

## **Deterritorialized States Within the Framework of Public International Law**

**By**

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### **Abstract:**

one of the most important consequences of climate change is the rise in sea levels, which leads to the drowning of some low-lying island states, which leads to them losing the elements of statehood and thus affecting their status as a state, this resulted in several proposals made by the jurisprudence of international law to solve this issue, perhaps the most important of which is the idea of the government in exile, and the proposal to continue recognition of submerged countries, in a way that makes it possible to talk about a new concept of states represented by deterritorialized states, all of which are ultimately proposals that contain great difficulties that hinder their implementation in reality.

**Keywords**— Climate change, Submerged states, The government in exile, Continuing recognition

### **Introduction**

In a world characterized by continuous development, countries are constantly exposed to new threats, some of which have existential dimensions, and climate change is one of them and is also a phenomenon that raises complex issues for international law to deal with, given the rise in sea level caused by the phenomenon of global warming caused by global warming, and one of the most important consequences of global warming is global warming causing sea level rise. As rising temperatures cause ice to melt at the Earth's poles, causing rising water levels in the seas and then drowning the world's lowlands, it is expected that a certain number of island states with a height of only a few meters will sink underwater and disappear at the end of the twenty-first century.

Thus, since the territory is one of the most important constituent elements of the State as a subject of public international law, this future scenario raises many issues, since the modern world has not experienced the complete physical disappearance of the territory of the entire State, and one of the most prominent problems raised by climate change is that of the situation of submerged States, which lose their territory or other elements necessary for their establishment. Is it possible to continue talking about the existence of a state? If so, in what form? This is what we will try to highlight in this research, by dividing it into two sections, the first of which deals with the concept of deterritorialized states by exposure to the traditional concept of the state as a necessary introduction to talk about the possibility of the disappearance of the state. , and then we address recognition as an additional element through

which the submerged state can continue to exist as an international legal person, in an attempt to talk about the possibility of reaching a modern concept of the state within the framework of public international law, which will be the subject of the second section of this research, and therefore this study aims to analyze the impact of climate change on the situation of island states, and to analyze and discuss possible legal ways to ensure that these states can continue. In order to achieve this goal, the following questions should be answered: Does the loss of elements of the State due to climate change lead to the termination of their existence as a subject of public international law? What are the possible solutions to preserve the state of these entities in the traditional sense and in a new, non-regional sense?

## **The Concept Of Deterritorialized States**

The state may undergo changes that have consequences for the state, both internally and internationally, and these changes may include one of the elements of statehood leading to its demise, as in the case of climate change factors that have contributed to environmental changes that have resulted in significant impacts on island and low-lying countries, and whose rise in sea level has led to their complete submerger underwater. Therefore, we will try to shed light on the concept of these states, by addressing the traditional criteria for the establishment of a state in accordance with public international law, because of their importance as a prelude to any talk of the demise of the state, and then we address recognition as an additional criterion by which the existence of non-regional states can continue.

### ***Traditional State Standards:***

As a subject of public international law, a State is based on several criteria that must be met to characterize an entity as a State, and therefore it is necessary to identify from the beginning the definition of the term "State", which raises many theoretical controversies among scholars of public international law, and the basis of these differences is due to the complex nature of the State, which is in fact a very ambiguous phenomenon both with regard to its genesis and the complex elements that interact within its entity. This makes it difficult to establish an accurate and clear definition of a state (Muhammad,2004) and in the words of some jurisprudence "the state is not a fact in the sense that the chair is a fact, it is a fact in the sense that a treaty is a fact: any legal situation linked to a particular situation under certain rules or practices". (Ali,2001)

Despite the importance of the State as the original subject of public international law, there is no reliable legal definition of it, and on the other hand, the Montevideo Convention of 1933 (Bo,2003) defined in its first article the constituent elements of the State as a subject of international law: permanent population; a specific territory; a Government; and the ability to enter into relations with other States. (Guy,2001)

It should be noted that despite the fact that Montevideo standards are necessary for the establishment of the state and not for its continuation, since modern international law is characterized by a strong tendency in favor of the continuation of the effective existence of

the state despite the fundamental changes that affect one of its criteria that do not lead to the end of the existence of the state, the study of these standards is indispensable for any beginning of the study of the demise of the state. (Kelsen,1941)

*Therefore, we will address these criteria briefly in the following:*

***A permanent population:***

Some jurisprudence argues that the relationship of the population with their State is not a relationship of residence in a particular place and subject to a certain sovereignty, but rather a relationship of loyalty and belonging to the sovereign entity of which the population and territory are one of the elements, and this relationship between the State and its inhabitants is expressed in the term "nationality" as a political and legal bond between the individual and the State that entails mutual rights and obligations. (Isabelle,2018). Although this criterion is of great importance, there is no minimum population required, and some small island States at risk of disappearing due to climate change such as Tuvalu and Nauru are among the least populous.

***A defined territory:***

It means an area of land on which the State exercises certain powers, and the territory is the basic element of the existence of States, as some jurisprudence considers that "it is clear that States are territorial entities", yet a certain area is not required in the territory, so there are large States in the world such as Canada and Russia and small States such as Liechtenstein and San Marino, and at the same time the determination of the boundaries of the territory of the State does not affect its fulfillment of the criterion of the specified territory, Even border disputes do not affect the existence of a State, as confirmed by the International Court of Justice in the 1969 North Sea Continental Shelf case by stating that "there is no rule that the land boundary of a State must be fully demarcated and defined, and it has not often been determined in different places and for long periods" (Jane,2010)

Based on the foregoing, it seems that there is a close correlation between the elements of population and territory, and according to some jurisprudence that the element of population must be viewed in conjunction with the element of territory, and on the other hand that the loss of territory makes the individuals who make up the element of population lose the only criterion that defines them as such, and therefore besides the existence of the territory is required to be habitable, The criterion of permanent population within a given territory requires that the territory retain the population on a permanent basis, nor does it appear that there is a need for the entire population to live on State territory, the criterion has been met even in cases where a large proportion or even the largest proportion of the population lives outside the territory of the State. (Jenny,2015)

But what if the exodus of the population from the territory is accompanied by the loss of the territory, does that affect the existence of the state?

It can be said that since the territory is the material basis that guarantees people to live together as organized societies, it is clear that in the absence of the material basis of an

organized society, it will be difficult to prove the existence of a state, and this close interdependence between the norms of population and territory according to their traditional concept, leads us to wonder to what extent this concept can be modified in the context of the challenges facing the existence of the state due to climate change?

***Government:***

The existence of a permanent population and a specific territory is not sufficient for the formation of a State, as a third criterion should be met, namely the existence of an independent and effective Government capable of exercising its competences and powers over the population and the territory, and the emphasis on the elements of independence and effectiveness in establishing the criterion of government is due to the decentralized nature of public international law, since the absence of a central international executive body with the authority to enforce international obligations within States, It makes it necessary for the state itself to take over this, so the state must be able to exercise its authority effectively and independently within its borders.(Lisa,2010)

With regard to the effectiveness of government, jurists agree that these powers must be exercised within a certain territorial and personal scope, as Crawford explains this by saying that government power must be "exercised, or can be exercised in relation to certain lands and populations", as he considers government the most important criterion in the formation of the state because all other criteria depend on it.(Lilian,2010)

Thus, the existence of the population and the territory is required not only to achieve those initial criteria but also to have a Government that meets the requirement of effectiveness.

From this it is possible to say that the loss of any territory or population is the first indicator of the loss of the state, which means that there will be a prelude until the complete disappearance of the state, but the close link between all the criteria and the general quest of the population to stay in their state as long as possible invites us to say that all the criteria discussed will be lost at the same time, That is, when the land becomes uninhabitable, then there will be no territory capable of retaining permanent inhabitants and no government capable of exercising its governmental authority effectively(Michael,2001)

***Capacity to enter into relations with the other states***

This criterion is also called "independence", some jurisprudence holds that this ability to enter into relations with other states is not limited to states only, but includes international organizations, non-independent states and other bodies, and therefore is not a characteristic of the state.(Rosemary,2010)

The entry of a State into relations with other States is subject to two conditions, the first being that there must be a Government capable of exercising its authority over a specific territory and its inhabitants, and capable of entering into legal obligations with other States(Valentina,2017) and the second being that such a Government must be independent of

the other legal systems of the State and not subject to any other sovereignty. Constitutively for its existence.

It is worth mentioning that the jurist Kelsen was a staunch supporter of the view that it is the governmental authority that determines the establishment of the state in the first place, as he developed the legal concept of the state, as he put it, "The coercive system that makes up the political society that we call a state, is a legal system. What is commonly called the legal system of the State, or the legal system established by the State, is the State itself"

It is clear from this phrase that "Kelsen" underestimates the importance of the territory as a key criterion for the establishment of the state, by equating it with the legal order established by the state, the concept of the state in "Kelsen" is the ability to establish a legal system that regulates the relations between the individuals to whom it applies, saying "If an authority is established anywhere and in any way, it is able to ensure permanent obedience to its coercive system among the individuals whose conduct is regulated by this system, The society formed by this coercive regime is a state in the sense of international law"

In conclusion, it should be emphasized that these criteria are necessary for the establishment of the State and not for its continuation, and that international law assumes the continuation of the existence of the State despite the changes in its elements. Is it possible to talk about an additional criterion besides traditional criteria by which this problem can be addressed?

### ***Recognition as an additional criterion for the existence of the state***

We mentioned earlier that although the traditional criteria necessary for the establishment of the state are important, they are necessary for the establishment of the state and not for its continuation, and the changes that occur to these standards leading to their demise will not lead to the termination of the existence of the state, and therefore the expected loss of the traditional objective standards of the state due to climate change will not necessarily and automatically lead to the loss of the state.

For the purpose of the continuation of the effective existence of the State, these criteria have been supplemented in certain cases by the criterion of recognition, as it allows them to continue despite their lack of constituent standards, knowing that recognition is not a condition for the establishment of a State in international law, since an unrecognized entity that meets the Montevideo standards is considered a State and has the rights of States under international law, since the entity is not a State because it is recognized, It is recognized because it is a state, but at the same time recognition may be of great importance for certain cases , as it is an important proof of legal status, and modern international law is characterized by a strong assumption in favor of the continuation of the effective existence of the state despite the fundamental changes affecting one of its criteria.

Here it should be asked how important is the existence of this "assumption", which is not evidence but a presumption required by law to reach the resolution of a particular issue in the absence of other evidence, and can be refuted if there is evidence to the contrary? Can the

assumption of state continuity remain in the face of the reality of climate change? How can we oppose the fact that a territory that once provided a territorial basis for a State had been completely submerged and no longer existed?

Recognition did not have a constitutive role in the emergence of states, as the theory of revealing recognition was prevalent at the time of the conclusion of the Montevideo Convention, the state was created by the realization of the elements contained in the first article of the Convention, nor was recognition provided for as an element of the establishment of the state, since it is considered an inn independent of the existence of the state.

Undoubtedly, the theory of revealing recognition does not fit the situation of low-island States facing the risk of losing their territories due to their complete submersion, because it excludes entities that do not meet the criteria for statehood from being States, while at the same time excluding the importance of recognition as an important element of recognition of special legal status. In the law of treaties states have defined not only as an entity consisting of a people living in a specific region under an organized system of government, and having the ability to enter into binding international relations, but also included "entities recognized as states for special reasons" hence it can be assumed that recognition is a constitutive element in some cases, addressing the lack of elements of the state.

The Commission had also refrained from codifying the topic of recognition of States and Governments, noting that "although it had legal consequences , it had raised many political problems that were not regulated by law", and similarly, the Commission's 1949 draft Declaration on the Rights and Duties of States did not contain a definition of the term "State", as the Commission had concluded that no useful purpose would be achieved through such an effort. She then decided to use the term in the generally accepted sense of international practice.

Thus, we can say that the lack of agreement on a specific definition of the term "State", which it means that it is an ambiguous and indefinite idea because of the aspects it entails that bear the political effects based on relations between States, especially with regard to the question of recognition, because of the political aspects it entails that fall within the discretion of each State, since there is no legal obligation on States to recognize an entity that meets Montevideo's criteria as a State, Therefore, by analogy, there is nothing to prevent States from continuing to recognize a State that has lost one of the elements of its existence, and therefore it should be asked here who determines that submerged States no longer exist? Before that, was it permissible to withdraw the recognition granted to the State?

#### ***Effect of withdrawal of recognition of disappeared States:***

It is generally emphasized that a State is not entitled to withdraw the legal recognition previously granted to another State as long as the substantive elements of the creation of the State are still present, so under the doctrines of the constituent recognition and the revealing recognition, the withdrawal of recognition becomes permissible as soon as the State becomes

incomplete to one or all of the elements of its existence, due to the fact that the recognition is not a political act subject to the discretion of states but an application of international law, Based on the loss by the State of the elements of its existence, which indicates the convergence of the theories of constituent and revealing recognition, while others point out that under the theory of the recognition created the withdrawal of recognition remains discretionary, once the State has effectively disappeared, other States can withdraw its recognition, and can choose to continue to grant recognition, and accordingly the international legal personality of the entities whose actual State has disappeared, this trend then distinguishes between the recognition created and the revealer.

While it can be said that since the loss of the constituent elements of a State leads, according to revealing recognition, to the automatic termination of international legal personality, the withdrawal of recognition of a disappeared State is not merely a possibility but a logical necessity, for just as recognition of the creation of a new State is only an acknowledgement of a pre-existing fact, so too the withdrawal of previous recognition is nothing but recognition of a new status. Therefore, although revealing recognition represents the preponderant theory of international law, it is not strictly adhered to in international practice.

States therefore will not have to recognize the actual disappearance of a small island State, but can continue to treat it as an international legal person, however, once the elements necessary for the establishment of the State have been lost, other States will have the power to declare the disappearance of the island State, but it can be said that since the withdrawal of recognition from the State generally occurs implicitly through recognition of the successor State, The absence of a successor State to the disappeared island State requires the express withdrawal of recognition from it, and the result of the withdrawal of recognition by another State would be limited to bilateral relations between the two States, i.e. the cessation of factual and legal relations between the withdrawing State and the disappeared State, and thus could not lead to its loss of international legal personality.

Based on the above, much of the jurisprudence argues that the withdrawal of recognition of island States by the international community in general leads to the determination of the disappearance of the State and the loss of its legal personality and not the individual acts of a few States.

From this it seems that the international reality imposes the recognition of a new type of state, namely non-regional states, and this is neither new nor rejected in international law, and one of the most prominent examples of these countries is the sovereign military system of the Knights of St. John or the so-called Knights of Malta, a Catholic group based in the Italian capital Rome recognized by international law as a sovereign entity, and has the right to issue its own passport, in addition to postage stamps, and coins of moral value that are not used. As a currency, it also maintains diplomatic relations with a number of countries and enjoys observer status at the United Nations although it does not possess the element of territory after ceding its sovereignty over Rhodes and Malta to Napoleon by the Treaty of 1798, Similarly, the Holy See was a landless entity in the period leading up to the

establishment of the Vatican State by the Treaty of Lattirane (from 1870 to 1929), as it represented a territoryless entity recognized by most States and with which diplomatic relations had been established, which leads us to say that there is customary international law resulting from the repeated acts of States that accepts recognition as a sovereign State of a particular entity without territory, that is, without territorial authority. So we can say that a country that is completely submerged in water can take the form of a unique international entity and continue to exist as long as other countries choose to continue to recognize it.

We note that many proposals on how to address the issues raised by sea-level rise aim to maintain a stable legal status in the face of an increasingly dynamic process of climate change, at a time when such changes require a response to the requirements of the new situation, not the imposition of fixed forms established in previous conditions and situations that are no longer valid under the expected changes.

At the same time, if the legal researcher can measure previous cases and compare them with the case under study in an attempt to prove a particular legal position, then the phenomenon discussed here is unprecedented and has not occurred within the framework of public international law, since the sea has not yet completely submerged States, so the answers to the situation of the submerged State remain uncertain.

However, the potential for States to disappear due to sea-level rise exists, and international law should deal with their implications.

In light of the above it can be said that recognition will have the most prominent role in solving the problem of the existence of submerged states, it is important that the island state ensures the continuation of its recognition or obtaining new recognition by sovereign states, any solution that requires the preservation of the elements of its existence by the island state, as if working to obtain a new territory, is likely to be useless, the infrastructure and technological and administrative capabilities necessary to achieve these solutions are difficult to provide in island States, so they will need the assistance of other States, which we can express continuously in their recognition, as well as the social, economic and humanitarian impacts of climate change affecting States on their peoples, and require the intervention of the international community to find appropriate solutions.

#### ***The modern concept of the State within the framework of public international law:***

Based on the above, it has become necessary to ask whether submerged States will need to acquire territory to exercise sovereignty over it, or whether they can continue to exercise their sovereignty as a "deterritorialized" State, when only a State can exercise territorial sovereignty?

It seems that there are two different possibilities to ensure the continued existence of these states, the first comes from maintaining the traditional standards of the state, while the second depends on the continued recognition of these states as "non-regional" states, and this is what we will try to highlight in this section according to the following detail:

#### ***Maintaining the traditional standards of the state:***



The main problem with the continued existence of island states is that their territories have become uninhabitable and that this will lead to the loss of all the constituent standards of the state, so one of the most important ways to preserve the traditional state is to either preserve the habitable territory or acquire a new territory, and jurisprudence offers us two ways in which this can be achieved, namely the establishment of an area not linked to an existing territory which is represented by the establishment of "artificial islands", or get a territory that already exists and belongs to another state, which is called the idea of "renting the territory". We will therefore address these two ideas successively as follows:

### *Creation of artificial islands:*

The creation of new territories is not a new idea in international law, and has been practiced by States through the establishment of artificial islands within their exclusive economic zones or on their continental shelf for various purposes, examples of which are the island of "Flevopolder" in the Netherlands and the island of "Hulhumalé"[34] of the Maldives, the United Nations Convention on the Law of the Sea of 1982[35] authorized the establishment of artificial islands in the exclusive economic zone and continental shelf. This is in Articles (60) and (80).

Recently, artificial islands have been created for the purposes of urbanization and tourism by providing sites for infrastructure and airports, but in the context of sea level rise these islands may be of great importance, because they can provide habitable land on which the inhabitants of the submerged state can settle, but at the same time artificial islands must meet the requirements of the territory as an element of statehood.

It is well known that islands can meet the requirements of the specific territorial standard as stipulated in the Montevideo Convention, since a large number of States consist of only one or more islands, however, because the first paragraph of Article 121 of the United Nations Convention on the Law of the Sea defines an island as "an area of land naturally formed and surrounded by water, and superior to it in the event of a tide", The question that arises here is whether artificial islands meet these requirements?, Although there is no explicit definition of artificial islands in the United Nations Convention on the Law of the Sea, it is clear that the definition of islands above excludes artificial islands from obtaining the legal status of the island under the law of the sea, This is confirmed by article 60, paragraph VIII, of the United Nations Convention on the Law of the Sea by stating that "artificial islands, installations and installations shall not have the status of islands".

Jurists differed in the extent to which artificial islands met the requirements of the Territory in accordance with the Montevideo Convention, with some arguing that they met the requirements of the Territory, arguing that the legal regime for artificial islands in the Convention on the Law of the Sea was aimed only at attempts by States seeking to expand their territorial seas, while others were of the view that the future use of artificial islands would be either for the establishment of new independent States or for the expansion of territory and sovereignty by States at sea. There are those who argue that there are certain criteria that artificial islands must meet in order for them to be considered a territory, such as being a real island, that is, that they are created by land reclamation and not by structures and

compositions; Rather, international law must keep pace with real changes in order to be able to address them, on the other hand, another trend is that artificial islands do not constitute territory according to the concept of a State, and the German Administrative Court in Cologne upheld this view in its 1978 ruling, holding that international law requires that the territory of a State consist of part of the land or an area of land, a requirement that has not been met by the man-made islands. Accordingly, it rejected the claim of a German citizen that he had lost his German nationality by acquiring citizenship of the "Principality of Sealand", a former naval fortress in World War II located in international waters off the coast of Great Britain, where a number of individuals claimed to have established a sovereign State, as the Court found in 1978 that besides the loss of permanent population, the "Principality of Sealand" also did not constitute a State because it lacked the basic requirements of the specific territorial criterion. .

Thus, given the divided views on the legal status of artificial islands, the general acceptance of artificial islands to constitute the territorial criterion for the continuation of a State upon loss of its territory seems distant, but this does not preclude the possibility of changing its legal status in the light of future changes that may necessitate the search for solutions to the complete disappearance of States.

#### ***Acquisition of territory belonging to another State:***

Since the construction of new territory does not seem to be a viable option to ensure the continuity of the traditional state, the question arises here whether it is possible to acquire existing land for this purpose?, and here jurisprudence puts forward the idea of obtaining territory belonging to another state as one of the possible solutions to the problem of the disappearance of the state, namely that the disappeared state acquires new territory from another state under a treaty of assignment, Sovereignty over the fully ceded territory thus passes to the State that has lost its territory, which will then transfer its population to the new territory, and therefore the continued existence of the State will be guaranteed in accordance with the traditional rules of international law. There is also a precedent for this approach in responding to environmental disasters, as during the seventies of the nineteenth century, tens of thousands of Icelanders were expelled from Iceland as a result of extreme poverty exacerbated by a devastating volcanic eruption that destroyed half of the island, when the Canadian government entered into an agreement with these settlers granting them a large suitable plot of land to form their new land, and the agreement included providing them with funding and livestock to help resettle them, and to guarantee their rights as citizens of Canada and Iceland for themselves and their children. The new colony of Iceland was administered by a government committee elected from among the settlers, and eventually joined the province of Manitoba to become fully integrated into Canada.

But although this solution is the most legally conceivable, in practice, it is difficult to imagine any State agreeing, regardless of the price, to cede part of its territory to another State unless that area is uninhabited, uninhabitable, does not contain any personal or cultural property and is devoid of all resources whatsoever.

Therefore, another aspect prefers to acquire the territory by leasing part of the territory of an existing state to the submerged state, which is not without difficulties represented in the conditions of the inhabitants of the submerged state in terms of preserving their culture and traditions, as well as their access to the right to work, social security and health rights, as well as with regard to the nationality of the children born, it is more than obtaining land from an existing state.

Based on the above, the creation of artificial islands or the acquisition of an existing territory do not seem to be viable options, meaning that for the purpose of the continued existence of the submerged state, a new concept of the state must be defined, through its continued recognition.

### ***Preserving the State through Continued Recognition:***

We will try to discuss the continued existence of island states by recognizing a new concept of statehood, to be applied to address the challenges faced by these states in the context of climate change, which necessarily leads to a modification in the concept of traditional state elements in a way that fits the modern concept of statehood. The rise in sea level leads to the absence of a habitable territory, and therefore the new concept of the State must move away from the importance of the element of territory, and according to some jurisprudence that the element of population must be seen in conjunction with the element of territory, since the loss of territory makes the individuals who make up the element of the population lose the only criterion that defines them as such, In view of this interdependence between the territory and the population being fundamental elements of the traditional concept of the state, they should be dealt with together, moreover, the criterion of government needs to be adjusted as well, as it cannot host the required government institutions because the land has become uninhabitable, nor will it have scope to exercise its competences due to the loss of territory and population in the traditional sense.

From this it can be said that the close link between all standards and the general quest of the population to stay in their state as long as possible invites us to say that all standards will be lost at the same time, that is, when the land becomes uninhabitable then there will be no territory capable of retaining permanent inhabitants nor a government capable of exercising its governmental authority effectively, which makes it necessary to search for a modern concept of these standards in the light of the changes imposed by climate change .

For the purpose of managing the population and territorial components, there must be an effective government that manages the affairs of the territory and its population, and therefore jurisprudence deals with the idea of a "government-in-exile", [49], which is defined as a government that has been forced to leave the territory of its state due to occupation or civil war, and exercises governmental powers with the consent of the host state, as long as there is a real chance of return.

The idea of a government in exile allows governments to operate beyond territorial boundaries, so an island state government can try to establish itself in a host state as a

government in exile, if the effects of climate change make it impossible to maintain government institutions in the island state.

Thus, in the context of the disappearance of States, a deterritorialized State entity would consist of a Government or authority elected by registered voters of the deterritorialized State, which would continue to represent the disappeared State at the international level, exercising its functions of caring for the rights and interests of its citizens vis-à-vis the new host State or States. In the new host country or countries. The reason for this is that governments in exile do not constitute a distinct subject or special status of international law, but rather represent an organ of the state they represent, and are therefore natural governments that have only been separated from their territorial position.

Therefore, small islands facing the risk of disappearance will have the potential to maintain some form of identity similar to a state, by relying on other countries to host part of their government organs, and in this regard some jurisprudence holds that it is possible for the countries closest geographically to accept to do so or it may be reasonable for the countries responsible for the main emissions of greenhouse gases that cause rising sea levels to share the burden of not only receiving the inhabitants of these worlds. States, but to ensure the preservation of this special form of state.

In order for island States to continue to exercise their governmental functions through the apparatus of government in exile, population and territorial criteria should be modified as they define the scope of territorial and personal jurisdiction of the State, whereas the population is traditionally determined on the basis of the presence of the population on a specific territory, it must now be determined on a different basis, such as participation through voting, nationality or the rule of its population. Although they are outside their territory, the territory may therefore lose its relevance as a pre-existing criterion for the establishment of a state.

In the light of the aforementioned changes in the traditional norms of the state caused by climate change and the reality imposed by it that affects the existence of the state as a subject of international law, it invites us to wonder to what extent it is possible to talk about a modern concept of the State imposed by the repercussions of climate change?

It can be said that the possibility of discussing a new idea of the State on the basis of international law depends on the importance given to the standards set forth in the Montevideo Convention, the decline in their importance can be inferred from the increasing importance given to recognition as an additional criterion for the State, as mentioned earlier, this change in traditional elements is supported by international practice in so-called "de facto" States, since they are States that meet the standards of the State but do not enjoy the legal status of States because of their non-recognition by the international community, This is where the importance of recognition as a constitutive element emerges, to support the possibility of saying a modern concept of the state ,on the other hand, the importance of continued recognition of submerged States shows that, although the submerged State is unable to perform its obligations adequately due to the loss of its elements, it is better for

States to continue to recognize them as the termination of their rights and obligations would be more detrimental to the international community.

Moreover, the idea of secession from the territory is not new in international law, as it is recognized to governments in exile, as well as the recognition of other entities with a kind of sovereignty and the exercise of the competences of the state without the existence of a specific territory, such as the sovereign regime of the Knights of St. John the Military, Rhodes, Malta and the Holy See, and therefore it can be said that a new concept of the state does not depend on the existence of the territory. It can find room in international law, meaning that not only governments and other sovereign entities can accept separate territories, but also states can recognize them in the event that they lose their territory to climate change.

Finally, it can be said that both ways of ensuring the continuity of the disappeared States and their preservation of their international legal status involve great difficulties, especially with regard to the new concept of the State, since it needs at a minimum to ensure the continued recognition of them by the international community, since there is no duty on States to continue recognition, and therefore it depends on the moral will of the international community, in the sense that there is no legal duty on States to continue to recognize the submerged State, but rather to have a moral duty to enable the State to Continue to have her status as an international legal person.

## **Conclusion:**

At the end of the research on the subject of non-regional states, and after addressing several aspects of it with explanation and analysis, we reached a set of conclusions and proposals, which are as follows:

### ***First: Conclusions***

1. Climate change leads to sea-level rise, which can cause the complete disappearance of some island States, affecting their status as an international legal person.
2. Modern international law is characterized by the assumption that submerged island States will continue to be recognized by the international community.
3. The withdrawal of recognition of a submerged State produces its effect on its legal status only if it is issued by a large group of States.
4. Submerged States need to adopt a modern concept of statehood of continued recognition, with the consequent reconsideration of traditional state norms, but there is no duty on States to continue recognition, and therefore it depends on the moral will of the international community.

### **Second: suggestions**

1. Work to develop a mechanism of action through which the countries that emit greenhouse gases contribute to finding appropriate solutions for the island countries that are threatened with disappearance due to the activities of these countries.
2. This issue can be resolved by an international treaty dealing with the issue of climate change per se and determining which countries are responsible for hosting the inhabitants of the offshore countries, and the continuous recognition and approval of governments in exile can be regulated through such a treaty.

## References

- Muhammad S Abdel Hamid, International Organization, Section One (The International Community), Mansha'at al-Maaref, Alexandria, 2004, p. 87.:
- James C, The Creation of States in International Law, 2nd edition, Oxford University press, 2006, p: 31. DOI: 10.1093/law/9780199228423.001.0001
- Bo J Theutenberg, The Holy See, the Order of Malta and International Law, 2003,P:13.  
[http://www.theutenberg.se/pdf/the\\_holy\\_see\\_the\\_order\\_of\\_malta\\_and\\_international\\_law.pdf](http://www.theutenberg.se/pdf/the_holy_see_the_order_of_malta_and_international_law.pdf)
- Guy S Sainty, the order of Malta,sovereignty, and international law, available on:  
[http://library.gayhomeland.org/0010/EN/EN\\_Souvereignty\\_and\\_international\\_Law\\_G\\_S\\_Sainty.htm](http://library.gayhomeland.org/0010/EN/EN_Souvereignty_and_international_Law_G_S_Sainty.htm):
- Kelsen.H, The Pure Theory of Law and Analytical Jurisprudence, Harvard Law Review, Vol. 55, No. 1, 1941.:
- Isabelle B, Disappearing island states and human rights: Preservation of statehood and human rights in times of climate change, Master thesis, 2018,  
<https://www.divaportal.org/smash/get/diva2:1305106/FULLTEXT01.pdf>
- Imogen S, Artificial Islands and Territory in International Law, Vanderbilt journal of transnational law, Vanderbilt Law School, United States, Vol 52:643.
- James C, The Creation of States in International Law (2nd Edition), Mar 2007, p.1 DOI: 10.1093/law/9780199228423.001.0001
- Jane M, Disappearing states, statelessness and the boundaries of international law, UNSW Law Research Paper, Issue 2, 2010.:
- Jenny G Stoutenburg, Disappearing Island States in International Law, Brill, Nijhof, Leiden, Boston, 2015: DOI10.1163/9789004303010
- Lisa F, if a Country Sinks Beneath the Sea, is it Still a Country? ,Scientific American, August 23, 2010, available on: <https://www.scientificamerican.com/article/if-a-country-sinks-beneath-the-sea-is-it-still-a-country>
- Lilian Y and Miguel E, Vanishing Island States and sovereignty, Ocean & Coastal Management,Volume 53, Issue 1, January 2010.:  
<https://doi.org/10.1016/j.ocecoaman.2009.10.003>
- Michael G, Climate Change, Sea Level Rise, and Artificial Islands: Saving the Maldives' Statehood and Maritime Claims Through the 'Constitution of the Oceans', Colorado Journal of International Environmental Law and Policy, University of Colorado, Boulder, United States, Vol 23.
- Rosemary R, International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma, law research paper, University of New South Wales, Faculty of Law, 2010.
- Valentina B and Chiara R, Small Island Developing States and Climate Change: An Overview of Legal and Diplomatic Strategies,2017,Available at SSRN:[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3072872](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3072872).