

## NOTES

### THE PRESSING NEED FOR STATE SOVEREIGNTY RECOGNITION FOR POST-TERRITORIAL STATES

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#### ABSTRACT

This note offers an analysis of the retention of national sovereignty by states that have lost all of their territory, primarily by analyzing the international recognition of the Sovereign Military Order of Malta as a post-territorial state. This analysis will be of increasing pertinence as more nations face territorial loss due to climate change. This paper traces the development of the Order's role in world politics and its ongoing international recognition by various nations.

## I. INTRODUCTION: THE PRESSING NEED FOR STATE SOVEREIGNTY LAW FOR POST-TERRITORIAL STATES

Small Island Developing States (“SIDS”) are some of the nations that face the greatest risk from the negative impacts of climate change.<sup>1</sup> At the time of writing, global sea levels have already risen by six to ten inches since the dawn of the 20th century.<sup>2</sup> Seas are expected to rise further by at least two to three meters<sup>3</sup> and, according to the Intergovernmental Panel on Climate Change (“IPCC”),<sup>4</sup> potentially as much as twenty-two meters, depending on the extent to which carbon emissions can be limited.<sup>5</sup> This rise in sea level could result in the complete submersion of several countries and could make many others uninhabitable.<sup>6</sup> Even without complete submersion, climate change will likely subject coastal and island regions to severe flooding.<sup>7</sup>

SIDS, like the Maldives, Kiribati, Tuvalu, and the Marshall Islands, with median elevations of fifteen meters or less, could lose most or all of their habitable land. With defined territory widely considered one of the requirements for sovereign statehood in international law,<sup>8</sup> the risk of losing all territory begs the question: what happens to the national sovereignty of a country with no remaining landmass? This note seeks to propose a solution rooted in historical precedent. Upon the loss of all territory, these sovereign entities could retain a semi-sovereign status analogous to that of the Sovereign Military Order of Malta (“the Order”).

<sup>1</sup> Nemat Sadat, *Small Islands, Rising Seas*, UNITED NATIONS, <https://www.un.org/en/chronicle/article/small-islands-rising-seas> (last visited Apr. 14, 2024).

<sup>2</sup> NERILIE ABRAM ET AL., SUMMARY FOR POLICYMAKERS 10 (H. O. Portner et al. eds., 2019), available at [https://www.ipcc.ch/site/assets/uploads/sites/3/2022/03/01\\_SROCC\\_SPM\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/sites/3/2022/03/01_SROCC_SPM_FINAL.pdf).

<sup>3</sup> RICHARD P. ALLAN ET AL., CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS 132 (V. Mason-Delmotte et al. eds., 2021), available at [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_Full\\_Report.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf). [hereinafter CLIMATE CHANGE 2021].

<sup>4</sup> *Id.*

<sup>5</sup> Contingent on climate change being limited to a 5 degree rise in median global temperature, if temperature rises even further then sea level rise could be over 22 meters over a long-enough time scale.

<sup>6</sup> Global Conference on the Sustainable Development of Small Island Developing States, *Report of the Global Conference on the Sustainable Development of Small Island Developing States*, U.N. Doc. A/CONF.167/9, at 4 (May 6, 1994), [https://www.un.org/esa/dsd/dsd\\_aofw\\_sids/sids\\_pdfs/BPOA.pdf](https://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/BPOA.pdf).

<sup>7</sup> NATIONAL RESEARCH COUNCIL, CLIMATE STABILIZATION TARGETS: EMISSIONS, CONCENTRATIONS, AND IMPACTS OF DECADES TO MILLENNIA 5 (2011), available at <https://nap.nationalacademies.org/read/12877/chapter/3>.

<sup>8</sup> *Montevideo Convention on the Rights and Duties of States*, UNIV. OF OSLO, <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml> (last visited Apr. 18, 2024).

The Order is something of a historical and legal aberration; while there are some instances of similarly situated sovereign entities,<sup>9</sup> none are quite like it. Therefore, to adequately explain the proposal in this Note, it is helpful to first trace the history of the Order from its origins in Jerusalem through its brief stint in Cyprus, its two-century reign over Rhodes, and its final resting place as a sovereign territory on Malta. Next, this Note will address the modern status of the Order and its ongoing operation and enduring status as a subject of international law covering both bilateral diplomatic relations and recognition by supranational entities such as the United Nations. This portion of the Note will also address barriers to international recognition, such as nonrecognition of sovereignty by the United States and other major powers and distinguishing factors between the Order and other UN observers, such as the International Committee of the Red Cross.

Finally, after laying out this background information, this Note will survey the governing treaties and international law authorities on sovereignty and recognition of statehood, followed by a discussion of the *de facto* non-application of many of these treaties to the Order.<sup>10</sup>

## II. BACKGROUND

### A. HISTORY OF THE ORDER

Before explaining the relevant law, it is important to provide a sufficiently detailed history of the Order as history plays a large role in distinguishing the Order from other internationally operating groups. The Order having once been sovereign contributes to it retaining a degree of sovereignty.

#### 1. *Jerusalem*

The Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes, and of Malta is one of the modern successor institutions to the Knights Hospitaller, i.e., Knights of St. John.<sup>11</sup> Their history traces back to a hospice first commissioned in the year 603 by Pope Gregory I to care for Christian pilgrims in the holy land.<sup>12</sup> This hospice was expanded into a hospital in 1070 with funding from Amalfi merchants.<sup>13</sup> Monks then ran the

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<sup>9</sup> This refers to short term sovereign entities like governments in exile during war time, the holy see (as distinct from the Vatican city-state), and the unresolved “Roman Question” between the Italian Risorgimento and the Lateran Pacts.

<sup>10</sup> Not explicit, treaties requiring territory don’t mention the Order, however, many states recognize sovereignty in spite of their treaties.

<sup>11</sup> *Names of the Order*, ORD. OF MALTA, <https://www.orderofmalta.int/history/names-of-the-order/> (last visited Apr. 19, 2024).

<sup>12</sup> ADRIAN J. BOAS, *JERUSALEM IN THE TIME OF THE CRUSADES: SOCIETY, LANDSCAPE AND ART IN THE HOLY CITY UNDER FRANKISH RULE* 26 (2001).

<sup>13</sup> *Id.*

hospital from the nearby church until it became an independent monastic institution in 1113 via a papal bull issued by Pope Pascal II.<sup>14</sup>

In 1130, the second Grand Master of the hospital, Raymond of Le Puy, transformed it into a military order modeled after the Order of the Temple (“Knights Templar”).<sup>15</sup> It was Raymond who created the rule of the Order (i.e., its founding precepts, similar to a constitution but for a Catholic religious community), and Pope Eugenius III later confirmed this rule.<sup>16</sup> While in Jerusalem, the Order—now called The Order of the Knights of St. John—had a degree of autonomy and freedom from local secular and religious authorities and grew both in size and wealth. While primarily operating in the Levant, the Order built large hospitals and its contemporary headquarters in Acre.<sup>17</sup> As a hospitaller and charitable order, the Knights of St. John contributed financial and staffing support to works for the sick and poor, building additional hospitals and taking over hospital operations for German pilgrims.<sup>18</sup> The Order’s hospitals in Jerusalem frequently cared for between 900 and 1000 of the infirm at a time, regardless of religion or race, and could accommodate more in times of crisis.<sup>19</sup> It also provided food, clothing, and alms to the impoverished.<sup>20</sup> While initially purely charitable in nature, the Order eventually began arming knights to protect Christian pilgrims, amassing a significant fighting force and beginning the Order’s martial history.<sup>21</sup>

Over time the Order slowly gained territories and possessions beyond Jerusalem in both Acre and Tripoli, but as the crusades ended and these possessions were lost, the fate of the Order became uncertain, and it sought refuge elsewhere.<sup>22</sup> It first temporarily settled in Cyprus under the protection of the Cypriot King Amaury.<sup>23</sup> While the Order still did not resemble a sovereign nation at this time, its retreat from the Levant led it to construct fleets and shift its military efforts towards protecting Christian pilgrims on the seas.<sup>24</sup> This naval force also enabled it to contribute to future crusades.<sup>25</sup> After amassing significant naval power, in 1310, the Order conquered the island of Rhodes and the surrounding isles from the Byzantine Empire under the

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<sup>14</sup> *Id.* at 26-27.

<sup>15</sup> *Id.* at 27.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 27, 159, 160

<sup>18</sup> *Id.* at 27, 156.

<sup>19</sup> *Id.* at 157.

<sup>20</sup> *Id.* at 158. The SMOM continues its charitable works to this day globally, employing over 100,000 aid workers in over 120 countries.

<sup>21</sup> *Hospitallers of St. John of Jerusalem*, NEW ADVENT, <https://www.newadvent.org/cathen/07477a.htm> (last visited Apr. 19, 2024).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

leadership of Grand Master Foulques de Villaret,<sup>26</sup> taking a form that resembled sovereign statehood for the first time.<sup>27</sup>

## 2. *Rhodes*

The Knights of St. John—at this point called the Knights of St. John of Cyprus and Rhodes—grew considerably in power and influence while on its new island home, ruling from 1310 until 1522.<sup>28</sup> One unexpected source of this wealth came from the downfall of the Order of the Knights Templar, which, upon being dissolved by trial, had large sums of their assets gifted to the Knights of St. John via *Ad Providam*, a papal bull issued by Pope Clement V in 1312.<sup>29</sup> As the Order grew in Rhodes from an influx of European volunteers, an administrative organization began to take shape based on the language and nationality of the volunteers. The eight groups (“Tongues”) comprising the Order were Provençal, Auvergnat, French, Italian, English (including Scotch and Irish), Aragonite, Castilian, and German.<sup>30</sup> For a brief period, the Knights found great military success in joint crusades with other Christian powers in the region, capturing parts of the Turkish coast at Smyrna and eventually capturing Alexandria in conjunction with the Cypriot king, despite failing to hold this latter position.<sup>31</sup> At sea, the Knights successfully fought against the Turkish, Barbary, and Mameluke forces, both in traditional maritime battles and as privateers.<sup>32</sup> After surviving on Rhodes for nearly 200 years, the Knights became the targets of Ottoman conquest and expansion, culminating when Suleiman the Magnificent landed 100,000<sup>33</sup> troops on the island.<sup>34</sup> The Ottoman forces laid siege against a force of approximately 700 knights and 500 archers. After six months, the Order negotiated peaceful surrender, and the surviving soldiers sailed to Sicily, permanently abandoning their sovereign territory in Rhodes.<sup>35</sup>

<sup>26</sup> *Id.*; Albert Failler, *L'occupation de Rhodes par les Hospitaliers*, 50 *REVUE DES ÉTUDES BYZANTINES* 113, 118-19 (1992), [https://www.persee.fr/doc/rebyz\\_0766-5598\\_1992\\_num\\_50\\_1\\_1854](https://www.persee.fr/doc/rebyz_0766-5598_1992_num_50_1_1854).

<sup>27</sup> Boas, *supra* note 12, at 27.

<sup>28</sup> Anthony Luttrell, *The Hospitallers at Rhodes, 1306–1421*, in 3 *A HISTORY OF THE CRUSADES* 278, 278 (1975).

<sup>29</sup> MALCOLM BARBER, *THE NEW KNIGHTHOOD: A HISTORY OF THE ORDER OF THE TEMPLE* 304 (1998).

<sup>30</sup> Eirini Artemi, *Diasporic Communities in Rhodes 1350-1450*, 1 *ΕΚΚΛΗΣΙΑΣΤΙΚΟΣ ΦΑΡΟΣ* 237, 241 (2011).

<sup>31</sup> *Id.* at 242.

<sup>32</sup> *Id.*

<sup>33</sup> Some sources record this number as 200,000. See GILLES VEINSTEIN, *ENCYCLOPAEDIA OF ISLAM* (P. Bearman et al. eds., 2nd ed. 2007).

<sup>34</sup> PATRICK BALFOUR, *THE OTTOMAN CENTURIES: THE RISE AND FALL OF THE TURKISH EMPIRE* 176 (1979).

<sup>35</sup> *Id.* at 177-179.

### 3. *Malta and Post-Malta*

For seven<sup>36</sup> years, the Knights existed without territory. In 1530, Pope Clement VII—who had been part of the Order—entered into an agreement with the Holy Roman Emperor and King of Spain, Charles V, granting the Order permanent control of the Spanish territories of Malta, Gozo, and Tripoli in exchange for an annual gift of one Maltese falcon.<sup>37</sup> Once again a target of Ottoman conquest, Suleiman II laid siege to Malta in 1565.<sup>38</sup> During a four-month siege, nearly half of the Knights and 8,000 soldiers died before a Spanish army could repel the attack; 30,000 total were left dead, and a new city had to be built in the wake of the siege.<sup>39</sup> This new city became the modern Valletta, named for the Grand Master of the Order who had defended the island against this Ottoman attack.<sup>40</sup> On Malta, the Knights resumed their naval crusading activities, aiding the Spanish expedition against Tunis and Algiers and helping sink a large portion of the Ottoman fleet during the Battle of Lepanto.<sup>41</sup>

After the victory at Lepanto, the Order remained relatively undisturbed with its primary threat at sea thwarted.<sup>42</sup> The Order continued privateering, freeing Christian galley slaves and plundering Islamic fleets.<sup>43</sup> Gradually, it slipped into being a more secular establishment, as best illustrated by an event in which some knights of the Order took its Grandmaster prisoner for expelling “lewd women” from Malta.<sup>44</sup> Young men from Europe would continue to flock to Malta and join the Order, hoping for martial glory so that, once earned, they could return to the mainland as far-flung commanders of the Order’s distant bases on the Continent.<sup>45</sup> In 1607, the Grandmaster of the Order was elevated to the status of Reichsfurst, a prince of the Holy Roman Empire, and in 1630 the rank was made ecclesiastically equal to that of Cardinal.<sup>46</sup>

Gradually, the Order of Malta declined as the Protestant Reformation and increasing absolutism of Catholic monarchs significantly weakened its Continental support.<sup>47</sup> The Order’s German strongholds were lost upon the

<sup>36</sup> See *id.* at 179. Author’s note: sources vary on the number of years the Knights existed without territory with some claiming it was five years.

<sup>37</sup> *Malta (1530-1798)*, SOVEREIGN ORD. OF SAINT JOHN OF JERUSALEM, [http://www.kmfap.net/index.php?topic\\_id=16](http://www.kmfap.net/index.php?topic_id=16) (Last visited Nov. 19, 2022).

<sup>38</sup> *Hospitallers of St. John of Jerusalem*, *supra* note 21.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* The authors of the Catholic Encyclopedia wryly note that the knights violated their vows of obedience to improve their ability to violate their vows of celibacy.

<sup>45</sup> *Id.*

<sup>46</sup> RILEY SMITH, *THE CRUSADES: A HISTORY* 295 (2nd ed. 2005).

<sup>47</sup> *Id.*

conversion of the Bailiwick of Brandenburg to Lutheranism.<sup>48</sup> In France, the Order was first abolished, and then its assets were seized by the revolutionary government under the influence of its secularist leaders.<sup>49</sup> There is some evidence of a brief puppet state of the Order existing on the throne of Moldavia during the 1560s, ruled by a Maltese native, though this is disputed and not well supported by the historical record.<sup>50</sup> The Order also tried its hand at colonialism through the purchase of four Caribbean islands—Saint Barthélemy, Saint Christopher, Saint Croix, and Saint Martin—from the failed French *Compagnie des Îles de l'Amérique* (“Company of the American Islands”), though these were ultimately resold to the French West India Company.<sup>51</sup>

After a long era of decline that included economic hardship and widespread revolt,<sup>52</sup> the Order ultimately lost the last of its sovereign territory in 1798 to the great border shaper of Europe—Napoleon Bonaparte.<sup>53</sup> While sailing for Egypt, Bonaparte stopped at Malta to take on supplies and water.<sup>54</sup> As a neutral state, the Order agreed and allowed his fleet entry, but, fearing Bonaparte, did so on the condition that only two ships be allowed to enter the port at once to limit the French military presence.<sup>55</sup> Bonaparte, worried that this would exhaust too much time and seeking to avoid the fleet of Horatio Nelson, chose instead to lay siege to the island rather than provision the ships slowly.<sup>56</sup> After minimal fighting, the Order surrendered quickly, and it never regained rule of the island.<sup>57</sup>

<sup>48</sup> *History of the Order 1099-1999*, ORD. OF MALTA (July 24, 2008), <https://web.archive.org/web/20080724182811/http://www.orderofmalta.org.uk/history.htm>. This German branch is another successor, claiming the heritage of the order to this day while remaining non-Catholic.

<sup>49</sup> *The Siege and the Taking of Malta*, NAPOLEON.ORG, <https://www.napoleon.org/en/history-of-the-two-empires/articles/the-taking-and-the-siege-of-malta/> (Last visited Nov. 19, 2022). See also National Constituent Assembly, *The Decree Abolishing the Feudal System*, in 2 READINGS IN EUROPEAN HISTORY 404-409 (J. H. Robinson, ed., 1906).

<sup>50</sup> Andrei Pippidi, *Două Portrete Românești în Malta*, 18 STUDII ȘI MATERIALE DE ISTORIE MEDIE 177, 182 (2000), [http://www.iini.ro/smim/Studii\\_si\\_materiale\\_de\\_istorie\\_medie\\_2000\\_v18.pdf](http://www.iini.ro/smim/Studii_si_materiale_de_istorie_medie_2000_v18.pdf).

<sup>51</sup> David F. Allen, *The Social and Religious World of a Knight of Malta in the Caribbean c. 1632-1660* (Apr. 13, 2014), <https://web.archive.org/web/20140413125220/http://mhs.eu.pn/cc/CC08.html>.

<sup>52</sup> David Borg-Muscat, *Reassessing the September 1775 Rebellion: A Case of Lay Participation or a 'Rising of Priests'?*, 13 MELITA HISTORICA 239, 240 (2002), [https://web.archive.org/web/20160416153526/http://melitensiawth.com/incoming/Index/Melita%20Historica/MH.13\(2000-03\)/MH.13\(2002\)3/02.pdf](https://web.archive.org/web/20160416153526/http://melitensiawth.com/incoming/Index/Melita%20Historica/MH.13(2000-03)/MH.13(2002)3/02.pdf).

<sup>53</sup> JUAN COLE, NAPOLEON'S EGYPT: INVADING THE MIDDLE EAST 8-9 (2007).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 8.

<sup>56</sup> *Id.* at 8-9.

<sup>57</sup> *Id.* at 9-10.



The Knights then dispersed throughout Europe, and many found refuge under an unlikely patron—the Russian Emperor Paul I, who was elected as the new Grandmaster by the refugee Knights despite his ineligibility as a non-Catholic.<sup>58</sup> Although this election was never recognized formally by the pope, he was the Order’s de jure leader and is recognized by the Order’s members as such.<sup>59</sup> Paul’s son did not adopt the title of Grandmaster; instead, Pope Pius VII conferred the title upon an Italian, Giovanni Battista Tommasi, in 1803.<sup>60</sup>

Under the 1802 Treaty of Amiens, France and the United Kingdom initially planned for the Order’s reign over Malta to be restored,<sup>61</sup> but this never came to fruition. During the 1815 Congress of Vienna, the Congress determined that Malta would not be returned to the Order and would instead remain a British protectorate.<sup>62</sup> In 1806, the Swedish Crown offered to the Order the island of Gotland, but the Order refused for fear of ceding its claim on Malta.<sup>63</sup> Finally, in 1834, the Order established its embassy in Rome, where it remains headquartered to this day.<sup>64</sup> It has no remaining sovereign territory, though it has quasi-territory in the form of embassies, consulates, and a heritage site in Malta with long-term lease arrangements between it and the secular Maltese government.<sup>65</sup>

#### 4. *The Modern Era and the Present*

In modern times, the Order is by and large “out of the statehood game.” It has renounced its territorial claims to Malta<sup>66</sup> and returned to its

<sup>58</sup> Sarah Wilkinson, *Tsar Paul I: The Unlikely Grand Master*, MUSEUM OF THE ORD. OF ST. JOHN (Nov. 11, 2021), <https://museumstjohn.org.uk/tsar-paul-i-unlikely-grand-master/>.

<sup>59</sup> *Id.*; see also *The Grand Masters*, ORD. OF MALTA, <https://www.orderofmalta.int/history/the-grand-masters/> (last visited Apr. 19, 2024).

<sup>60</sup> *1048 to the Present Day*, ORD. OF MALTA, <https://www.orderofmalta.int/history/1048-to-the-present-day/> (last visited Apr. 19, 2024).

<sup>61</sup> Treaty of Amiens, art. 1, Fr.-BR. Brit., Mar. 25, 1802, <https://www.napoleon-empire.net/en/official-texts/treaty-of-amiens.php>.

<sup>62</sup> Harry Hansen, *Foreword to A PEACE CONGRESS OF INTRIGUE: A VIVID INTIMATE ACCOUNT OF THE CONGRESS OF VIENNA 15* (Frederick Freska ed., Harry Hansen trans., 1919).

<sup>63</sup> Nils Ihre, *L'Offre du Roi Gustave VI Adolphe de Suede de l'Ile de Gottland a l'Ordre S.M. de Malte*, 21 ANNALES DE L'ORDRE SOUVERAIN MILITAIRE DE MALTE 69, 70 (1963).

<sup>64</sup> *1048 to the Present Day*, supra note 60.

<sup>65</sup> *Id.*

<sup>66</sup> However, through a bilateral treaty with the state of Malta, the Order has been granted temporary, limited-extraterritorial control over Fort St. Angelo on the island for a period of 99 years. The Order is not permitted under the treaty to grant asylum at the fort and the Malta’s courts retain jurisdiction over the fort. See Agreement between the Government of Malta and the Government of the Sovereign Hospitalier Order of Saint John of Jerusalem, of Rhodes and of Malta for the restoration and utilisation of parts of Fort St. Angelo, Nov. 1, 2001,

original purpose—serving the sick and poor. Its primary function is as a lay Catholic religious and chivalric order.<sup>67</sup> It retains sovereign recognition from many countries and is an observer of the United Nations, leaving it in a “semi-sovereign” gray area.<sup>68</sup> The Order also maintains bilateral diplomatic relations with over 112 countries.<sup>69</sup> It issues its own passports,<sup>70</sup> stamps,<sup>71</sup> and currency.<sup>72</sup> Since resettling<sup>73</sup> in Rome, the Order has focused primarily on providing medical aid in war-torn countries.<sup>74</sup> For example, it cared for over 800,000 patients during the First World War.<sup>75</sup> During both the First and Second World Wars, the Order operated hospital ships and hospital trains.<sup>76</sup>

#### B. CURRENT DEGREE OF RECOGNITION AND INTERNATIONAL STATUS

There are many similarities between the Order and the International Committee of the Red Cross (“ICRC”). Both are Permanent Observers to the

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<https://web.archive.org/web/20141119024832/http://www.mfa.gov.mt/TreatyDetails.aspx?id=464>.

<sup>67</sup> *Homepage*, ORD. OF MALTA, <https://www.orderofmalta.int/> (last visited Apr. 19, 2024).

<sup>68</sup> *Id.*; *Permanent Observers*, UNITED NATIONS (Dec. 1, 2012), <https://web.archive.org/web/20121201004149/http://www.un.org/en/members/intergovorg.shtml>.

<sup>69</sup> *Bilateral Relations*, ORD. OF MALTA, <https://www.orderofmalta.int/diplomatic-activities/bilateral-relations/> (last visited Apr. 19, 2024).

<sup>70</sup> *The Order of Malta Clarifies Press Reported Figure on Passports Issued: Currently 500 Passports in Circulation*, ORD. OF MALTA, <https://www.orderofmalta.int/press-releases/the-order-of-malta-clarifies-press-reported-figure-on-passports-issued-currently-500-passports-in-circulation/> (last visited Apr. 19, 2024).

<sup>71</sup> *Stamps*, ORD. OF MALTA, <https://www.orderofmalta.int/stamps/> (last visited Apr. 19, 2024).

<sup>72</sup> *Coins*, ORD. OF MALTA, <https://www.orderofmalta.int/coins/> (last visited Apr. 19, 2024). These are, however, primarily collector’s items.

<sup>73</sup> As no major population remains, “resettling” is used to refer to the Order moving its headquarters to Rome.

<sup>74</sup> Laure Peureux et al., *Order of Malta during the First World War L'Ordre de Malte Pendant la Première Guerre Mondiale*, 1 *Soins* 80, 80 (2014), <https://pubmed.ncbi.nlm.nih.gov/25069365/>.

<sup>75</sup> *Id.*

<sup>76</sup> *The Order of Malta’s Efforts During the Wars of the Twentieth Century: A Glorious Tradition of Aid*, ORD. OF MALTA, [https://www.orderofmalta.int/wp-content/uploads/2014/02/Corpo-Soccorso-Militare-EN\\_Layout-1.pdf](https://www.orderofmalta.int/wp-content/uploads/2014/02/Corpo-Soccorso-Militare-EN_Layout-1.pdf) (last visited Apr. 19, 2024).

UN.<sup>77</sup> Both engage in similar humanitarian work for refugees,<sup>78</sup> disaster relief,<sup>79</sup> and infectious diseases (such as HIV),<sup>80</sup> and both have a global reach to over a hundred countries.<sup>81</sup> The primary distinguishing factor between the two is the history of the Order as sovereign and the ongoing efforts of the Order to maintain some formalities of statehood, i.e., the above-mentioned stamps, passports, coins, consulates, embassies, and diplomatic relations.

This claim to sovereignty can only be exercised by virtue of, as previously argued,<sup>82</sup> the Order's once full and indisputable sovereignty. In proposing partial retention of sovereignty for SIDS that lose most or all of their territory, having something to retain is key. I do not intend to argue that because of their similarities, the ICRC should be seen as sovereign. Nor am I arguing that sovereignty should be granted by retention to entities that have only ever exercised non-temporal jurisdiction, like the Holy See. The scope of this note is limited to discussing the retention of sovereignty, not the expansion of it to new bounds.

Another key feature distinguishing the Order from other non-sovereign entities is the extent of its bilateral diplomatic relations. Fundamentally, recognition as sovereign is essential for a claim to sovereignty to have any weight.<sup>83</sup> The Order is recognized as sovereign by over 112 countries.<sup>84</sup> This

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<sup>77</sup> U.N. Secretariat, List of Non-Member States, Entities and Organizations Having Received a Standing Invitation to Participate as Observers in the Sessions and the Work of the General Assembly, U.N. Doc. A/Inf/73/5/Rev.1 (Jan. 18, 2019). International Committee of the Red Cross in particular. Notably, the Holy See also holds observer status.

<sup>78</sup> *Refugees and Migrants*, INT'L COMM. OF THE RED CROSS, <https://www.icrc.org/en/international-migrants-day> (last visited Apr. 19, 2024); *Aid for Refugees*, ORD. OF MALTA, <https://www.orderofmalta.int/humanitarian-medical-works/aid-for-refugees/> (last visited Apr. 19, 2024).

<sup>79</sup> *Disaster Relief*, AMERICAN RED CROSS, <https://www.redcross.org/about-us/our-work/disaster-relief.html> (last visited Apr. 19, 2024); *Disaster Relief and Prevention*, ORD. OF MALTA, <https://www.orderofmalta.int/humanitarian-medical-works/disaster-relief-prevention/> (last visited Apr. 19, 2024).

<sup>80</sup> *Communicable Diseases*, THE INT'L FED'N OF RED CROSS AND RED CRESCENT SOC'YS, <https://www.ifrc.org/our-work/health-and-care/community-health/communicable-diseases> (last visited Apr. 19, 2024); *Diseases and Epidemics*, ORD. OF MALTA, <https://www.orderofmalta.int/humanitarian-medical-works/diseases-epidemics/> (last visited Apr. 19, 2024).

<sup>81</sup> *The ICRC Worldwide*, INT'L COMM. OF THE RED CROSS, <https://www.icrc.org/en/where-we-work> (last visited Apr. 20, 2024); *Social Assistance*, ORD. OF MALTA, <https://www.orderofmalta.int/humanitarian-medical-works/social-assistance/> (last visited Apr. 20, 2024).

<sup>82</sup> See *supra* Section II.a.

<sup>83</sup> HERSCH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 64 (1947).

<sup>84</sup> *Bilateral Relations*, *supra* note 69. Interestingly, despite its origins as a Crusader State, the Order maintains diplomatic relations with Afghanistan (the Taliban has not yet suspended relations). At the time of writing, during the invasion of Ukraine, the Order

recognition ranges from informal recognition by treaty alone to formal recognition through the presence of consulates and embassies. The Order seeks to maintain these sorts of relationships not only for its own legitimacy but also to be better positioned globally to accomplish its charitable mission.<sup>85</sup> It also hopes to use its neutral position and diplomatic placement to mediate armed conflicts.<sup>86</sup>

While recognition of the sovereignty of the Order is not universal, relations are maintained with many of the states that do not recognize it. For example, declassified documents from the U.S. State Department state that “[a]lthough the [United States Government] does not have diplomatic relations with the Order, the USG does have a relationship that is important to maintain.”<sup>87</sup> In the same document, the State Department recognized the Order as a “diplomatic entity.”<sup>88</sup> Other powerful nations, including Canada<sup>89</sup> and France,<sup>90</sup> have some official relations with the Order without granting full diplomatic relations. While these relations are not a full recognition of statehood, they legitimize the Order’s international interest. Any recognition—even if it is not bilateral or diplomatic—lends unique credence to the Sovereignty of the Order in the body of international law.

### III. ANALYSIS

Since the peace of Westphalia, international sovereignty has generally been defined by non-intervention and the legal equality of states—that is, that regardless of size, no one nation-state has the right to intervene in the affairs of the other.<sup>91</sup> These principles were enshrined in the United Nations Charter.<sup>92</sup> While criticism of this model of international sovereignty exists,<sup>93</sup> the purpose of this Note is not to answer the question of what sovereignty is or what it should be. The only question addressed is what nations should be

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maintains a special diplomatic mission with the Russian Federation rather than formal diplomatic ties.

<sup>85</sup> *Humanitarian Diplomacy*, ORD. OF MALTA, <https://www.orderofmalta.int/diplomatic-activities/humanitarian-diplomacy/> (last visited Apr. 20, 2024).

<sup>86</sup> *Id.*

<sup>87</sup> Letter from Am. Embassy Rome to U.S. Sec’y of State (Dec. 1998).

<sup>88</sup> *Id.*

<sup>89</sup> *Diplomatic Relations*, ORD. OF MALTA CANADIAN ASS’N, <https://orderofmaltacanada.org/abouttheorder/diplomaticrelations/> (last visited Apr. 20, 2024).

<sup>90</sup> *Signature of a Cooperation Protocol with France*, ORD. OF MALTA, <https://www.orderofmalta.int/news/signature-of-a-cooperation-protocol-with-france/> (last visited Apr. 20, 2024).

<sup>91</sup> Leo Gross, *The Peace of Westphalia*, 42 AM. J. INT’L L. 20, 20-21 (1948).

<sup>92</sup> U.N. Charter art. 2 ¶ 1, 4.

<sup>93</sup> *See, e.g.*, Robert I. Rotberg, *The New Nature of Nation-State Failure*, 25 WASH. Q. 85 (2002).

allowed to retain sovereignty after loss of territory. This note proposes that nations that lose their territory, especially to climate change, should be allowed to retain sovereignty under the existing precedent of the treatment of the Order.

There are several competing theories of what entities are entitled to sovereign statehood in international law. One such theory, the constitutive theory, is that a sovereign state exists *vis-à-vis* its recognition by one or more existing sovereign states.<sup>94</sup> Under this theory, particular attention is paid to recognition by a “great power,” with the quality of recognition being more important than the quantity of state recognition.<sup>95</sup> While the recognition of new states is more often a matter of political expediency,<sup>96</sup> there does seem to be a general hesitation to cease recognizing previously recognized states that experienced territorial loss alone. For example, during the fifty-nine year period between Italy's annexation of the Papal States and the Lateran Pacts, recognition of the Holy See in international law increased rather than decreased.<sup>97</sup> The government of Kuwait retained international recognition during the Iraqi occupation of the early 1990s, like the governments-in-exile of occupied Europe during the Second World War.<sup>98</sup> And, as discussed above, the Order's recognition in international law has remained despite hundreds of years without territory.

Because of the general trend of continuing to recognize sovereign statehood despite territorial loss in the modern history of nation-states, it is unlikely that modern nations would be quick to stop recognizing any SIDs that lost their land to climate change. Therefore, under a constitutive theory of sovereign statehood, statehood would remain so long as there is a successor entity that can be recognized.

Under a common and competing theory of statehood, the declarative theory, as expressed in the Montevideo Convention,<sup>99</sup> the requirements for sovereign statehood are (a) a permanent population, (b) defined territory, (c)

<sup>94</sup> 1 L. OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* 134–36 (Ronald F. Roxburgh ed., 3d ed. 2005).

<sup>95</sup> *Id.*

<sup>96</sup> TIM HILLIER, *SOURCEBOOK ON PUBLIC INTERNATIONAL LAW* 201–02 (1998).

<sup>97</sup> Tommaso Di Ruzza, *The “Roman Question”: The Dissolution of the Papal State, the Creation of the Vatican City State, and the Debate on the International Legal Personality of the Holy See*, in *A HISTORY OF INTERNATIONAL LAW IN ITALY* (Oxford Univ. Press 2020), available at <https://doi.org/10.1093/oso/9780198842934.003.0013>, accessed 21 Nov. 2022.

<sup>98</sup> 4 CATHAL J. NOLAN, *THE GREENWOOD ENCYCLOPEDIA OF INTERNATIONAL RELATIONS* 1559, (2002).

<sup>99</sup> This convention is not a universal instrument of international law, its signatories are only states in the Americas but it is rooted firmly in the reasoning of the declarative theory. Montevideo Convention on Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. [hereinafter Montevideo Convention].

government, and (d) the capacity to enter relations with other states.<sup>100</sup> While a SID would lack the second of these four requirements, the lack of defined territory has not stopped the Order from being recognized. Like the Order, a post-territorial SID state would retain a population, government, and diplomatic capacity. While the United States, Canada, and Mexico do not recognize the Order, the vast majority of other signatories to the Montevideo Convention do, indicating that the defined territory requirement either does not apply to nations that once had territory or is irrelevant to the application of the treaty generally. Therefore, under a declarative theory of statehood, post-territorial SIDs could still be considered sovereign states.

#### IV. CONCLUSION

With climate change rapidly reshaping national territory and boundaries, it is necessary for international law to have an answer ready for the question of sovereign statehood for post-territorial states. Looking to modern and historical practice as well as existing precedent in international law, it is clear that where a state once was a sovereign entity with state-like powers and legal recognition can remain. In fairness towards and recognition of the interests of displaced peoples and their former rights in international law, the status of an entity like the Order can be extended to any post-territorial SIDs that emerge. Like the Order, these states would have once met all the requirements for a Declarative theory of statehood. However, like the Order, the Holy See, or a government-in-exile, losing all territory would not preclude continued existence as a state.

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<sup>100</sup> *Id.*