

NO PORT, NO PASSPORT: WHY SUBMERGED STATES CAN HAVE NO NATIONALS

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Abstract: Territorial loss owing to sea level rise presents novel challenges to the international legal order. Nowhere is this clearer than in the case of small island states like the Maldives, Tuvalu and Kiribati, whose very existence is in jeopardy. In our recent article, *Sinking Into Statelessness*, we argue that the principle of presumption of continuity of state existence does not ensure that sinking states shall, or may, retain their legal statehood, because that principle cannot overrule the fact that territoriality is a constitutive feature of legal statehood. Here, we argue that even if, contra our previous conclusion, submerged states retain their legal statehood, territory is nevertheless necessary in order for a state to confer nationality in the sense of the 1954 Convention Relating to the Status of Stateless Persons; that is, for a state to consider someone a national under the operation of its law. In consequence, even granting that a submerged state could exist and have members, its members would need nationality in another state in order to avoid *de jure* statelessness. To establish this claim, we will argue that for a state to consider someone a national under the operation of its law, that state must be capable of complying with the duty to readmit nationals when requested to do so by another state, which requires habitable territory.

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