

**Global Responsibility to the Sovereignty of Sinking Island States Due to  
Climate Change: A Study in a Cosmopolitan Law**

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**Abstract**

Sinking Island States represent a tangible manifestation of the impacts caused by climate change. According to Article 1 of the Montevideo Convention of 1933, these states face the threat of losing their sovereignty due to not meeting the territorial requirements outlined in the convention due to sea level rise. Given that this phenomenon arises from the collective actions of countries worldwide concerning climate change, this issue must be elevated to a global issue and addressed collectively. By adopting a cosmopolitan law approach, this research seeks to analyze how the international community can collaboratively overcome this challenge through sustainable recognition and efforts such as the creation of new international legal instruments, the initiation of artificial islands, land acquisition, and the establishment of ex-situ states in accordance with the cosmopolitan law approach. The research method employed is normative juridical and comparative studies among Sinking Island States. Utilizing data collection through a literature review, this study aims to identify cosmopolitan laws that can guide the formation of a global legal framework to protect the sovereignty of Sinking Island States.

**Keywords:** Global Responsibility, Sinking Island States, Climate Change, Sovereignty & Cosmopolitan Law.

**Introduction**

Climate change has become a global concern (Abbass et al., 2022). This concern has transformed into an international issue as the impacts of this phenomenon become increasingly evident in our daily lives. The effects of this phenomenon can be scientifically demonstrated by the increase in the world's average annual temperature by 1.1°C for 2011-2020, a significant rise compared to 1850-1900 (Yin et al., 2024).

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The United Nations Framework Convention on Climate Change (UNFCCC) acknowledges a solid correlation between human activities and natural processes, which gives rise to the climate change phenomenon (Cappelli et al., 2021). Furthermore, Trenberth 2018 stated that human activities, especially burning fossil fuels that produce carbon dioxide, contribute significantly to global warming and climate change (Trenberth, 2018). This demonstrates that the causes of climate change can stem from various sources, including natural factors, human activities, and a combination of both.

Naturally, climate change affects the sea level rise. This is due to the processes triggered by climate change, such as ocean warming, which causes the melting of polar ice caps, leading to continuous impacts like thermal expansion that contributes to sea level rise and changes in ocean currents (Nerem et al., 2018). For some regions of the world, this rise in sea levels may not be a significant issue. However, for countries located in the Pacific, Indian, and Caribbean Oceans that are geographically disadvantaged, this rise poses a serious threat. These vulnerable countries are categorized as Small Island Developing States (SIDS).

In the current situation, the rising sea levels have potentially alarming impacts on Small Island Developing States. These countries have relatively small and low-lying land areas, such as Nauru, with a land area of 21.1 km<sup>2</sup> (Nerem et al., 2018), Tuvalu with a land area of 26 km<sup>2</sup>, the Maldives with a land area of 298 km<sup>2</sup>, and the Marshall Islands with a land area of 181.4 km<sup>2</sup>. This condition is exacerbated by these countries lacking ideal forest cover, leading to a very rapid rate of sea level rise. Some SIDS have even reportedly lost parts of their territorial land. Kiribati is an example of an island nation slowly affected by rising sea levels. The high tide rises yearly, pushing residents further inland as people crowd into increasingly confined living spaces. Due to the sea level rise, the lives of the citizens are increasingly threatened as seawater encroaches closer to their homes.

The loss of land territory from these countries will become the primary issue for Small Island Developing States (SIDS), as it will affect the territorial sovereignty of their nations. According to Article 1 of the Montevideo Convention of 1933, a state has four criteria: a permanent population, a defined territory, a sovereign government, and the capacity to enter into relations with other states. Critically examining these criteria, the future of SIDS appears increasingly at risk because one of these criteria—land territory—will disappear over time. The submersion of territorial areas of SIDS will further lead to the identification of what can be termed as Sinking Island States.

The emergence of Sinking Island States due to the threat of sea level rise caused by climate change has become a substantial discussion for international

law scholars. Collectively, the countries affected by sea level rise have formed an alliance represented by the Alliance of Small Island States (AOSIS) to elevate this issue to a global scale. Additionally, AOSIS has submitted an Advisory Opinion to the International Court of Justice (ICJ) through Advisory Opinion No. 2023/76 regarding the Obligations of States regarding Climate Change. By Article 66 of the Statute of the International Court of Justice, the ICJ determined that AOSIS could provide relevant information regarding the questions posed by the General Assembly. Subsequently, these countries were permitted to submit written statements addressing the specified questions and to provide written comments on statements submitted by other states or organizations regarding these obligations.

Therefore, the spotlight on the issue of sea level rise has transcended beyond being merely a domestic and regional discussion and has become part of a global discourse. This is because it relates to the global community's accountability in protecting the marine environment and addressing global warming. The basis for this request stems from a fundamental understanding that climate change is driven by collectively destructive activities toward the environment, which harm the people living in SIDS.

Although the issue has been periodically raised on a global scale, there still needs to be a specific solution to address the legal issues related to the sovereignty of Sinking Island States. Consequently, there is a normative legal void in the international scope to protect the sovereignty of Sinking Island States and the legal subjects within them. To explore potential alternatives needed by Sinking Island States, a cosmopolitan legal approach will be employed in this study. The use of cosmopolitan law refers to the fact that the experiences of Sinking Island States stem from the collective activities of the global community, which are accelerated by the phenomenon of climate change.

### **Method**

The methodological approach of this study is juridical-normative research, utilizing complex interpretation, application, and understanding of legal norms found in legislation, instruments, principles, and concepts of international law. The nature of this research is prescriptive, using secondary data sources comprising primary legal materials from conventions and international agreements, as well as secondary legal materials from UNHCR data, AOSIS, relevant organizations, books, scholarly articles, and opinions of international law experts related to the subject of this study. The methods employed include library research and web research, with data analysis techniques using qualitative analysis through deductive syllogism.

## Results and Discussion

### Sovereignty of Sinking Island States under International Law

In the past, discussions regarding the disappearance of nations due to climate change could still be avoided, as the impacts were not yet visibly evident to the global community. In modern society, however, the commitment of all nations at the international level is crucial for Sinking Island States. The rate of sea level rise in the last decade, which has doubled compared to previous years, should serve as a warning for all countries to respond to this issue seriously (Rahmstorf et al., 2012).

The subsequent discussion will pertain to the protection of the sovereignty of these nations. This question arises from the pressure to reconsider the actual meaning of the terms “state” and “sovereignty” (Oliver, 2009). Article 1 of the Montevideo Convention of 1933 stipulates that at least four criteria must be met for a state to be recognized as sovereign: territory, population, government, and the capacity to enter into international relations. Regarding these four criteria, Sinking Island States will need help meeting the most essential criterion: having a sovereign territory.

In contemporary developments, territory still plays a crucial role in international law. This view is supported by Gagain (2012), who describes territory as a vital element of state sovereignty. Atapattu (2014) similarly argues that territory remains essential for sovereignty and statehood. The most important aspect of this discussion is to determine whether the existence of a state’s territory is a *sine qua non* condition—a prerequisite for sovereignty—or merely a requirement for the normative fulfillment of the Montevideo Convention of 1933.

Before delving into a more comprehensive discussion regarding the status of Sinking Island States under international law, a table illustrating the concept of Sinking Island States will be presented. This table is intended to explain the relativity between the status of Sinking Island States and the current existence of these nations.

**Table 1.**

#### The Impact of Climate Change in Kiribati, Maldives, and Tuvalu

Impact of Climate Change	Kiribati	Maldives	Tuvalu
<b>Geographic Conditions</b>	Consists of 33 coral atolls between Tuvalu and Hawaii (USA).	Consists of 26 coral atoll chains located in the Indian Ocean.	Consists of 9 coral atolls. Its highest point is only 4 meters

			above sea level.
<b>Population</b>	115.372	393.595	10.5444
<b>Sign of Climate Change Impact</b>	Rising temperatures, high annual rainfall, sea level rise, and ocean acidification.	They are affected by natural disasters and tidal floods, which damage infrastructure, destroy crops, and reduce access to clean water.	Sea levels rise with tides as high as 3.4 meters and extreme weather events.
<b>Estimated Submersion</b>	30 years from 2025.	By 2100, sea levels are projected to rise about 50 cm. A 100 cm rise would be required to submerge the entire country.	50 years from 2015.
<b>Social Issues</b>	It decreased food supply due to seawater contamination and climate change.	Increased cases of dengue fever and chikungunya.	Loss of culture due to population displacement and food security crisis.
<b>Economic Condition</b>	GDP: USD 164 million per capita. Primary industries: Fishing and handicrafts.	GDP: USD 4.254 billion or USD 12,400 per capita. Estimated economic loss of more than two percent of GDP per year by 2025. Primary industries: Tourism, fish processing, and handicrafts.	GDP: USD 39 million or USD 3,200 per capita. Since 1987, the economy has been highly dependent on aid from Australia, New Zealand, and the United Kingdom. Primary industries: fishing and

			tourism.
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Given the vulnerabilities faced by these three countries, a pattern emerges that can generally be attributed to climate change: these countries are threatened with submersion, limited rights to a decent environment, high population density, and ultimately, impacts on the health, social environment, and economy of their citizens. These countries serve as evidence that the Sinking Island States are not merely theoretical constructs; in reality, they have become a communal form of states with common characteristics. They are threatened with losing their land territory due to sea level rise.

In critical reality, current international law does not have specific provisions to address the total loss of a state's territory in the context of Sinking Island States, as this has never occurred before. However, some unique cases in international law exist where parts of a state's territory have disappeared, yet the state has persisted. An example can be seen in the existence of the Sovereign Order of Malta. This international legal entity was once a state, recognized by the United Nations, and maintains diplomatic relations with 120 countries despite not having any territorial land. The recognition of the Sovereign Order of Malta suggests that a submerged island state could become a *sui generis* international entity if other states continue to recognize its sovereignty. It is evident that the Sovereign Order of Malta still participates in international conferences and meetings, exercising its rights as a sovereign international legal entity despite lacking territorial land (Gagain, 2012).

Another example is the recognition of the State of Palestine by 139 UN member states, even though its territory is under Israeli occupation. These practices indicate a tendency to recognize a state's status virtually as long as it is recognized by other states. Thus, sovereignty and cooperation among involved states can continue even if their land territory is lost due to sea level rise.

### **Global Responsibility to the Sovereignty of Sinking Island States Based on Cosmopolitan Law**

To begin with, the concept of distributive justice concerning the allocation of burdens and benefits to specific countries needs to be expanded. Currently, conventional theories of burden and benefit distribution tend to focus on efforts to increase wealth and income (Caney, 2005). Regarding Sinking Island States, distributive justice must be elaborated to include aspects related to the environment, encompassing welfare, environmental carrying capacity, environmental ethics, and other related factors.

Secondly, beyond considering the distribution of burdens and benefits, it is essential to recognize domestic policies from countries vulnerable to climate change should be acknowledged as international legal norms. This step aims to find a new international legal framework that can be used to protect the status of Sinking Island States. These policies embody the local wisdom of the respective societies about maintaining ecosystem stability, preserving the environment, and initiating practices that can serve as initial steps toward achieving the sustainability of their countries. While these policies may align with current international legal principles, there are significant challenges in globally recognizing and adopting them. Nevertheless, a robust theory of justice must be established in this context, as collective actions by the international community in contributing to climate change will have moral consequences for countries that play a significant role in causing climate change.

Lastly, global environmental justice must address intragenerational justice, which considers the fairness of environmental impacts within the current generation. This can be viewed from four perspectives: distributive, corrective, procedural, and social justice (Wibisana, 2017). Distributive justice aims to ensure a fair allocation of access to and benefits from environmental resources and the costs associated with environmental protection. Corrective justice emphasizes the importance of legal systems that allow those responsible for environmental damage to rectify and compensate for the harm they cause. Procedural justice demands fair processes in environmental decision-making, recognizing the right to participate in decision-making, access to information, and the right to seek legal redress if necessary. Social justice highlights that environmental issues are often linked to social inequality and poverty, suggesting that efforts to protect and manage the environment must be intertwined with efforts to alleviate poverty and eliminate social injustice.

Beyond the current generation, the impacts of climate change will be felt by future generations, necessitating clear guidelines on the obligations of the present generation towards the sustainability of future generations. This concept of global environmental justice can be seen in the implementation of programs such as the United Nations Development Programme's Sustainable Development Goals (SDGs).

In conclusion, global environmental justice must address how this issue's intergenerational dimension will impact each generation's differing intentions and moral responsibilities. This approach reflects a cosmopolitan legal perspective that emphasizes moral and ethical responsibilities extending beyond national boundaries, ensuring a collective effort to address and mitigate the impacts of climate change on vulnerable states.

Compliance with international law depends on a nation's capacity and intention. Consequently, the effectiveness of international law in its commitment to preserving sovereignty in this context becomes practically useless if it relies on the political will of developed countries. Sinking Island States might seek an advisory opinion from the International Court of Justice regarding countries' legal obligations in the context of climate change. This could help the Sinking Island States maintain their sovereignty.

In the classical understanding of international law, it is defined as a system built on the foundation of equality and the status of sovereign states. This understanding may shift after the era of globalization, which has resulted in changes in the global order, particularly in economic, social, cultural, and political aspects. In this era, there is a developmental trend from nation-states towards a boundless global world. This will give rise to a global society, leading to international interactions that can transcend a country's territorial boundaries regarding information acquisition and cultural exchange due to globalization.

With globalization, legal life will also be affected, raising questions about the type of legal character capable of addressing legal issues related to Sinking Island States. The emergence of this issue will result in the creation of binding legal rules for all countries, including those that do not agree with them. This line of thinking is based on the belief that the current issues are no longer the responsibility of each affected country but have become globally recognized due to their impact on most countries.

The implementation of cosmopolitan law in this phenomenon will be based on using peremptory norms/jus cogens (compulsory norms). This compulsion pertains to enforcing the recognition of the sovereignty status of Sinking Island States by expanding the concepts and principles of international law. This coercion can also be applied to support Sinking Island States in their efforts to maintain their sovereignty and territorial integrity, which are threatened by submersion.

### **Global Efforts to Protect the Sovereign Status of Sinking Island States**

Global efforts to maintain the territorial sovereignty of Sinking Island States can be undertaken through several measures, including the creation of new international legal instruments, artificial islands, land acquisition, and ex-situ states.

#### **a) New International Legal Instruments**

The main issue faced by Sinking Island States is how to preserve their national territory amidst the increasingly impactful climate change. We operate under the legal assumption that existing countries will never die in international



law. Regardless, a country can sometimes exist in different forms. Countries can be replaced in the same territory, such as Rhodesia with Zimbabwe, the Soviet Union with the Russian Federation, or East Germany with the Federal Republic after reunification. In this sense, although Rhodesia, the Soviet Union, and East Germany have disappeared, the territories of these former countries still exist today because there are people or populations and governments in the same areas. This situation differs from countries losing their territories due to sea-level rise caused by climate change, as there are no similar cases to use to determine sovereignty.

Indeed, sovereignty over a country's territorial integrity remains crucial. Until now, we have adhered to the concept of sovereignty established in the 1900s by Georg Jellinek (2013). According to Jellinek's doctrine of the three elements of the state, every country has three essential elements: people, government authority, and territory. Jellinek's doctrine is currently used as customary international law to recognize a country's sovereignty, as outlined in the criteria of Article 1 of the Montevideo Convention of 1933.

In practice, any international legal instrument, regardless of its form—a Convention, Treaty, Declaration, Covenant, or otherwise—emerges from spatial and temporal dimensions. This indicates that international legal instruments ratified at a particular time only contain substances considered relevant at the time of their ratification. It can be identified that the initial enthusiasm for such international legal instruments is extreme at their inception and may weaken as time progresses and advancements occur. Therefore, it can also be said that a law cannot be considered entirely final due to societal dynamics.

Therefore, it is highly feasible to amend international legal instruments related to state sovereignty, such as the Montevideo Convention of 1933. The doctrine outlined in Article 1 of the Montevideo Convention of 1933 may not be relevant to the conditions of Sinking Island States in the coming decades. Consequently, the criteria for establishing a state must be re-evaluated to ensure these countries can maintain their existence. This re-evaluation could involve an inventory of various legal ideals that will later be developed into normative laws for the concerned states. These changes could include amendments, modifications, adding new protocols to the convention, and revisions.

This new legal instrument aims to specifically recognize Sinking Island States and climate refugees, ensuring their status is acknowledged and they receive definite protection in accordance with human rights. Additionally, a collective commitment from the international community in formulating and adopting related international laws is crucial as a form of shared responsibility among the involved countries.

## b) Artificial Islands

Artificial islands have become a prominent topic in various studies as a potential method for relocating the Sinking Island States' territories and their citizens' rights when sea levels rise. Some Sinking Island States have initiated this process as part of their adaptation measures to climate change. One notable example of an artificial island within the Sinking Island States is Hulhumalé in the Maldives, which was created to accommodate 60,000 people. Similarly, in 2011, the President of Kiribati announced a plan to consider a \$2 billion project to build an artificial island structure similar to offshore oil rigs.

Although artificial islands are an effective solution for maintaining the sovereignty of these nations, there are legal implications concerning their status. According to Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS 1982):

*“..An island is a naturally formed area of land, surrounded by water, which is above water at high tide.”*

This provision implies that artificial islands legally cannot possess maritime zones because UNCLOS 1982 defines an island as land formed by natural processes, not human-made structures. However, in practice, the legitimacy of creating artificial islands is provided for under Article 60(1)(a) of UNCLOS 1982:

*“In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation, and use of: (a) artificial islands; (b) installations and structures for the purposes provided for in article 56 and other economic purposes; (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.”*

This article states that coastal states have the exclusive right to construct artificial islands. In practice, the Maldives has jurisdiction over its Exclusive Economic Zone (EEZ) to establish artificial islands, which includes customs, fiscal, health, safety, immigration laws, and regulations (Hananto et al., 2022). Considering the real potential disaster if sea levels continue to rise, the construction of artificial islands within the Maldives' EEZ can be deemed legally valid under UNCLOS 1982.

Therefore, Sinking Island States should advocate for recognizing the sovereignty of artificial islands in international law so that maritime zones are not affected by rising sea levels through proposals to amend or revise UNCLOS 1982. For such proposals to be accepted, countries must demonstrate the urgent need for these artificial islands due to the imminent loss of their coastlines caused by climate change.

Opposition to the construction of artificial islands may also exist, as actions taken by a country to build such islands could potentially be illegal and violate the provisions of UNCLOS 1982, particularly if they are within another country's EEZ. Apart from sovereignty violations, the construction of artificial islands is also prone to breaches of environmental obligations.

Despite the uncertainty regarding the sovereignty of artificial islands, there is an opportunity to develop new international law where non-territorial sovereignty could serve as a solution for citizens at risk of displacement. Under this concept, they could reside on these islands while retaining their governance and national identity from their original countries, thus ensuring the continued existence of Sinking Island States' citizens.

c) Land Acquisition

Suppose a state wishes to maintain its sovereignty without compromising territorial integrity. In that case, a viable solution under established legal provisions is acquiring land through transfer agreements and purchasing or receiving land as a gift from another country. The alternative means of acquiring land depends entirely on the political will of the receiving state. Consequently, it is impractical for island states to sustain sovereignty in practice despite opportunities offered by international law.

In the Maldives, a long-term adaptation strategy involves collectively accumulating national wealth to facilitate the purchase of new land and relocation of populations when necessary. This strategy is reflected in efforts by other Sinking Island States, such as Kiribati, whose minister informed the UN Human Rights Council in January 2015 of their government's land purchases in anticipation of uninhabitable islands due to sea level rise. Kiribati and Tuvalu have sought support from New Zealand and Australia to relocate their populations. Historically, such practices include Alaska's purchase by the United States from Russia in 1867, demonstrating mutual benefit.

Currently, Tuvalu's Vaitupu Island residents purchased land in Fiji (Kioa Island in 1947), and Banabans from Kiribati bought Rabi Island in Fiji in 1945. Kiribati acquired land in Vanua Levu, Fiji, in 2014 for USD 8.77 million. If populations were successfully relocated to another state, island states would lose their legal status. Unless specified otherwise in legal agreements, purchased land

would become private property without accompanying citizenship rights, subject to the laws of the selling state. In scenarios where the receiving state seeks to reclaim purchased land, more than international law may be required to prevent it. The principle of territorial integrity poses a challenge to maintaining sovereignty for island states.

Another alternative is to acquire new territories through transfer agreements, ensuring the preservation of the state's legal status and existing maritime zones, regardless of population dispersion. Historical precedents, such as Icelanders' relocation to Canada after volcanic eruptions in the 1870s, underscore the feasibility of this approach. However, acquisition through transfer agreements may contradict the principle of territorial integrity and is unlikely to be sustainable politically.

As an alternative, technically, land can be obtained as a gift from another country or as a "gift" bestowed. For instance, this practice is exemplified by Austria's gift of Venice to France, which subsequently transferred it to Italy in 1866, setting a precedent for such choices. However, in reality, relying solely on this practice to request land from developed nations appears daunting as it hinges entirely on the willingness of countries to cede territory to those in need. There is yet to be an international indication that any country is willing to grant land as a gift in the context of climate change adaptation.

In summary, land acquisition as a means to maintain the sovereignty of island states has several drawbacks: the willingness of involved states, funding for such acquisitions, if necessary, threats to community and cultural identity, and the risk of conflict. Moreover, some proposed alternatives for land acquisition do not uphold the sovereignty of island nations. Furthermore, the acquisition of land by Sinking Island States could gain acceptance in the international community as it reflects the consequences faced by these states due to actions of countries accelerating climate change. Therefore, the global responsibility of all nations should be acknowledged, and over time, this could become an international norm legally enforceable to recognize the sovereignty of Sinking Island States.

#### d) Ex-Situ States

An ex-situ state would become a new entity in international law if all states agreed to recognize its existence. The mechanism for the functioning of an ex-situ state is based on a political security system that provides a model for Sinking Island States to establish governance over uninhabitable territories. The government of an ex-situ state would operate from a permanent location, managing its national affairs remotely. Scholars, including Rayfuse, have suggested similar arrangements where authorities could continue administering

maritime zones to benefit displaced populations, utilizing resource revenues to support relocation and livelihoods in the host country. While the ex-situ government would have similar mandates, greater emphasis would be placed on practices to preserve all elements of a nation that should endure beyond its territory, especially concerning culture, citizen relations, and the security and welfare of its people.

The legitimacy of ex-situ states remains a dilemma as it depends on international community approval, including host countries that may receive populations from the Sinking Island States. International legitimacy is crucial so that the global community can legally recognize these states and protect those entrusted to them. International legitimacy is necessary for the entrusted parties to have the necessary resources and face resistance supported by states. Besides providing tangible benefits and services to its citizens, an ex-situ state would help preserve ideologies, customs, and individual or group habits of entities whose territorial existence is threatened.

These efforts can proceed if there is a global consensus regarding the recognition of sovereignty for the Sinking Island States. It is essential for laws based on the obligations of relevant states to be implemented so that in the future, legal provisions are binding not solely based on sanctions but on the willingness to commit to and recognize the sovereignty of Sinking Island States through various available means.

## **Conclusion**

The Montevideo Convention of 1933 requires a territory for state sovereignty, which Sinking Island States may lose. This loss raises questions about their continued recognition as sovereign states. Examples like the Sovereign Order of Malta and the State of Palestine show that states can be recognized without control over territory, suggesting a potential path for the Sinking Island States. However, these states can avoid significant uncertainty with explicit international legal provisions to address total territorial loss. In response to this issue, cosmopolitan law presents itself as a tool to promote the recognition of Sinking Island States, maintain international stability, and uphold the continuity of state sovereignty despite losing physical territory.

The global community can support the existence of Sinking Island States through several initiatives, such as the creation of new international legal instruments recognizing their status, the construction of artificial islands, land acquisition, and the establishment of ex-situ states. These efforts need to be backed by the presumption of continuity, which supports the flexible existence of a state once it is accepted as part of the sovereign nations. Implementing the

presumption of continuity further requires a cosmopolitan legal approach using binding norms and principles of international law. This enforcement can be applied to compel states to recognize the sovereign status of Sinking Island States by expanding legal concepts and principles of international law. It can also support Sinking Island States in maintaining their sovereignty and territorial integrity threatened by submersion.

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