Tuvalu and the Continuity of Statehood: The Sovereignty Debate

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The Falepili Union: Mobility, Security and Statehood

An innovative treaty commitment to the continuity of statehood was put forth through the Australia-Tuvalu Falepili Union Treaty. According to this agreement, the Australian government agreed to provide citizens of Tuvalu with the option of permanent residency through the implementing visa scheme, allowing them to live and work in Australia. The initial allocation was up to 280 places annually, including dependents, with allocations subject to agreement between the governments. Additionally, as per Article 3(1)(b) of the Falepili Treaty, Tuvaluans would be able to access facets of the Australian system including health, education and family support upon arrival. Visa holders will receive the opportunity to access subsidized education, Medicare and support programmes, subject to eligibility requirements.

The Falepili Union also includes provisions on security, with Article 4(4) stipulating that Tuvalu must mutually agree with Australia on security and defence agreements with third parties. Additionally, Article 2 supports adaptation and attempts by Tuvaluans to stay home.

Rising Seas and Tuvalu's Vulnerability

Tuvalu is particularly vulnerable to rising sea levels, and it is forecast that by 2050 approximately half of Fongafale, the main islet of Funafuti, could experience routine flooding during monthly high tides. This projection represents the worst-case scenario without adaptation. The added factors of limited domestic resources and a population mainly living along the coast exacerbate Tuvalu's problems. The exposure of low-lying settlements and infrastructure compounds these risks.

Preserving Tuvalu Through Constitutional Initiatives

The revised Constitution took effect on 1 October 2023. Section 2(1) declares the perpetuity of the State of Tuvalu, notwithstanding physical territorial loss. Sections 2(2)–(3) address the geographical coordinates defining its area and maritime zones. Crucially, section 2(3) preserves baseline coordinates unless Parliament provides otherwise.

The constitutional changes, alongside international agreements, provide a modicum of external cooperation, which is especially relevant in dealing with domestic issues which cannot be resolved alone. Tuvalu has also launched a digital-nation initiative intended to preserve cultural heritage and support the continuity of government services. This initiative is intended to help Tuvalu survive as a digital state even after being submerged, although this remains to be incorporated in international law. In this scenario, two questions arise: can an established state retain its statehood and sovereignty if its land becomes uninhabitable or submerged, and what ramifications could the changing global situation have?

Does the Loss of Territory Mean Loss of Statehood?

According to Article 1 of the Montevideo Convention, a state requires four core elements: a permanent population, a defined territory, government and capacity to enter into relations with other states. Territory has traditionally been a central element of statehood. The prospect of complete territorial submergence raises an unprecedented challenge for Tuvalu and other low-lying states.

Tuvalu faces increasing risks of inundation and loss of habitable land as a result of climate-related sea-level rise. The crisis of Tuvalu is a consequence of anthropogenic climate change. The worldwide rise in sea levels is due to warming driven by persistently high greenhouse gas emissions to which Tuvalu has made a negligible contribution. Tuvalu is an established

state seeking to preserve its international legal personality. Thus, the fundamental question becomes: does the loss of territory mean loss of statehood?

The Case for Continuing Tuvaluan Statehood

In paragraph 363 of its advisory opinion of 23 July 2025 in *Obligations of States in Respect of Climate Change*, the ICJ explained that losing a constituent element does not necessarily extinguish an established state. The opinion is advisory, rather than a binding judgment between litigating states. Additionally, the UN Declaration on Sea Level Rise of 24 September 2026 supports continued statehood, continued UN membership, and the stability of lawfully established maritime zones despite sea-level rise. It must be noted that this is a General Assembly declaration, not a new treaty.

Tuvalu already possesses international diplomatic recognition, an established form of government and a permanent population. Thus, the loss of territory would not necessarily entail the end of statehood itself. There exists international support for continuing Tuvaluan sovereignty and statehood, such as the Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons. Australia expressly recognises Tuvalu's continuing statehood and sovereignty in Article 2(2)(b) of the Falepili agreement. It must be noted that this bilateral commitment does not itself bind every other state or confer Tuvaluan territorial sovereignty over land in Australia.

Additionally, the extinction of Tuvalu's statehood could expose nationals who lack another nationality to statelessness. There are precedents for states continuing to exist despite a lack of governmental control over territory. For example, during World War II, Germany invaded Belgium, but the Belgian state continued to exist. Tuvalu's initiatives illustrate growing legal support for the continuity of established states despite climate-related territorial loss, while practical arrangements for displaced populations and government institutions still require development.

References

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