Statehood, Nationality, and Sovereignty Under Climate Change

THE CASE OF TUVALU

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Abstract

A central question in international law is how the continuity of statehood can be maintained when climate change renders a state's territory uninhabitable and displaces its population beyond its borders. The case of Tuvalu—and the ways in which this question is concretely manifested through its legal and diplomatic responses, particularly the 2023 Falepili Union Treaty—provides a critical empirical lens for examining this broader problem. Methodologically, the article adopts a doctrinal legal approach, drawing on key international legal instruments, jurisprudence, and historical precedents concerning state continuity. The analysis demonstrates that, while international law lacks a fully coherent doctrine for deterritorialized statehood, it contains significant adaptive capacities, including recognition practices, flexible interpretations of nationality, and emerging treaty-based arrangements. By situating the Tuvalu case within these evolving legal dynamics, the article contributes to the literature by shifting the focus from individual displacement to the continuity of states and by

grounding debates on deterritorialized sovereignty in concrete institutional practice.

Keywords
climate change; deterritorialized sovereignty; international law; state continuity; Tuvalu

Introduction

Climate change is increasingly recognized not merely as an environmental challenge but as a structural transformation with profound implications for the foundations of international law. As rising sea levels, coastal erosion, and extreme weather events reshape the physical geography of the planet, they also call into question one of the core assumptions underpinning the international legal order: that states possess stable and enduring territorial bases. For over a century, international law has operated on the premise that territory and population remain relatively fixed, and that sovereignty is exercised within clearly defined spatial boundaries. However, as the material effects of climate change intensify—particularly through sea-level rise—the continued validity of this territorial assumption is increasingly uncertain. Nowhere is this tension more visible than in small island states such as Tuvalu, Kiribati, and the Maldives, which face existential threats not only to their ecosystems and economies but also to their legal status as sovereign entities under international law (Rayfuse, 2010).

Among these, Tuvalu represents one of the most acute cases. Comprising nine low-lying coral atolls in the South Pacific, with a mean elevation of approximately two meters above sea level, the country is exceptionally vulnerable to environmental change (Government of Tuvalu, 2025). Its population of roughly 11,600 is concentrated on narrow coastal strips exposed to storm surges, coastal erosion, and saltwater intrusion into freshwater systems (World Bank, 2021). Scientific projections indicate that these vulnerabilities will intensify significantly over the course of the twenty-first century. According to the IPCC, global mean sea levels are expected

to rise by at least 0.5 meters under moderate scenarios and potentially exceed one meter under high-emission trajectories (IPCC, 2021). Even relatively modest increases in sea level are likely to render large portions of Tuvalu uninhabitable through land loss, agricultural degradation, and freshwater contamination (Kumar, 2018). In practical terms, this raises the possibility that Tuvalu's territory may become partially or wholly uninhabitable within this century.

Such a scenario extends beyond humanitarian concern and raises a fundamental legal question: can a state continue to exist under international law in the absence of habitable territory? Classical international legal doctrine, as codified in the Montevideo Convention on the Rights and Duties of States, defines statehood through four core criteria: a permanent population, a defined territory, a government, and the capacity to enter into relations with other states (Organization of American States, 1933). While historical practice has demonstrated a degree of flexibility in the interpretation of these criteria—particularly in cases of occupation or temporary loss of effective control—the prospect of permanent territorial uninhabitability presents a qualitatively different challenge. Climate-induced displacement disrupts the traditional alignment between territory, population, and governance, thereby introducing uncertainty into the application of established legal frameworks.

This article addresses this emerging tension by asking how international law can accommodate the continuity of statehood under conditions of climate-induced deterritorialization. More specifically, it examines how this broader problem is manifested in the case of Tuvalu, particularly through its recent legal and diplomatic initiatives. In 2023, Tuvalu and Australia concluded the Falepili Union Treaty, which establishes a novel form of bilateral cooperation combining climate adaptation support, controlled migration pathways, and mutual security arrangements (Australian Government, Department of Foreign Affairs and Trade (DFAT), 2023). Crucially, the treaty affirms the continued recognition of Tuvalu's sovereignty and statehood irrespective of population

displacement. As such, it represents one of the first concrete attempts to institutionalize what has been described in the literature as "deterritorialized statehood" (Burkett, 2011).

Methodologically, the study adopts a qualitative doctrinal legal approach, which focuses on the systematic analysis and interpretation of existing international legal rules, principles, and institutional practices (Petrova Georgieva, 2026). Through this approach, the article evaluates the extent to which established legal frameworks are capable of addressing the novel challenges posed by climate-induced territorial loss and large-scale population relocation. The analysis draws on primary sources of international law, including key legal instruments such as the Montevideo Convention on the Rights and Duties of States and the United Nations Convention on the Law of the Sea, in order to examine how international law conceptualizes territory, population, and jurisdiction under conditions of environmental disruption. In addition, the study engages with relevant international jurisprudence—particularly decisions of the International Court of Justice—to explore how legal understandings of nationality, sovereignty, and the relationship between individuals and the state may be interpreted in contexts of displacement.

To complement this doctrinal analysis, the article incorporates comparative historical references, most notably the continued recognition of the Baltic states during periods of territorial disruption, as well as insights from the existing scholarly literature on climate-induced migration and deterritorialized sovereignty (McAdam, 2012; Rayfuse, 2010; Burkett, 2011). By combining doctrinal interpretation with comparative analysis, the study seeks to assess whether international law possesses the conceptual flexibility necessary to sustain statehood beyond traditional territorial assumptions.

The emergence of such arrangements raises a set of interrelated legal questions concerning nationality, jurisdiction, and the exercise of sovereign authority. If a state's population is dispersed across foreign territories, can nationality continue to function as a meaningful legal bond? How can jurisdiction be exercised over citizens residing abroad? And to what extent can maritime rights—particu-

larly under the United Nations Convention on the Law of the Sea —be maintained in the absence of a stable territorial base? By situating the Tuvalu case within these broader doctrinal debates, this article seeks to evaluate whether existing international legal frameworks can adapt to the realities of climate-induced displacement while preserving the legal continuity of the state.

This article is organized as follows. The first section reviews the existing literature on climate change and international law, focusing on debates surrounding climate-induced displacement, statehood and continuity, maritime entitlements, and emerging theories of deterritorialized sovereignty. The following section presents the empirical analysis, bringing together doctrinal insights, historical precedents, and contemporary developments—most notably the case of Tuvalu and the Falepili Union Treaty—to examine how these legal questions are manifested in practice. The article concludes by synthesizing the main findings, outlining their theoretical and legal implications, and reflecting on the future adaptation of international law to conditions of climate-induced deterritorialization.

Literature Review: Climate Change, Statehood, and the Limits of Territorial Sovereignty

The existing literature at the intersection of climate change and international law can be broadly understood through four interconnected debates: climate-induced displacement and legal protection, the doctrine of statehood and state continuity, maritime entitlements under sea-level rise, and emerging theories of deterritorialized sovereignty. Together, these strands provide the conceptual foundation for examining how international law responds to the unprecedented challenges posed by climate-induced territorial loss.

Early scholarship on climate change within international law has primarily focused on human mobility and displacement. A central concern in this literature is whether existing legal frameworks—particularly refugee law—are capable of addressing climate-induced migration. Jane McAdam's (2012) work highlights the structural

limitations of refugee law in this context, noting that the legal definition of a refugee is grounded in persecution and does not extend to environmental degradation. As such, individuals displaced by climate change fall outside the scope of existing protection regimes. Building on this critique, scholars such as Park (2011) and Mayer (2011) argue that international law lacks a coherent normative framework to address the needs of climate-displaced populations, leaving affected individuals reliant on fragmented and ad hoc policy responses. Moreover, climate-induced migration is increasingly understood as a multidimensional phenomenon shaped not only by environmental factors but also by social, economic, and political dynamics (Barnett, 2009). This broader understanding underscores the inadequacy of narrow legal categories and points to the need for more comprehensive frameworks. However, this body of literature remains largely focused on individuals and protection mechanisms, with comparatively limited attention to the implications of climate-induced displacement for the continuity of states themselves.

A second strand of scholarship engages with the classical doctrine of statehood and its adaptability under conditions of disruption. Drawing on the Montevideo Convention on the Rights and Duties of States, scholars such as Crawford (2006) and Shaw (2017) have examined the criteria of statehood—permanent population, defined territory, government, and capacity for international relations—as well as their interpretation in practice. Crawford argues that these criteria should not be treated as rigid or mechanically applied conditions; rather, once statehood is established, international law tends to presume continuity even in the face of significant political or territorial disruption (Crawford, 2006). Historical examples, such as governments-in-exile during the Second World War, demonstrate that states may persist without effective territorial control. Similarly, Shaw emphasizes the centrality of recognition in sustaining statehood, highlighting how the attitudes of other states can shape the legal status of a political entity within the international system (Shaw, 2017). At the same time, the prospect of climate-induced, permanent territorial loss introduces a qualitatively different challenge. Unlike temporary

occupation or political upheaval, environmental transformation may result in the irreversible disappearance of habitable territory, thereby raising fundamental questions about the continued applicability of the Montevideo criteria.

Closely related to this debate is a growing body of literature on the implications of sea-level rise for maritime boundaries and ocean governance. For many small island states, maritime zones—particularly Exclusive Economic Zones (EEZs)—constitute a critical source of economic and strategic value. Under the United Nations Convention on the Law of the Sea, coastal states are entitled to EEZs extending up to 200 nautical miles from their baselines, within which they exercise sovereign rights over natural resources (United Nations, 1982). Scholars such as Rayfuse (2010) have demonstrated that traditional interpretations of UNCLOS assume that maritime baselines shift in accordance with changing coastlines, implying that maritime entitlements may diminish as land is submerged. For low-lying island states, this would entail not only territorial loss but also a significant erosion of economic resources. In response, a growing number of scholars advocate for the stabilization—or "freezing"—of maritime baselines as a legal solution, allowing states to retain their existing maritime entitlements regardless of physical changes to their coastlines (Rayfuse, 2010; Busch, 2018). This proposal has gained increasing traction within international legal debates and reflects broader efforts to adapt legal doctrines to the realities of climate change.

Building on these developments, more recent scholarship has begun to question the assumption that sovereignty is inherently tied to territory. Instead, it explores the possibility that statehood may be sustained through political identity, institutional continuity, and international recognition, even in the absence of a stable territorial base. A key contribution in this regard is Burkett's concept of the "nation ex-situ," which envisions the continued existence of a state whose population has been displaced beyond its original territory (Burkett, 2011). In this framework, sovereignty is understood not solely as territorial control but as a function of collective identity, legal authority, and self-determination. In parallel, emerging legal

scholarship has begun to examine how evolving diplomatic arrangements may provide practical expressions of these theoretical developments. The 2023 Falepili Union Treaty between Tuvalu and Australia, for instance, has been discussed as a pioneering attempt to address the legal and political consequences of climate-induced displacement, suggesting that international law may be gradually moving toward a more flexible understanding of sovereignty grounded in continuity and recognition rather than strict territoriality.

Despite these important contributions, several critical gaps remain. Much of the existing literature continues to focus either on the protection of displaced individuals or on abstract debates concerning the possible disappearance of states. While important insights exist on nationality, governance, and jurisdiction in related contexts, these have rarely been examined in an integrated manner in situations where an entire population is permanently relocated beyond national territory. Furthermore, although concepts such as deterritorialized sovereignty and the nation ex-situ have gained theoretical prominence, their practical realization within contemporary international legal frameworks remains limited and insufficiently systematized. In particular, the extent to which emerging diplomatic arrangements can operationalize these ideas has not been comprehensively examined.

This study seeks to address these gaps by situating the case of Tuvalu within the doctrinal frameworks of the Montevideo Convention on the Rights and Duties of States and the United Nations Convention on the Law of the Sea. It argues that emerging institutional arrangements—most notably the Falepili Union Treaty—can be understood as early legal experiments in sustaining statehood under conditions of climate-induced territorial loss. In doing so, the article bridges the gap between theoretical debates and evolving state practice, offering a more grounded account of how deterritorialized sovereignty may develop within international law.

From Doctrine to Practice: Climate-Induced Deterritorialization in the Case of Tuvalu

The foregoing discussion demonstrates that, although international law has developed partial responses to climate-induced displacement, state continuity, and maritime instability, these strands remain insufficiently integrated when confronted with the prospect of full or near-total deterritorialization. Existing scholarship reveals both the adaptability and the limits of established doctrines, yet it leaves unresolved how these legal principles operate in concrete situations where territory, population, and governance are no longer spatially aligned. In particular, while debates on statehood, nationality, and maritime entitlements have evolved in parallel, their combined implications under conditions of permanent territorial loss remain underexamined. To address this gap, the following analysis brings these doctrinal elements together and examines how they are manifested in practice through historical precedents, international jurisprudence, and contemporary institutional developments, with a particular focus on the case of Tuvalu.

A useful starting point for assessing the possibility of state continuity without effective territorial control is the historical experience of the Baltic states following their annexation by the Soviet Union in 1940. During this period, Estonia, Latvia, and Lithuania lost effective control over their territories for several decades. Nevertheless, a significant number of Western states refused to recognize the legality of the annexation and continued to acknowledge Baltic diplomatic missions as legitimate representatives of their respective states. These missions operated abroad, maintaining a form of government-in-exile and preserving the legal continuity of the state despite the absence of territorial authority (Mälksoo, 2022). This historical precedent demonstrates a crucial principle within international law: the continuity of statehood is not strictly dependent on effective territorial control, but is instead sustained through recognition and the persistence of legal personality.

This precedent is particularly instructive for climate-vulnerable states such as Tuvalu. In a scenario where significant portions of its

territory become uninhabitable due to sea-level rise, it is conceivable that its governmental institutions could continue to operate externally while retaining international recognition. In this sense, climate-induced displacement may produce a functional analogue to governments-in-exile, although the underlying cause would be environmental transformation rather than military occupation. At the same time, the analogy should not be overstated. In the Baltic case, territorial loss was temporary and ultimately reversible, whereas climate change may lead to the permanent and irreversible transformation of physical territory. This distinction raises more fundamental questions about whether international law can sustain state continuity in the absence of any prospect of territorial recovery.

A second dimension of this challenge concerns the relationship between nationality and territory. The Nottebohm Case (Liechtenstein v. Guatemala) remains a foundational reference point for understanding nationality in international law. In its 1955 judgment, the International Court of Justice (1955) emphasized that nationality must reflect a "genuine link" between the individual and the state, grounded in factual and social ties such as residence, economic activity, and participation in public life. This formulation complicates the situation of climate-displaced populations. Where an entire population—or a significant portion of it—is permanently relocated abroad, subsequent generations may develop stronger social and economic ties to host states than to their state of origin, thereby weakening the traditional basis of nationality.

However, international practice also suggests that nationality is not rigidly tied to territorial presence. Many states maintain enduring legal and political relationships with diaspora populations through mechanisms such as dual citizenship, citizenship by descent, external voting rights, and continued diplomatic representation. These practices indicate that nationality can function as a transnational legal bond, provided that institutional and symbolic connections between the state and its population are maintained. In the context of climate-induced displacement, this implies that the continuity of nationality will depend less on physical proximity to territory and more on the capacity of the state to sustain meaningful

political, legal, and cultural ties with a geographically dispersed population. Nonetheless, this process is not without tension, as the gradual integration of displaced populations into host societies may complicate the long-term durability of these connections.

Closely linked to these questions is the issue of maritime sovereignty. For states such as Tuvalu, maritime zones represent a central component of both economic survival and legal identity. Under the United Nations Convention on the Law of the Sea, coastal states are entitled to an Exclusive Economic Zone extending up to 200 nautical miles from their baselines, within which they exercise sovereign rights over natural resources (United Nations, 1982). Despite its small landmass—approximately 26 square kilometers—Tuvalu controls an EEZ of roughly 900,000 square kilometers, making it a significant maritime state. The economic importance of this maritime domain is substantial, particularly in relation to tuna fisheries, which constitute a major source of government revenue (Food and Agriculture Organization, 2017).

The threat posed by sea-level rise is therefore not limited to territorial loss but extends to the potential erosion of maritime entitlements. Traditional interpretations of UNCLOS assume that baselines shift in accordance with changing coastlines, implying that maritime zones may contract as land is submerged. In response, Pacific Island states have increasingly advocated for the stabilization or "freezing" of maritime boundaries, whereby existing baselines would retain legal validity irrespective of physical changes to the coastline (Rayfuse, 2010). This approach seeks to preserve both economic resources and the legal status of affected states. For Tuvalu, maintaining maritime entitlements is essential not only for economic viability but also for sustaining its recognition as a state within the international system.

Within this broader legal and structural context, the 2023 Falepili Union Treaty between Tuvalu and Australia represents a significant contemporary development. Signed at the Pacific Islands Forum in Rarotonga, the agreement establishes a framework combining climate adaptation support, controlled migration pathways, and elements of security cooperation (Australian Govern-

ment, Department of Foreign Affairs and Trade (DFAT), 2023). One of its most notable features is the introduction of a migration pathway allowing up to 280 Tuvaluan citizens per year to relocate to Australia, thereby facilitating gradual population mobility while maintaining the formal continuity of the state. Crucially, the treaty affirms that Tuvalu's sovereignty and statehood will continue to be recognized regardless of the extent of population displacement:

> As part of the Falepili Union treaty, Australia has:
>
> - recognised for the first time in a legally binding treaty, Tuvalu's continuing statehood and sovereignty, notwithstanding the impact of climate-change related sea-level rise
> - committed to assist Tuvalu in response to a major natural disaster, health pandemic or military aggression
> - created a special visa pathway to support mobility with dignity, which will enable citizens of Tuvalu to come to Australia to live, work and study.
>
> There are also obligations under the Treaty to ensure Australian interests are protected and to facilitate the smooth operation of the migration pathway and increased security cooperation:
>
> - Tuvalu is obliged to ensure its immigration, passport, citizenship and border controls are robust and meet international standards for integrity and security
> - Tuvalu will mutually agree with Australia any partnership, arrangement or engagement with any other State or entity on security and defence-related matters in Tuvalu (Australian Government, Department of Foreign Affairs and Trade (DFAT), 2023).

At the same time, the treaty highlights the complex trade-offs associated with such arrangements. Certain provisions—particularly those requiring consultation with Australia on security and defense matters—raise questions about the extent to which Tuvalu's external autonomy may be constrained. While these provisions may reflect broader geopolitical dynamics in the Pacific region, they also illustrate the tensions between sovereignty and dependency that may arise in the context of climate-induced relocation. Nevertheless, it is

important to emphasize that Tuvalu entered into the agreement as a sovereign actor, suggesting that such arrangements may be understood as pragmatic responses to existential risk rather than as straightforward erosions of sovereignty.

Taken together, these empirical observations suggest that international law possesses a degree of latent flexibility in addressing the challenges of climate-induced deterritorialization, but that this flexibility remains uneven and insufficiently systematized. Historical precedents, such as the Baltic case, demonstrate that state continuity can be sustained without effective territorial control, yet they do not fully resolve the implications of permanent territorial loss. Similarly, legal doctrines on nationality and maritime entitlements provide partial tools for adaptation, but their application in conditions of large-scale displacement introduces new uncertainties. Contemporary institutional developments, exemplified by the Falepili Union Treaty, indicate that states are beginning to experiment with hybrid legal and political arrangements that decouple sovereignty from strict territoriality. However, these developments remain fragmented and context-specific. Overall, the analysis here underscores that while international law is not inherently incapable of accommodating deterritorialized statehood, it currently lacks a coherent and integrated framework capable of systematically addressing the legal, political, and institutional consequences of climate-induced territorial transformation.

Conclusion

This article has examined how climate change challenges the foundational assumptions of international law by destabilizing the traditional alignment between territory, population, and sovereignty. The case of Tuvalu illustrates that sea-level rise is not merely an environmental or humanitarian issue, but a structural transformation with far-reaching implications for the legal concept of statehood. The analysis demonstrates, first, that existing international legal doctrine does not provide a coherent framework for addressing the permanent loss of habitable territory. While the Montevideo criteria have

historically been interpreted with a degree of flexibility—particularly in cases of occupation or temporary territorial disruption—they were not designed to accommodate scenarios in which territory becomes irreversibly uninhabitable.

Second, the study highlights the central role of international recognition in sustaining state continuity. Historical precedents, such as the continued recognition of the Baltic states, indicate that legal personality may endure even in the absence of effective territorial control. In the context of climate-induced displacement, recognition by the international community may therefore become the primary mechanism through which statehood is preserved. Third, the analysis underscores the growing uncertainty surrounding nationality in situations of large-scale and potentially permanent relocation. While nationality has traditionally been understood as a legal bond reflecting a "genuine link" between individuals and the state, the dispersal of populations across foreign territories raises complex questions about the durability of this relationship over time.

At the same time, the emergence of new diplomatic arrangements suggests that states are beginning to experiment with institutional responses to these challenges. The Falepili Union Treaty between Tuvalu and Australia represents one of the first concrete attempts to reconcile population mobility with the continuity of sovereignty. Although such arrangements do not yet constitute a comprehensive legal framework, they indicate a shift toward more flexible, practice-based approaches to deterritorialized statehood. In this sense, Tuvalu can be understood as an early empirical test case for how international law might evolve beyond strictly territorial conceptions of sovereignty.

These findings carry important implications for the future development of international law. They point to the need for greater doctrinal clarity regarding the status of states facing permanent territorial loss, as well as the development of legal and institutional mechanisms capable of sustaining nationality, jurisdiction, and governance in conditions of displacement. Potential avenues include the recognition of deterritorialized forms of statehood, the adaptation of nationality regimes—particularly through dual citizenship

frameworks—and the creation of international agreements governing climate-induced mobility. Moreover, emerging models of shared or coordinated governance between host and displaced states may offer pragmatic solutions for managing jurisdictional and economic relations, particularly with respect to maritime resources under the United Nations Convention on the Law of the Sea.

Ultimately, the intersection of climate change and statehood presents a profound challenge to the existing international legal order. The case of Tuvalu demonstrates that this challenge is no longer theoretical but increasingly practical. As environmental transformations continue to reshape the conditions of state existence, international law will be required to adapt in ways that reconcile the persistence of political communities with the erosion of their territorial foundations. Whether such adaptation can be achieved within existing doctrinal frameworks or will require more fundamental rethinking remains an open question. What is clear, however, is that the future of statehood under climate change will depend not only on legal innovation, but also on the willingness of the international community to recognize and sustain new forms of sovereignty beyond territory.

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