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What Remains When Territory Disappears? On the Possibility of Climate Sovereignty

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ABSTRACT

As rising sea levels threaten to render low-lying island states uninhabitable, international law faces an urgent dilemma whether statehood persist without territory or not. The traditional idea of a statehood is called into question if an entire nation's landmass is submerged by increasing sea levels. Traditional legal frameworks, anchored in the territorial criteria outlined by the Montevideo Convention that provide no definitive guidance on this unprecedented scenario. This article proposes "climate sovereignty," a novel theoretical framework designed to address the challenges of climate-induced territorial loss. Climate sovereignty redefines statehood beyond fixed territory, emphasizing instead the continuity of a people, their governing institutions, and collective identity, even when physical territory is submerged or uninhabitable. By shifting international legal recognition from a land-centric approach to a community-based framework rooted in self-determination, climate sovereignty offers a legal pathway responsive to the evolving realities of vulnerable states. Through illustrative cases of Tuvalu and Kiribati, this article demonstrates the normative justification and legal viability of recognizing deterritorialized statehood within contemporary international law. Ultimately, this article seeks to advance international law's response to an unprecedented existential threat, advocating for proactive recognition mechanisms and urging a fundamental reconsideration of sovereignty itself. It argues that, in a climate-altered world, nationhood must not disappear alongside territory.

INTRODUCTION

Climate-induced sea-level rise is compelling international law to address previously overlooked questions. In low-lying island states such as Kiribati and Tuvalu, the rising ocean is not only eroding coastlines but also undermining the foundations of legal identity (Yamamoto and Esteban 2013; IPCC 2021). What happens to a state when the land that defines its territory is gradually submerged? This is no longer an abstract thought experiment. An unfolding reality calls into question the basic assumptions

behind the legal concept of statehood. At the center of this dilemma lies the Montevideo Convention's definition of a state, which requires a permanent population, a defined territory, a government, and the capacity to engage in international relations (Montevideo Convention 1933; Crawford 2006). Among these, territory has traditionally been viewed as indispensable. Yet this assumption—rarely scrutinized until recently—now appears fragile. As Baldwin (2023) notes, the Montevideo model begins to falter when applied to communities whose land is becoming physically uninhabitable. The Convention does not account for what happens when the loss of territory is not due to war, annexation, or legal extinction, but the slow advance of the sea. The legal consequences are potentially severe: the loss of international personality, the forfeiture of maritime rights, and the dissolution of treaty capacity (Stoutenburg 2015). While the international legal order has responded to many forms of crisis over the last century, it has not yet developed a consistent or coherent response to the possibility that a state might physically disappear, even while its people, government, and political identity remain intact. Various proposals have emerged in response to this looming legal vacuum (Docherty and Giannini 2009; Carlarne 2014). Some suggest preserving maritime baselines regardless of physical land loss, while others propose maintaining state recognition even after a state's population relocates. There are also discussions around governments in exile, the creation of digital nations, and fixed zones for legal continuity. These ideas reflect growing awareness, but they often stop short of addressing the core problem: most of these approaches rely on exceptional recognition, political goodwill, or provisional workarounds. Few offer a principled account of how sovereignty itself might be redefined when territory is no longer a given.

This article takes that question as its starting point. It proposes the concept of climate sovereignty—a theoretical framework for understanding how a state may retain its legal identity even in the absence of permanent, habitable territory. Rather than treating territorial loss as the end of statehood, this approach suggests a shift in legal focus from the physical dimensions of sovereignty to its functional and relational aspects (Miller 2007). Climate sovereignty emphasizes the continuity of a people and the institutional structures that allow them to act collectively, regardless of geography. It offers a structured alternative to ad hoc solutions, grounded in the idea that sovereignty, at its core, is not simply about land but about political self-determination and the ongoing capacity to represent a community under international law. The idea that sovereignty could be decoupled from territory is not entirely without precedent. International law has, on rare occasions, recognized the continued existence of states or governing entities despite the loss of effective territorial control. Historical cases—such as governments in exile during wartime or the legal personality of the Holy See—demonstrate that a stable land base is not always a precondition for recognition (Burkett 2011). Yet, these examples have generally been treated as anomalies, justified by unique political or religious circumstances rather than as signals of a broader legal possibility. More importantly, they have not offered a coherent framework for how international law might respond to slow-onset, irreversible territorial disappearance caused by environmental change.

Climate sovereignty seeks to address that gap. It draws from the intuition that sovereignty is ultimately about people—their ability to act collectively, preserve their identity, and participate in global affairs—even when their physical environment can no longer sustain them. In doing so, it reframes sovereignty not as a static condition tied to geography but as a set of relationships: between people and institutions, between governments and legal systems, and between displaced nations and the international community (Miller 2007). This approach does not reject the foundations of statehood but suggests that they can—and must—evolve. The idea is not to dissolve the link between law and land entirely but to

recognize that in the face of climate-induced loss, that link cannot remain absolute. The legal challenges of territorial loss are inseparable from the human consequences it brings. In many Pacific societies, land is not only a political resource but a living foundation for cultural identity, ancestry, and belonging (Farbotko and Lazrus 2012). When territory disappears, what is at stake is not just sovereignty in the formal sense but the continuity of meaning that land holds for the people who inhabit it. Existing legal frameworks for displacement or statelessness offer little protection for that kind of loss. While the right to self-determination is recognized under international law, its application presumes that a people still possess a space from which to exercise it. The case of climate-threatened states complicates this assumption. It calls for legal thinking that can bridge institutional continuity and cultural survival—two aspects of sovereignty that have rarely been addressed together.

This article takes climate sovereignty as a starting point for that effort. It develops the concept not as a technical fix but as a way to rethink the relationship between people, territory, and law in the context of climate disruption. The following sections explore how international law has traditionally linked statehood to land, why those links are being stretched to their limit, and how a shift in conceptual focus might offer a more just and durable response. Rather than offering a single blueprint, the article aims to contribute to an ongoing conversation about how sovereignty must adapt so that the disappearance of land does not erase the rights, identity, or recognition of the people who called it home.

1. WHY EXISTING LEGAL FRAMEWORKS FALL SHORT

The prospect of state disappearance due to climate change has prompted a range of legal efforts to repurpose existing frameworks in the hope of preserving sovereignty beyond territory. These proposals reflect more than institutional pragmatism; they express a normative conviction that international law, despite its limitations, must provide stability when statehood's physical foundations erode. Yet while elements of the legal system have responded in part, none fully resolve the structural question at hand. They address symptoms—maritime loss, population displacement, institutional disruption—but do not supply a cohesive account of how statehood endures when territory vanishes. What follows is a review of these partial responses and the limits that render them insufficient.

UNCLOS:

Among the more widely discussed proposals is the effort to fix maritime baselines under the UN Convention on the Law of the Sea (UNCLOS). Low-lying island states face a double threat: not only the disappearance of land, but also the collapse of maritime zones—territorial seas, exclusive economic zones (EEZs), and continental shelves—whose legal status depends on coastlines. Under current rules, baselines are ambulatory, shifting as the coastline retreats. This could result in the cascading loss of maritime entitlements triggered by environmental change. In response, several Pacific Island states, backed by legal scholars, have advocated for "freezing" existing baselines and maritime claims, regardless of future inundation (Rayfuse 2010; Pacific Islands Forum 2021).

This proposal is both practical and normatively resonant. As Mayer (2016) and Zahar (2017) note, the ambulatory baseline rule was never designed for gradual, irreversible submersion. Locking in maritime boundaries could help protect not only economic rights but also symbolic continuity, allowing threatened states to retain a presence in international law. Some island states have already declared an

intention to preserve maritime zones permanently, even as land disappears. This reflects a shift toward legal stability over geographic precision—a logic grounded in equity and environmental justice ((Wang 2023). Still, fixed baselines address only part of the problem. They may secure access to marine resources but cannot by themselves sustain the legal identity of a disappearing state. Even if UNCLOS is interpreted or amended to accept frozen claims, the sovereignty question remains unresolved. Zahar (2017) cautions that treating EEZs as freestanding rights—detached from a viable state—risks reducing sovereignty to mere extractive entitlement. Moreover, UNCLOS is silent on questions of population, governance, or legal personality. A state may retain a maritime footprint while lacking the institutional and social grounding that underpins international subjectivity. In this light, baseline strategies are protective but partial.

Governments in Exile:

Other approaches look to historical precedents of displaced governance. The example of governments-in-exile—especially during the Second World War—suggests that states may persist without territory, provided their institutional structures remain intact. Exiled regimes such as those of Poland, Norway, and France retained international recognition and operated diplomatically despite occupation. By analogy, scholars have proposed that island states like Tuvalu or Kiribati could relocate their governments abroad and continue to function as sovereign actors (McAdam 2012, 130). This reasoning draws on a longstanding presumption in international law: that once statehood is established, it is not easily undone. Talmon (1998) and Vidmar (2012) have documented cases in which continuity was preserved despite ruptures in territory, population, or government. A government-in-exile that issues passports, signs treaties, and represents a polity may, in theory, maintain legal identity. Under this model, sovereignty becomes portable—lodged in institutions rather than land.

Yet here, too the analogy frays under closer scrutiny. Wartime exile assumed a temporary absence and eventual return. Climate-induced disappearance allows no such assumption. When land is not occupied but lost, the legal fiction of deferred sovereignty loses plausibility. Crawford (2006, 700) notes that while international law accommodates disruption, it offers few precedents for indefinite statehood in the absence of core attributes. Practical governance challenges compound the legal uncertainties. How would an exiled government legislate, enforce, or engage a population dispersed across multiple jurisdictions? Over time, integration into host societies may dilute collective identity and undermine political cohesion. Sovereignty may persist formally while becoming hollow in function. As the institutional links between people and government weaken, recognition may preserve a name but not a polity. In light of these difficulties, some have proposed shifting the legal focus from collective sovereignty to individual dignity. Human rights frameworks offer a different mode of continuity—grounded in the protection of persons rather than the persistence of states. These frameworks ensure that even if a state disappears, its people retain certain protections under international law (Knox 2009).

Human rights law:

Yet these protections are incomplete. Human rights law is designed to safeguard individuals, not collectivities. It conceptualizes climate displacement as a humanitarian crisis, not a constitutional rupture. Most climate-displaced persons fall outside the scope of the 1951 Refugee Convention, which requires a showing of persecution. As McAdam (2012, 41) observes, this leaves many without access to effective international protection. Recent developments point to limited progress. The Nansen Initiative and the

Platform on Disaster Displacement promote cooperative frameworks for environmental migrants. The UN Human Rights Committee has suggested that non-refoulement obligations may apply where return would expose individuals to uninhabitable conditions (UNHRC 2020). But these are soft law instruments—fragmented, non-binding, and oriented toward individuals. They provide no clear legal basis for maintaining a people as a political community once their constitutional order is lost.

The structural limits become clearer in practice. Resettlement depends on the discretion of the receiving states. There is no right to relocate with one's legal system, language, or institutional continuity intact. As Mayer (2016) notes, human rights regimes are well suited to protecting persons from the state but poorly equipped to protect the state itself. A displaced population may survive but may no longer function as a political subject. In this light, statelessness—both legal and symbolic—emerges not just as a risk but as the likely outcome, especially when international law fails to protect collective identity beyond territorial attachment (Anaya 1996). For some scholars, recognition offers a last resort. Sovereignty, they argue, might persist if the international community is willing to treat deterritorialized states as continuing entities. Burkett (2011) suggests that "nations ex situ" could survive through sustained recognition, even absent territory. This view finds partial support in the experience of entities like the Holy See or various governments-in-exile, which have maintained legal presence despite institutional rupture (Crawford 2006; Vidmar 2012). But these cases were either temporary or exceptional. They do not constitute a generalizable doctrine. Recognition is not a legal right—it is a political decision. No state is obligated to recognize another once it ceases to meet conventional criteria for statehood. Even where granted, recognition does not restore full political function. It may preserve formal visibility—a seat at the UN, participation in treaties—but cannot guarantee effective governance or cultural continuity. The sovereign may remain visible, but its institutional reality may dissolve. Most critically, recognition provides no legal security. It can be extended, withdrawn, fragmented, or ignored. As Wang (2023) cautions, symbolic solidarity can fade into procedural silence. If recognition becomes the sole support for state survival, its fragility becomes a liability.

The Territorial Assumption in International Law

International law has never formally declared that a state must have territory to exist. But in practice—and doctrine—that assumption runs deep. It is present in the way maps organize political space, in how treaties define borders, and in the legal architecture of sovereignty that emerged after Westphalia (Shaw 2017). Territory, more than any other element, has anchored the idea of statehood in both symbolic and functional terms. The Montevideo Convention of 1933 made that anchor explicit. Alongside population, government, and the capacity to enter into relations with other states, it named "a defined territory" as a requirement for statehood (Montevideo Convention 1933, Art. 1). Though the treaty was regional in origin, its criteria came to serve as a shorthand for the customary legal understanding of what a state is—or must be (Shaw 2017). Behind that codification lay a long lineage of legal thought. Max Huber, in the Island of Palmas arbitration, had defined sovereignty in terms of independence exercised over "a portion of the globe," making control over land a core indicator of legal personality. The logic was clear: if sovereignty is authority, and authority requires jurisdiction, then jurisdiction needs a place to take effect. A state without land would seem to be a contradiction in terms.

There are reasons why this assumption became so durable. Territory does more than outline the

physical extent of a state—it frames the legal and political space in which authority takes shape. First, territory defines jurisdiction. It sets the boundaries within which a state can apply its laws, enforce decisions, and exercise monopoly over violence (Klabbers 2013). A government needs somewhere to govern. Without a defined space, the distinction between internal and external authority begins to dissolve, making it difficult to trace the limits of legal obligation or sovereignty.

Second, territory has long been tied to the identity and continuity of the state itself. A state, in the classical view, is not just a set of institutions but a community rooted in place. Territorial permanence was seen as a proxy for political permanence. This view helped stabilize the post-colonial international order: states inherited their borders, however arbitrary, and those borders became the vessel through which political legitimacy flowed. Recognition, membership in the United Nations, and treaty-making capacity all presupposed territorial existence—even if the population was scattered or the government in flux (Stoutenburg 2015, 34–35).

Third, territory contributed to the practical stability of the international system. It served as a reference point for mapping rights and responsibilities, resolving disputes, and allocating access to resources. Whether in border arbitration, maritime delimitation, or international humanitarian law, the idea that states have "somewhere" remained fundamental (Kelsen 1945). Even in cases where states lost control of parts of their land—through war, occupation, or collapse—the assumption was that the territory still existed and that sovereignty might one day return to it. What international law has not had to confront, at least until now, is the possibility that the land itself might be lost. This implicit consensus, which regards territory as indispensable to legal statehood, has rarely been questioned. Even in moments of crisis, such as exile, occupation, or border erosion, international law has tended to treat territory as a latent constant: the legal "container" of sovereignty, waiting to be reactivated when control is restored. But climate change introduces a different kind of disruption. It does not displace governments through war or dissolve states through consent. Instead, it threatens to erase the material basis of statehood altogether.

Sea-level rise presents a scenario that existing legal frameworks were not built to absorb. For low-lying island states like Tuvalu or Kiribati, the prospect is not only of temporary loss or diminished control but of permanent uninhabitability—first through saltwater intrusion, then infrastructural collapse, and eventually physical submergence. If and when that happens, these states' territorial foundation may vanish. As Rayfuse (2010) observes, this is not a matter of occupation or failed government, but the gradual unmaking of a state's geography. With it, international law's reliance on territory as a precondition for legal personality begins to fracture. International law does contain examples of states continuing to exist without exercising control over their territory. Governments in exile, like those of Poland during World War II or Kuwait during the 1990 Iraqi occupation, retained recognition even when displaced. In such cases, sovereignty persisted de jure, even if suspended de facto. The territory, though inaccessible, still existed—and crucially, still belonged to the state. That distinction matters. These cases presumed that land remained legally assignable, recoverable, and central to the state's future. The legal personality of the government-in-exile hinged on the assumption that one day it would return. Similarly, entities like the Holy See or the Sovereign Order of Malta complicate the territorial model, but they do not displace it. Their recognition rests on religious, historical, or institutional particularities, not on a broader rethinking of how sovereignty might function without land (Crawford 2006, 221–23).

In contrast, the climate crisis offers no clear path of return. The loss it introduces is not temporary or reversible, but potentially permanent and physical. As Stoutenburg (2015, 3) points out, modern legal history has no precedent for the complete disappearance of a state's land due to environmental change. If that happens, and if a people are forced to relocate across borders, no doctrine tells us what happens to the state they leave behind. Recognition, in that case, becomes a legal and political choice—one for which there is no consistent guide. Still, not all scholars agree that the loss of territory would necessarily dissolve statehood. Crawford (2006, 700) emphasizes that once established, a state is not easily extinguished—even when it undergoes dramatic changes in population, government, or land. International law, he notes, tends to favor continuity. This is reflected in the treatment of fragmented or occupied states and in the reluctance to declare extinction without clear acts of succession, merger, or voluntary dissolution. However, that presumption of continuity, while powerful, is not without its limits. It presumes that the core features of the state remain recoverable or legally intact. When territory disappears not by force or choice but by natural erosion, the conditions shift. There is no roadmap for a state that loses the space within which its sovereignty has always been imagined. As Rayfuse (2010) and Burkett (2011) have argued, the Montevideo model does not accommodate this form of loss. It was never designed for it. This is not simply a technical gap. It reflects a deeper conceptual rigidity: a belief that sovereignty requires soil. Climate change forces a return to that assumption—not only to see where it came from but also to ask whether it should still hold. If the law cannot imagine a people governing themselves without a fixed space beneath them, then it risks failing the very communities whose futures it must now confront.

2. CLIMATE SOVEREIGNTY AS A LEGAL FRAMEWORK

Climate sovereignty denotes a state's sustained legal existence—including its international personality, sovereign rights, and institutional identity—even after the complete loss of territory caused by climate change. The concept is not proposed as a sui generis status but as a doctrinal extension of existing principles of state continuity, adapted to the unprecedented scenario of permanent and involuntary submergence. Under orthodox international law, the Montevideo Convention identifies four criteria for statehood: a permanent population, defined territory, a government, and the capacity to enter into relations with other states (Montevideo Convention 1933, art. 1). These criteria were drafted to define the creation of states, not their continued existence under exceptional threats. As Crawford (2006, 702–3) observes, the Montevideo standard is flexible in practice, yet no provision currently clarifies whether a state that loses its entire territory to environmental forces retains its legal status. The tension between formal criteria and the absence of extinction rules creates a doctrinal gap—a problem previously noted in exile-related jurisprudence.

The proposed framework builds on the international legal presumption of state continuity, which maintains that a state, once established, does not cease to exist merely because it no longer fulfills certain factual criteria. Marek's analysis of governments in exile underscores that legal personality can survive without territorial control, provided an institutional structure and collective identity remain in place. There is no principled basis in current international frameworks for treating involuntary territorial loss as a sufficient ground for legal extinction (ILC 2001, Draft Articles on State Responsibility). These

interpretations do not challenge the traditional doctrine but expose its capacity to absorb non-territorial forms of legal presence. Climate sovereignty, in this reading, rests on a tripartite foundation for continued statehood under conditions of permanent climate-induced submergence. This framing aligns with broader trends in international law that conceptualize sovereignty as a relational and functional structure rather than a fixed threshold (Kingsbury 1998). Second, a functioning governmental structure must exist to represent that community and maintain institutional coherence. Third, the recognition of that continuing claim by the international community—though not legally guaranteed—must be sufficiently sustained to preserve international legal personality. This formulation does not negate the importance of territory, but it reframes its loss as a condition that shifts legal analysis toward institutional persistence and collective self-definition rather than geographic presence (Talmon 1998).

While not entirely novel, this view draws partial support from scattered precedents. The Sovereign Order of Malta, for instance, has retained an international legal personality despite the absence of sovereign territory (Jain 2014, 27–28). Wartime governments-in-exile likewise sustained state functions and recognition without physical control over their homeland. These cases illustrate that legal personality, as distinct from territorial jurisdiction, can persist under exceptional circumstances. Climate sovereignty does not seek to equate these examples but rather to systematize their underlying principle: that sovereignty, once fractured from land by irreversible climate loss, may still be carried by institutional coherence and a politically self-aware community. This reframing is both conceptually plausible and normatively urgent. Yet its legal implications remain under-theorized. If climate sovereignty is to function as a doctrine of continuity under conditions of territorial loss, then its relationship to existing legal norms must be carefully examined. The aim is not to discard current frameworks but to interrogate their elasticity. What, if anything, in the current law affirms or resists the continuity of a state without land?

One starting point is the Montevideo Convention itself. While widely cited as the benchmark for statehood, it was never intended to address cases of irreversible environmental loss. Its territorial requirement is often read as axiomatic, yet neither customary law nor treaty law explicitly states that the absence of territory extinguishes legal personality. The resulting ambiguity leaves states vulnerable to an interpretive vacuum at precisely the moment when they face existential risk—a vulnerability that reflects deeper historical biases embedded in dominant sovereignty discourses (Chimni 2004). Marek's (1968) principle of state continuity offers partial support for survival without territory, but its application has been limited to cases of foreign occupation or annexation, not natural submergence. The doctrine rests on the idea that sovereignty is temporarily obstructed, not fundamentally disrupted. Climate change complicates this distinction. When territory is not seized but lost—without fault and return—what counts as continuity?

This is not merely a conceptual puzzle. Without a legal mechanism for continuity, displaced nations face the prospect of losing their treaty rights, international representation, and the legal bond of nationality. As the ILC has noted (2022, para. 201), there is currently no clear protection against the risk of de jure statelessness for entire populations. While existing doctrines presume that states continue through crises, they were not built to withstand the slow erosion of coastlines. Climate sovereignty insists that the basis for continuity must expand accordingly. There are systemic implications as well. If international law permits the silent extinction of a sovereign state due to environmental collapse, it

normalizes disappearance as a lawful outcome (Crawford and Baetens 2023). For many small island states already marginalized in global decision-making, this legal silence compounds structural disadvantage (Betzold 2015). That sets a dangerous precedent—not only for low-lying island states but for the coherence of the legal order. A doctrine of climate sovereignty aims to close that space of indeterminacy. It proposes not a break from international law but a necessary adaptation to preserve its most fundamental commitments: to dignity, stability, and the enduring subjectivity of peoples in international life.

If climate sovereignty is to operate within international law, it must do more than appeal to moral urgency. It must demonstrate how the foundational elements of statehood—territory, population, government, and international capacity—can be interpreted in ways that accommodate continuity under conditions of permanent territorial loss. This does not require abandoning the Montevideo framework, but it does require reading its criteria as functional rather than literal. Take the question of territory. Nothing in the Montevideo Convention specifies how much territory is required or in what form. Historical practice includes states with fragmentary or contested land, and the law has tolerated considerable flexibility. What climate sovereignty proposes is an interpretive shift: that where a state's territory has become physically uninhabitable through no fault of its own, the existence of prior territorial attachment—combined with continued self-identification—can suffice to satisfy the criterion. This reading would align with the approach already suggested in efforts to preserve maritime entitlements through fixed baselines (Pacific Islands Forum 2021). In both cases, legal stability is prioritized over geographic precision.

A similar logic applies to population. The permanent population criterion is often assumed to require physical residence within the state's territory. But this, too is more convention than rule. Diasporic nations, governments in exile, and postcolonial transitions have all shown that the legal community does not depend on physical co-presence (Crawford and Baetens 2023). Climate sovereignty builds on this by proposing that a national population dispersed by climate displacement can remain a "people" for statehood, provided that institutional, legal, and symbolic bonds endure. Citizenship laws, administrative capacity, and cultural continuity—rather than geographic density—become the operative markers of state identity. The requirement of government, too, is adaptable. International law has long recognized that governments may function in exile or without territorial control. What matters is not the physical location but the capacity to represent, organize, and act. Climate sovereignty formalizes this possibility: a relocated or digitalized government, operating through transnational mechanisms, may continue to fulfill the core functions of statehood (Vidmar 2012). This idea draws strength from existing practices—such as Estonia's digital governance model or Tuvalu's initiative to preserve its institutions in virtual form—but grounds them in legal theory rather than symbolic innovation.

The fourth Montevideo element—the capacity to enter into relations with other states—is, in some ways, the least problematic. A state that retains recognition, signs treaties, participates in international organizations, and represents its citizens abroad continues to act as a subject of international law. Climate sovereignty does not alter this criterion; it relies on it. The capacity for international engagement becomes not only a proof of continuity but a condition for it. In that sense, sovereignty is reinforced not by territory but by relational presence in the legal order. Taken together, these reinterpretations do not dilute the idea of statehood. They clarify its purpose. The Montevideo criteria were never meant to be metaphysical

tests (Pacific Islands Forum 2023). They are tools to assess whether a community can function as an international legal person. Climate sovereignty pushes that function to the foreground. It insists that when geography fails, legal design must step in—not to invent states where none exist, but to ensure that existing ones are not extinguished by forces beyond their control.

Climate sovereignty is often grouped with existing proposals for addressing climate-induced state disappearance. However, its purpose and legal structure are different. Rather than offering a workaround or technical supplement, it confronts the core legal question: what must be preserved, and how, when a state loses its land. Burkett's Nation Ex-Situ proposal anticipates the possibility of continuity but does so through the idea of new arrangements—such as international trusteeship or regional guarantees (Burkett 2011). This places the displaced nation in a dependent position, requiring external support to maintain its status. Climate sovereignty takes a different view: it asserts that a people already entitled to statehood do not lose that entitlement when their land disappears. Continuity should not depend on institutional invention or external benevolence but on the enduring rights of a political community—a normative position increasingly echoed in climate justice scholarship (Crawford and Baetens 2023).

Proposals to freeze maritime baselines—now reflected in state practice across the Pacific—focus on protecting economic entitlements under UNCLOS. Yet they implicitly assume that the state itself remains to claim those entitlements. Climate sovereignty addresses the prior question: How does legal personality endure when the land base disappears? Without answering that, maritime rights risk becoming detached from any subject to hold them. In this sense, baseline preservation is a defensive measure; climate sovereignty is a structural one. The analogy to governments in exile is also limited. Those governments are typically displaced by force and operate under the assumption that return is possible. Climate-displaced nations, by contrast, face permanent deterritorialization with no wrongful actor to invoke. Climate sovereignty does not seek to replicate the exile model. It builds a distinct legal logic: continuity without territory and the expectation of return (Vidmar 2012). Symbolic efforts—like Tuvalu's digital nation project—reflect the will to preserve national identity. However, symbolism is not legal continuity. A state's presence in the international system depends not on memory but on recognition, rights, and institutional capacity. Climate sovereignty provides the legal doctrine that digitization alone cannot supply. It does not merely commemorate statehood; it protects it.

Climate sovereignty reinterprets these scattered precedents into a principled and prospective legal doctrine: that a people's sovereign status should not be extinguished solely by the physical disappearance of their territory (Crawford and Baetens 2023). This proposition, however, remains doctrinal in character. Whether it can be translated into legal continuity within the actual structures of international law depends not only on interpretive plausibility, but on the institutional and political conditions through which recognition, participation, and personality are sustained.

3. APPLYING CLIMATE SOVEREIGNTY IN PRACTICE

For climate sovereignty to transition from normative aspiration to legal reality, it must integrate coherently into the existing framework of international law. The question is not one of political morality but of legal structure: Can existing doctrines be interpreted to sustain the continued statehood of a country that has irreversibly lost its territory to rising seas? (Vidmar 2012). This inquiry does not call for new

institutions or formal amendments. Instead, it concerns the flexibility of categories such as recognition, state continuity, and legal personality whether they can stretch to meet a reality they were never designed to confront.

One possible entry point lies in how states themselves articulate continuity through their domestic legal orders. Tuvalu's 2023 constitutional amendment—particularly Article 2A—declares that the State "shall remain in perpetuity… notwithstanding the impacts of climate change or other causes resulting in loss to the physical territory." It further affirms that maritime boundaries "shall not be challenged or reduced due to any regression of the low water mark." These provisions do not directly modify international criteria for statehood, but they express a deliberate legal position, one meant to frame Tuvalu not as a disappearing object but as a persisting legal subject. The constitutional act anticipates ambiguity and attempts to fill it from within, drawing on a logic familiar from the jurisprudence of governments-in-exile, where legal identity is preserved through institutional order rather than geographic control (Talmon 1998). Here, the claim is not to restitution, but to continuity—anchored in a self-declared legal identity that seeks recognition without precondition (Pacific Islands Forum 2023).

This interpretive move gains coherence through regional alignment. In 2023, the Pacific Islands Forum adopted a declaration stating that international law "supports a presumption of continuity of statehood" in the face of climate-related sea-level rise. The document does not propose new legal categories. Rather, it affirms those existing principles—such as self-determination, dignity, and equity—provide sufficient grounds to maintain legal personality despite territorial disappearance (Vidmar 2012). As a form of collective legal interpretation, the declaration seeks to clarify what the law already allows. In doing so, it follows a path recognized by the International Court of Justice: the formation of customary norms may begin with the consistent articulation of legal views, especially when offered by states with a direct stake in the matter (ICJ 2010, paras. 345–47). Whether such efforts can crystallize into law depends in large part on how third-party states respond through their recognition practices or institutional behavior (Byers 1999).

This brings the problem back to recognition. International law offers no definitive rule on whether the loss of territory extinguishes statehood. Recognition remains a discretionary function—structured by legal expectation but ultimately executed through political judgment (Crawford 2006, 95–102). States like Tuvalu can construct compelling legal narratives, yet their legal identity depends on whether others are willing to engage with them as sovereign equals. Here, the record of international practice is ambiguous. Entities such as Taiwan and Palestine have been variously recognized and excluded, not always by objective criteria but often in response to strategic or geopolitical concerns (Vidmar 2012). These cases underscore the fragility of legal personality when it hinges on recognition. They also remind us that persuasive claims may still falter if the institutional environment declines to absorb them.

Failure to recognize climate-threatened states has consequences beyond symbolism. The loss of territory, if followed by the loss of legal status, could result in the disappearance of treaty rights, institutional memberships, and diplomatic capacity. Individuals from such states might retain national identities under domestic law, yet face uncertain status abroad—neither citizens of a functioning state nor formally stateless. One may ask: if Tuvalu becomes physically uninhabitable, will it retain its UN seat? Will it remain a party to multilateral treaties such as the UNFCCC or UNCLOS? International law

currently offers no clear process to confirm or reject such continuity (Talmon 1998). This institutional silence risks producing a legal vacuum in which the collapse of territory is quietly mirrored by the erosion of sovereign identity (Pacific Islands Forum 2023).

Some people think that climate sovereignty is a bad idea because it could hinder international collaboration and make it harder for the world to combat climate change. Some worry that governments may put their own economic interests ahead of global climate goals if national sovereignty is prioritised, which would lead to less accountability and make it harder to implement effective climate measures. On top of that, there is the argument that climate sovereignty stands in the way of the legally enforceable international agreements and protocols that would be vital to take effective action on the climate.

Problem with Global Cooperation:

Prioritising national economic development and short-term benefits over long-term climate goals is a risk that can arise from an emphasis on national sovereignty. Important steps towards combating climate change, such as investing in renewable energy sources and setting strict emission reduction targets, may be impeded as a consequence.
Governments' resistance to binding commitments or their pursuit of loopholes to evade their obligations, both of which stem from an emphasis on national sovereignty, can undermine the effectiveness of international climate agreements. A failure to accomplish substantial reductions in emissions and an absence of responsibility may result from this.
Obstacles to fair burden-sharing and equity: Developed nations may claim they shouldn't be punished for previous emissions while developing nations are free to keep emitting at higher rates, according to the idea of climate sovereignty (Klabbers, 2020).

Destroying International Agencies:

State sovereignty may make states less likely to accept blame for climate change and act to mitigate it, leading to a lack of accountability. As a result, states may not be held responsible for their climate policy, and accountability may suffer. The idea of climate sovereignty raises concerns about the potential erosion of international law due to the potential erosion of adherence to international climate change norms and responsibilities. While climate change has the ability to intensify preexisting tensions and conflicts, the idea of climate sovereignty has the ability to further complicate matters by fostering fiercer rivalry over resources and territories.

Threats to Sovereignty and Statehood:

Migratory patterns brought on by climate change: As a result of changing weather patterns, people may be compelled to leave their homes and seek refuge in other parts of the world. Concerning the rights of displaced people and the maintenance of statehood and sovereignty, this might lead to complicated political and legal concerns. Particularly in low-lying coastal regions, complete territory may vanish as a result of climate change. The capacity of a state to preserve its political and legal status, as well as the very concept of statehood, may be called into doubt by this. An already polarised society may see its

political and social divisions deepen as a result of climate change, which might spark calls for more independence or even breakaway from current states (Klabbers, 2020). Although climate sovereignty is a tempting idea in some places, it can also make international cooperation and global climate action very difficult. The efficiency of international accords, accountability procedures, and the risk of conflict and social instability can all be undermined by an emphasis on national sovereignty.

Even so, the legal system is not entirely closed to adaptation. Doctrines of continuity, the functional flexibility of treaty participation, and the procedural discretion of international organizations all offer interpretive footholds. The principle of effective participation—already embedded in treaty law and multilateral practice—could sustain a deterritorialized state's legal personality if applied purposive intent (Chinkin 1989). In this sense, climate sovereignty does not disrupt the system but tests its willingness to evolve. It asks whether the law can interpret its categories in light of existential risk without needing to rewrite them from scratch. The response need not be revolutionary. It requires, rather, a willingness to read silence as possible and treat continuity not as a geographic fact but as a legal stance that deserves engagement.

4. CONCLUSIONS

This article has examined how the legal notion of statehood may respond to a scenario not previously contemplated within the doctrinal tradition of international law: the complete and permanent loss of a state's territory due to climate change. Through the framework of climate sovereignty, it proposed a way to understand such loss not as the end of legal personality but as a condition that may be addressed through the reinterpretation of existing principles. The focus has remained on continuity—not as an assertion of legal exceptionalism, but as a potential outcome of applying current doctrines of recognition, personality, and self-determination to a new factual context. In assessing whether international law can accommodate this proposition, the analysis has pointed to a degree of interpretive openness. States such as Tuvalu have begun to articulate legal continuity through constitutional instruments, and regional declarations suggest an emerging normative consensus that the disappearance of territory should not be equated with the extinction of sovereignty (Pacific Islands Forum 2023). However, the legal consequences of these claims remain uncertain. International law does not provide a clear mechanism for confirming or denying the continuing statehood of deterritorialized polities, and recognition remains politically contingent. The system is procedurally silent, and this silence allows for flexibility but also creates a risk of incoherence or selective absorption.

The implications of this uncertainty are likely to become more concrete as affected states move closer to physical uninhabitability. Whether climate sovereignty will be accepted as a valid legal position may depend less on theoretical persuasiveness than on the willingness of other states and institutions to treat such claims as actionable. Participation in international organizations, treaty continuity, and diplomatic recognition will serve as the practical tests of interpretive acceptance (Vidmar 2012). At present, the conditions for such recognition remain undefined. Whether this ambiguity will be resolved through gradual accommodation or remain unaddressed will reveal much about the capacity of international law to adapt without formal transformation. Unlike questions of aggression, secession, or decolonization, climate-induced deterritorialization presents no adversarial party. The absence of a violating actor removes the legal anchor typically used to preserve continuity. What remains is the

interpretive will of the system itself its ability to acknowledge new forms of disruption without waiting for a corresponding rule to emerge. It is significant to know that how the world community responds to the threat of climate change will determine its actual effect on national sovereignty. Treaties and decisions of international courts and arbitral tribunals establishing marine boundaries may be unaffected by these changes. In this context, climate sovereignty is less a test of doctrinal innovation than of legal self-awareness examining whether international law can recognize its own flexibility to accommodate disappearance without dissolution.

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