
THE RIGHT TO NATIONALITY AFTER THE LOSS OF EFFECTIVE TERRITORY OF A STATE: INTERNATIONAL LEGAL MECHANISMS FOR THE PREVENTION OF STATELESSNESS

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Abstract: Climate change and sea-level rise create a legal problem that cannot be reduced to environmental damage or physical displacement. For international law, an especially difficult question arises when a State progressively loses territory that is necessary for permanent habitation: whether the affected population can retain its nationality when residence, administration and access to official documents increasingly take place outside the territory of the State of nationality. This paper examines the relationship between continuity of statehood, nationality and the prevention of statelessness in that situation. The research uses a qualitative doctrinal methodology based on international treaties, the work of the International Law Commission, human-rights materials, recent scholarship and current international guidance on climate change and nationality. Particular attention is given to the 1954 and 1961 statelessness conventions, the 1997 European Convention on Nationality, the International Law Commission's work completed in 2025, the 2025 International Court of Justice Advisory Opinion on climate-change obligations, Pacific research on nationality and climate mobility, and the 2026 UNHCR Global Recommendations. The analysis indicates that territorial loss and loss of nationality are legally distinct events. Continuity of statehood can provide an important legal foundation for maintaining the nationality relationship, but it does not by itself solve problems created by residence abroad, transmission of nationality to children, documentation and restrictions on multiple nationality. The paper argues that prevention should begin before displacement becomes permanent and should combine nationality-retention rules, secure civil registration, transmission safeguards, flexible approaches to dual nationality and cooperation between the affected State and receiving States.

Keywords: nationality, statelessness, sea-level rise, statehood, climate change, international law

1. INTRODUCTION

Climate change is increasingly relevant to public international law because its consequences may affect not only environmental conditions but also the legal structures through which populations are connected to States. Sea-level rise is particularly challenging for low-lying coastal States and small island developing States. The most difficult scenario is not necessarily the physical disappearance of every part of a State's land territory, but the progressive loss of territory that is habitable, administrable and capable of supporting a stable population. In that situation, relocation may occur before any final territorial loss, creating a prolonged period in which the State continues to exist while an increasing part of its population lives abroad.

This distinction matters for nationality. A person displaced from a climate-vulnerable territory does not automatically become stateless. Statelessness is a legal status, not simply a consequence of crossing a border or losing a home. Under the international framework, the decisive question is whether the person continues to be regarded as a national by at least one State under its law. The climate-related risk therefore emerges through the interaction of several legal systems: the nationality law of the affected State, the law of the State of residence, rules on birth registration and transmission of nationality, and international safeguards against arbitrary deprivation of nationality (United Nations, 1954, 1961).

The issue also requires a careful distinction between statehood and nationality. The traditional account of statehood emphasizes territory, population, government and the capacity to enter into international relations. Sea-level rise creates pressure on the territorial element, but contemporary legal work does not support a simple proposition that a reduction in habitable territory automatically terminates statehood. The International Law Commission's final work in 2025 treated continuity of statehood and protection of affected persons as connected questions and emphasized the need for international cooperation in addressing the consequences of sea-level rise (International Law Commission, 2025).

Recent international developments make the subject especially timely. The International Court of Justice addressed climate-change obligations in its 2025 Advisory Opinion and discussed the legal significance of sea-level rise and continuity-related questions in the broader context of climate change. At the same time, the 2022 Pacific nationality research and the 2026 UNHCR Global Recommendations place greater emphasis on practical nationality risks, including documentation, movement and the position of children born outside the State of origin (Foster et al., 2022; United Nations High Commissioner for Refugees [UNHCR], 2026).

The central research question is therefore whether existing international law can preserve nationality when the effective and habitable territory of a State is substantially or permanently lost. The paper proceeds from the

proposition that preservation of nationality cannot depend on a single rule. It requires the combined operation of continuity of statehood, nationality legislation, human-rights safeguards and practical cooperation. The analysis first considers the relationship between territorial loss and statehood, then examines nationality as a continuing legal relationship, the risk of statelessness after displacement, the role of dual nationality and the human-rights dimension. The final part identifies areas in which the existing framework can be applied preventively.

2. MATERIALS AND METHODS

The paper applies a qualitative doctrinal legal methodology. The primary sources include international treaties and institutional legal materials dealing with nationality, statelessness, statehood and climate-related consequences. The 1954 Convention relating to the Status of Stateless Persons is used for the basic legal concept of statelessness, while the 1961 Convention on the Reduction of Statelessness provides safeguards directed at preventing and reducing statelessness. The 1997 European Convention on Nationality is considered as a regional instrument articulating principles concerning nationality, including the avoidance of statelessness (Council of Europe, 1997).

The second group of sources consists of the International Law Commission's materials on sea-level rise, particularly its 2022 issues paper and the final 2025 report. These materials are important because the Commission considered statehood and the protection of persons affected by sea-level rise as separate but interconnected dimensions of the problem. Recent scholarship is used comparatively, especially the Pacific-focused study of nationality loss and statelessness and the 2025 contribution concerning statehood and protection of persons (Foster et al., 2022; McAdam et al., 2025).

The method combines textual interpretation and legal synthesis. The analysis does not assume that climate-related displacement creates a new category of nationality. Instead, it asks how existing rules operate when the ordinary territorial context of nationality is weakened. The research also distinguishes between legal continuity and practical effectiveness. A State may remain legally continuous while its nationals encounter practical obstacles to documentation, transmission of nationality or participation in the public life of that State. This distinction is necessary for assessing whether a formal entitlement to nationality is actually protected over time.

3. RESULTS

3.1. Continuity of statehood and the loss of territory

Territorial loss and extinction of statehood should not be treated as legally identical events. The international legal problem created by sea-level rise is gradual rather than instantaneous: territory may become difficult to inhabit, populations may relocate, government functions may be performed partly outside the traditional territory, and yet the State may continue to maintain international relations. The International Law Commission's final report adopted in 2025 reflects this approach by addressing continuity of statehood together with the protection of persons affected by sea-level rise (International Law Commission, 2025).

The significance for nationality is straightforward. If statehood were regarded as ending immediately when habitable territory became unavailable, the population could face uncertainty about the continuing legal source of its nationality. By contrast, a presumption or expectation of continuity can preserve the institutional framework within which nationality continues to operate. This does not mean that international law has established an unconditional rule that every State will retain statehood in every hypothetical scenario. Rather, the contemporary legal discussion supports treating sea-level rise as an exceptional situation in which continuity and cooperation should be considered before conclusions about extinction or succession are reached (Aurescu, 2025; McAdam et al., 2025).

Continuity also has a practical dimension. A State whose population has relocated may still need to issue passports and identity documents, maintain civil registers, register births abroad, provide consular assistance and establish procedures through which nationals can prove their status. Thus, continuity of statehood has value for nationality only if institutional functions can continue. The legal existence of a State and the ability of individuals to demonstrate their nationality are related, but they are not the same question.

3.2. Nationality as a continuing legal relationship

Nationality is primarily regulated through domestic law, but international law places limits on how States exercise that competence. The 1997 European Convention on Nationality formulates nationality as a legal bond between an individual and a State and links nationality policy with the avoidance of statelessness (Council of Europe, 1997). The 1961 Convention similarly establishes rules designed to reduce the circumstances in which nationality is lost or denied in a manner that produces statelessness (United Nations, 1961).

For climate-related displacement, the key question is therefore not whether a person remains physically present in the territory of the State of nationality. If residence abroad automatically terminated nationality, long-term migration would itself become a source of mass nationality loss. The more precise issue is whether domestic nationality rules contain conditions that become difficult to satisfy after permanent relocation. These may include residence requirements, registration deadlines, proof of descent or formal procedures for children born

abroad. Such rules can become more consequential when an entire community is displaced rather than only individual migrants.

The Pacific literature illustrates why nationality must be examined across generations. Foster and colleagues found that nationality laws can either maintain or weaken the legal connection of people living outside their State of origin, particularly through rules on retention and transmission to children born abroad (Foster et al., 2022). In a long-term climate displacement scenario, this intergenerational element may be more important than the initial displacement itself. The first generation may retain nationality while later generations encounter additional conditions that gradually narrow the legal connection.

3.3. The risk of statelessness following climate-related displacement

Climate-related displacement does not itself create statelessness. The immediate legal position of a displaced person may remain unchanged: the person may retain the nationality of the original State while residing in another country. The risk develops when displacement interacts with nationality rules that are not designed for prolonged or permanent residence abroad. This is why a preventive approach is more appropriate than waiting until a person has already lost nationality.

Three risks are particularly relevant. First, documentation may become difficult to obtain or renew. If civil registries, consular services or identity systems are disrupted, a person can remain legally a national while facing increasing difficulty proving that status. Secondly, transmission to children may be restricted by conditions concerning the parent's residence, registration or documentary evidence. Thirdly, the receiving State may not provide an alternative nationality automatically. Residence and integration in another country therefore do not necessarily resolve the nationality question.

The 2022 Pacific study is important because it moves the analysis from an abstract 'sinking State' scenario to the operation of concrete nationality laws. Its focus on retention and transmission shows that the legal risk can arise well before any final disappearance of territory (Foster et al., 2022). The 2026 UNHCR Global Recommendations further reinforce the preventive approach by addressing nationality and statelessness in the context of climate change. Together, these developments suggest that the central task is to identify legal barriers before they produce cumulative nationality loss (UNHCR, 2026).

The international statelessness conventions provide a framework, but they were not drafted specifically for the permanent relocation of an entire population following environmental change. Their general rules can nevertheless be relevant. The 1961 Convention is particularly important because its object is to reduce statelessness through safeguards concerning deprivation and loss of nationality. The legal challenge is to apply those safeguards in a situation where the factual conditions of residence, birth registration and administrative access have changed for an entire population.

3.4. Dual nationality and other protective mechanisms

Dual or multiple nationality may serve as one mechanism for preserving the original nationality while allowing displaced persons to establish a durable legal relationship with a receiving State. The International Law Commission's work identified maintenance of original nationality, acquisition of another nationality and dual nationality as relevant options for addressing the risk of de facto statelessness in sea-level-rise scenarios (International Law Commission, 2022). The value of these mechanisms lies in their ability to avoid forcing displaced persons to choose between continued legal attachment to the State of origin and practical integration elsewhere.

Nevertheless, dual nationality is not a universal solution. Nationality remains substantially dependent on domestic law, and States differ in their acceptance of multiple nationality. A receiving State may also require residence, naturalization or other conditions before granting nationality. For that reason, the legal design should not depend exclusively on naturalization in the receiving State. Retention of the original nationality and transmission to descendants may be equally important.

A broader package of measures is therefore preferable. Affected States may strengthen rules allowing nationals to retain nationality while living abroad; simplify registration of births outside the territory; maintain accessible civil records and digital copies of identity documents; and remove unnecessary residence-based conditions for transmission of nationality. Receiving States can complement these measures by facilitating residence, documentation and, where their domestic law permits, access to nationality without requiring the abandonment of the original nationality. These mechanisms address different stages of the same problem rather than competing with one another.

3.5. International human rights dimension

Nationality is also connected with human rights because it influences legal identity, political participation and access to protection by a State. International human-rights law does not make nationality identical to every other right, but it limits arbitrary interference with personal and family life and provides safeguards relevant to nationality decisions. The European Court of Human Rights has treated nationality as an element capable of engaging Article 8 of the European Convention on Human Rights in appropriate circumstances, particularly where nationality decisions affect an individual's identity and private life (European Court of Human Rights, 2025).

This dimension becomes more significant where climate displacement is long-term. A person who remains formally a national but cannot obtain documents, register children or exercise basic administrative rights may experience a gap between legal status and practical protection. Human-rights safeguards therefore complement, rather than replace, nationality law. They support the principle that changes in nationality status should be legally grounded, procedurally fair and compatible with the protection of individual rights.

The 2025 work of the International Court of Justice also strengthens the broader legal context in which climate-related effects are considered. The Court's Advisory Opinion on obligations of States in respect of climate change addressed the international legal consequences of climate change and considered the significance of sea-level rise within that framework (International Court of Justice, 2025). The Opinion does not itself create a complete nationality regime for displaced populations. Its relevance here is more limited and methodological: climate change is treated as a matter engaging existing international legal obligations rather than as a subject outside the established legal order.

4. DISCUSSION

The results indicate that the principal weakness of the existing framework is not the complete absence of legal rules, but their fragmentation. Statehood, nationality, statelessness, human rights and climate-related mobility are regulated through different instruments and institutions. None of these regimes, taken alone, was designed for the situation in which an entire population may need to live outside the effective territory of its State for an extended period.

The first level of protection is continuity of statehood. The 2025 work of the International Law Commission and recent scholarship provide substantial support for examining continuity rather than assuming automatic extinction. Continuity is particularly important for nationality because it preserves the institutional subject to which the nationality relationship is attached. At the same time, continuity of statehood should not be presented as a guarantee that every individual will retain nationality. The content of nationality remains substantially determined by domestic law, and domestic rules can produce nationality loss even while the State continues to exist.

The second level is substantive nationality protection. Here, the strongest preventive strategy is to ensure that displacement does not trigger loss of nationality and that children born abroad can acquire nationality through descent under clear and accessible procedures. This is consistent with the logic of the statelessness conventions and with the more recent focus on climate-related nationality risks. The 2026 UNHCR recommendations are particularly relevant because they frame climate change as a context in which existing nationality safeguards need to be applied proactively rather than only after statelessness has emerged (UNHCR, 2026).

The third level is practical effectiveness. Nationality has limited protective value if individuals cannot demonstrate it. Civil registration, identity documents, consular services and reliable records therefore become part of the preventive architecture. In a scenario involving permanent relocation, maintaining records may require cooperation between the State of nationality, host States and international organizations. This is not simply an administrative matter: documentation can determine whether a person can prove a legal status that already exists under national law.

A fourth element is inter-State cooperation. No single State can resolve all aspects of permanent climate-related displacement. The affected State may need host-State arrangements concerning residence, documentation, consular services and access to public institutions. The receiving State, for its part, may need procedures that recognize the continuing nationality of displaced persons without treating them as ordinary migrants. The international legal principle of cooperation is therefore relevant to nationality even when the immediate legal rule remains domestic.

The analysis also shows why the term 'climate statelessness' should be used cautiously. Climate change may increase the risk of statelessness, but it does not automatically create a distinct legal category of stateless persons. The legal status remains determined by nationality law. This distinction matters because overstating the novelty of the problem can obscure the practical use of existing legal safeguards. The more precise conclusion is that climate change creates circumstances in which known nationality and statelessness risks may become more difficult to manage and may affect populations on an unprecedented scale.

5. CONCLUSIONS

The progressive loss of effective and habitable territory caused by sea-level rise challenges the territorial assumptions that have traditionally shaped international law, but it does not require the conclusion that nationality must disappear with territory. The contemporary legal framework provides several points of continuity: the possibility of continued statehood, international safeguards against statelessness, human-rights protection and cooperation between States.

The research demonstrates, however, that continuity of statehood and continuity of nationality are related but distinct. A State may continue to exist while its nationals face practical and legal risks arising from residence abroad, transmission of nationality to children, registration requirements and documentary barriers.

Consequently, the preservation of nationality should be treated as a continuing legal and administrative process rather than as a consequence that follows automatically from the survival of statehood.

The most coherent preventive approach combines five elements: retention of the original nationality after displacement; effective transmission of nationality to descendants born abroad; accessible civil registration and identity documentation; facilitation of dual or multiple nationality where legally possible; and sustained cooperation between the affected State and receiving States. These measures are consistent with the direction of recent international legal work and respond to the practical risks identified in Pacific research and current UNHCR guidance (Foster et al., 2022; International Law Commission, 2025; UNHCR, 2026).

Accordingly, the loss of effective territory should not, by itself, be treated as an automatic legal event terminating nationality. A more appropriate international-law approach is to preserve the legal relationship between the State and its population while adapting the mechanisms through which that relationship is exercised. Such an approach does not require the creation of an entirely new legal status. It requires coordinated use and development of existing rules so that climate-related displacement does not become a pathway to preventable nationality loss and statelessness.

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