⁰⁵ They 'impute meaning to the land'.²⁰⁶ In turn, they 'gain meaning from [the land]'.²⁰⁷ Connections are made to land through the naming of places,²⁰⁸ or the erection of landmarks,²⁰⁹ and other interactions with the land through 'everyday activities'.²¹⁰ Gottmann discusses how these connections run so deep as to form 'the very basis on which national existence rests,' and how 'true

²⁰² Yi-Fu Tuan, *Topophilia: A Study of Environmental Perceptions, Attitudes and Values* (Columbia UP 1990) 4.

²⁰³ Taufiee Kitara, 'Climate Change and Tuvalu's Sovereignty' 137 *Chain Reaction* 20.

²⁰⁴ Burkett (n 4) 369.

²⁰⁵ see the discussion of topophilia by Tuan (n 202).

²⁰⁶ Knight (n 195) 313.

²⁰⁷ Knight (n 195) 313.

²⁰⁸ see Saul B Cohen and Nurit Kliot, 'Place-Names in Israel's Ideological Struggle over the Administered Territories' (1992) 82 *AAAG* 653.

²⁰⁹ John Brinkerhoff Jackson, *Discovering the Vernacular Landscape* (YUP 1984).

²¹⁰ Knight (n 195) 313.

citizens will be prepared to give their lives' in order to defend 'the "sacred soil" of their State.²¹¹ Absence from territory will necessarily mollify this connection. The land that Atlanteans reside on will likely not be entirely their own. Therefore, whilst the institution of Atlantis could remain, it may 'lose legitimacy... in the eyes and in the hearts' of Atlanteans,²¹² as they lose their connection to Atlantis and form new connections to their new environment.²¹³ Once Atlantis loses legitimacy and meaning in the eyes and hearts of Atlanteans, 'for whom the State exists'²¹⁴ must be questioned and could ultimately serve to destroy Atlantis.

Conclusion

This dissertation has not sought to operate as a rule book from which Atlanteans may be able to explore and discern methods of protecting the statehood of their State. However, it has discussed a number of the topics that would likely reside within such a book, if one were to exist.

Section one explored international law's current understanding of the State, and focused on Atlantis' potential to regain statehood if it were to lose it. This invoked consideration of New Atlantis. Assessment of New Atlantis' potential to be a State concluded that, if Atlantis lost its statehood or were not already a State, it would be unlikely that it would be able to *become* a State.

Atlantis, however, is a State. With its inability to regain lost statehood, it became pertinent to explore whether Atlantis could retain its statehood. Section two explored the lack of precedent for State destruction and the propensity for State continuity within recent international legal history. Accordingly, section two reached the conclusion that the destruction of Atlantis could not be taken for granted and,

²¹¹ Jean Gottmann, *The Significance of Territory* (University Press of Virginia 1973) 15. See also Gottmann's preceding statement that '[t]erritorial sovereignty is an indispensable attribute of independent nations'; see also, Knight's discussion (apt as it presently is) of the loss of life over territorial conflict and how whilst it may be true that '[i]nternational society has in recent times reached new levels of understanding and cooperation,... there is still no basis for believing that conflicts over territory have necessarily ceased.' Knight (n 195) 313.

²¹² Rotberg (n 90) 1.

²¹³ see Jain (n 5) 52.

²¹⁴ Knight (n 195) 313.

furthermore, that the continuation of Atlantis appeared likely as its loss of territory would not necessarily strip Atlantis of its statehood *per se*. It also alluded to the novelty of Atlantis' circumstance, that would be explored more in section three.

The presence and potential of a Grotian Moment was explored in section three. The ineffectuality of international law's current understanding of statehood as a uniform concept was discussed herein. It was also discussed that the novel situation of Atlantis, as well as climate change more broadly, would serve only to increase this ineffectiveness. In addition to the necessity of international legal reform, the desirability of reform was also explored. This ultimately served to reach the conclusion that the reality of statehood is far from uniform at present, and requires an evolving understanding of what the State is. Failure to evolve encourages international law's fall into disrepute.

Having established that Atlantis is likely to remain a State, but one that challenges the conventional concept of a State, section four explored what form Atlantis might be able to take and the consequences of its new form. Further examination of these consequences largely fell outside of the scope of this dissertation, but could prove significant discussions as the time of reckoning for Atlantis, and thus international law itself, draws ever-closer.

Overall, there is little to support Marek's assertion that Atlantis' loss of territory requires its destruction. As such, international law will have to adapt to an evolving understanding of statehood, that it appears to have neglected. In answer to this dissertation's title: Atlantis *can* be a State and, perhaps more significantly, should.

Bibliography

Cases

Re Duchy of Sealand (1978) 80 ILR 683, 685 (Administrative Court of Cologne)

International Agreements

The Agreement on the Establishment of the Republic of Yemen (1991) 30 ILM 820

Charter of the United Nations (24 October 1945) 1 UNTS XVI

Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933) 165 LNTS 19

United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397

Other United Nations Publications

UNGA, 'Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, New Hebrides, Niue, Pitcairn, St Helena, St Kitts-Nevis-Anguilla, St Lucia, St Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands' UNGA Res 2709 (XXV) (14 December 1970) GAOR 25th session 1929th plenary meeting, Agenda Item 23, UN Doc A/RES/2709(XXV)

UNSCOR, 383rd meeting (2 December 1948)

ILC Publications

ILC, 'Sea-Level Rise in relation to International Law: Second Issues Paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on Sea-Level Rise in relation to International Law' (18 April–3 June and 4 July–5 August 2022) UN Doc A/CN.4/752

— — 'Report of the International Law Commission on the work of its seventy-third session (2022)' (24 April–2 June and 3 July–4 August 2023) UN Doc. A/CN.4/755

Other Secondary Sources

Blackwood L, 'Czech and Polish National Democracy at the Dawn of Independent Statehood, 1918-1919' (1990) 3 East European Politics and Societies 469

Bliss F, 'Exploring the criteria for Statehood in international law in respect to climate change induced migration' (2019) 137 Chain Reaction 17

Boasák E, 'Slovaks and Czechs: An Uneasy Coexistence' in H Gordon Skilling (ed), *Czechoslovakia 1918-88: Seventy Years From Independence* (Palgrave 1991)

Brons MH, *Society, Security, Sovereignty and the State in Somalia: From Statelessness to Statelessness?* (International Books 2001)

Bühler KG, 'State Succession, Identity/Continuity and Membership in the United Nations' in Pierre Michel Eisemann and Martti Koskenniemi (eds), *State Succession: Codification Tested against the Facts* (Nijhoff 2000)

Burkett M, 'The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era' (2011) 2 Climate Law 345

— — 'The Nation Ex-Situ' in Michael B Gerrard and Gregory E Wannier (eds), *Threatened Island Nations: Legal Implications of Rising Seas and A Changing Climate* (CUP 2013)

Burson B, Kälin W and McAdam J, 'Statehood, Human Rights and Sea-Level Rise' (2023) 4 Yearbook of International Disaster Law Online 265

Camprubí AJ, *Statehood Under Water: Challenges of Sea-Level Rise to the Continuity of Pacific Island States* (Brill 2016)

Carroll AJ and Rajagopal B, 'The Case for the Independent Statehood of Somaliland' (1992) 8 Am U J Int'l L & Pol'y 653

Cohen SB and Klot N, 'Place-Names in Israel's Ideological Struggle over the Administered Territories' (1992) 82 AAAG 653

Crawford E and Rayfuse R, 'Climate Change and Statehood' in Rosemary Rayfuse and Shirley V Scott (eds), *International Law in the Era of Climate Change* (Elgar 2012)

Crawford J, 'The Criteria for Statehood in International Law' (1976) 48 BYIL 93
— — 'Islands as Sovereign Nations' (1989) 38 ICLQ 277
— — *The Creation of States in International Law* (2nd edn, OUP 2006)
— — *Brownlie's Principles of Public International Law* (9th edn, OUP 2019)

Del Grande AJ, 'Statelessness in the Context of Climate Change: the Applicability of the Montevideo Criteria to "Sinking States"' (2021) 53 Int'l L & Pol 153

Franck TM, *Fairness in International Law and International Institutions* (OUP 1998)
— — and Hoffman P, 'The Right to Self-Determination in Very Small Places' (1976) 8 NYU J Int'l L & Pol 331

Gottmann J, *The Significance of Territory* (University Press of Virginia 1973)

Grant TD, 'Defining Statehood: The Montevideo Convention and its Discontents' (1998) 37 Colum J Transnat'l L 403

Grote J, *Disappearing Island States in International Law* (Brill 2015)

Henkin L, 'International Law: Politics and Values' (1995) 18 *Developments in International Law* 1

Hippel K von, *Democracy by Force: US Military Intervention in the Post-Cold War World* (CUP 2000)

Hobe S, 'Global Challenges to Statehood: The Increasingly Important Role of Nongovernmental Organizations' (1997) 5 *Ind J Global Legal Studies* 191

Holland B, *The Moral Person of the State: Pufendorf, Sovereignty and Composite Politics* (CUP 2017)

Ioannidis C, 'Are the Conditions of Statehood Sufficient? An Argument in Favour of Popular Sovereignty as an additional Condition of Statehood' (2014) 21 *Jurisprudencija* 974

Jackson JB, *Discovering the Vernacular Landscape* (YUP 1984)

Jain AG, 'The 21st Century Atlantis: The International Law of Statehood and Climate Change-Induced Loss of Territory' (2014) 50 *Stan J Int'l L* 1

Kelsen H, *Der soziologische und der juristische Staatsbegriff: Kritische Untersuchungen des Verhältnisses von Staat und Recht* (Tübingen: J. C. B. Mohr, 1922)

— — 'The Pure Theory of Law and Analytical Jurisprudence' (1941) 55 *HLR* 44

Kitara T, 'Climate Change and Tuvalu's Sovereignty' 137 *Chain Reaction* 20

Kittel J, 'The Global Disappearing Act: How Island States Can Maintain Statehood in the Face of Disappearing Territory' (2014) 2014 *Mich St L Rev* 1207

Knight DB, 'Statehood: A Politico-Geographic and Legal Perspective' (1992) 28 GeoJournal 311

Lapaš D, 'Climate Change and International Legal Personality: "Climate Deterritorialized Nations" as Emerging Subjects of International Law?' (2022) 59 Can YBIL 1

Lauterpacht H, *Recognition in International Law* (CUP 1947)

Lorca AB, *Mestizo International Law: A Global Intellectual History 1842 - 1933* (CUP 2014)

Lowe V, *International Law* (OUP 2007)

Marek K, 'Identity and Continuity of States in Public International Law' (2nd edn, Librairie Droz 1968)

McAdam J, 'Disappearing States', Statelessness and the Boundaries of International Law' in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart 2010)

McConnell F, 'De Facto, Displaced, Tacit: The Sovereign Articulations of the Tibetan Government-In-Exile (2009) 28 Political Government 343

Mitra R and Sanghi S, 'The Small Island States in the Indo-Pacific: Sovereignty Lost?' (2023) 31 APLR 428

Newman E, 'Failed States and International Order: Constructing a Post-Westphalian World' (2009) 30 Contemp Sec Pol'y 421

Oppenheim L, *International Law: A Treatise* (Longmans, Green and Co. 1905)

Österdahl I, 'Relatively Failed: Troubled Statehood and International Law' (2003)

Rotberg RI, Failed States, 'Collapsed States, Weak States: Causes and Indicators' in Robert I Rotberg (ed), *State Failure and State Weakness in a Time of Terror* (Brookings Institution Press 2003)

Scharf MP, 'Seizing the Grotian Moment: Accelerated Formation of Customary International Law in Times of Fundamental Change' (2010) 43 Cornell Int'l LJ 439

Schroder P, *Concepts and Contexts of Vattel's Political and Legal Thought* (CUP 2021)

Schwarzenger G, *International Law as applied by International Courts and Tribunals* (vol 3, Stevens 1976)

Sterio M, 'Grotian Moments and Statehood' (2022) 54 Case W Res J Int'l L 71
— — 'A Grotian Moment: Changes in the Legal Theory of Statehood' (2011) 39 Denv J Int'l L & Pol'y 209

Stewart M, 'Cascading Consequences of Sinking State' (2023) 59 Stan J Int'l L (forthcoming)

Talmon S, 'The Constitutive Versus The Declaratory Theory of Recognition: Tertium Non Datur?' (2004) 75 BYIL 101

Tuan Y-F, *Topophilia: A Study of Environmental Perceptions, Attitudes and Values* (Columbia UP 1990)

Vidmar J, 'Territorial Integrity and the Law of Statehood' (2013) 44 Geo Wash Into L Rev 101

Warbrick C, 'The New British Policy on Recognition of Governments' (1981) 30 ICLQ 568, 569

Wheatley N, *The Life and Death of States* (PUP 2023)

Wong D, 'Sovereignty Sunk? The Position of 'Sinking States' at International Law' (2013) 14 MJIL 346

Woodward E, 'Promoting the Continued Sovereign Status of Deterritorialized Island Nations' (2019) 14 Yale J Int'l Aff 49