THE PARADOX OF SOVEREIGNTY AND UNIVERSAL HUMAN RIGHTS: FROM ABSOLUTE AUTHORITY TO RESPONSIBLE STEWARDSHIP

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ABSTRACT

This article examines the relationship between state sovereignty and universal human rights in international law. It argues that the two are better understood as mutually constitutive and continuously renegotiated than as opposing principles. Tracing sovereignty from the settlements of 1648 through decolonization and the Cold War, and testing four theoretical accounts (realism, liberal institutionalism, constructivism and organized hypocrisy) against recent practice in Myanmar, China and the war in Ukraine, the article shows that claims to sovereign immunity from scrutiny have become progressively harder to sustain in law, though they remain politically potent. It then considers the doctrinal channels through which this change has occurred: treaty consent, obligations *erga omnes*, individual criminal responsibility and the Responsibility to Protect. Postcolonial and cultural relativist critiques are addressed, as is the claim that sovereignty is obsolete, together with the pressures that climate displacement and transnational artificial intelligence place on territorial authority. The article closes by proposing a model of "stewardship sovereignty," which is consent-based, legitimacy-driven, relational and accountability-oriented, and by examining the objections to which that model is exposed, including the charge that stewardship language revives colonial trusteeship.

Keywords: Human Rights; Sovereignty; Stewardship Sovereignty; Responsibility to Protect; Erga Omnes; International Law

I. INTRODUCTION

Few tensions in international law are invoked as often, and described as poorly, as the one between state sovereignty and universal human rights. In its classical form, sovereignty denotes the supreme authority of a State within its territory and its independence from other States beyond it.[1] Human rights, by contrast, are claimed by every person by virtue of being human, and are for that reason not supposed to depend on the grace of the State that holds that person within its power. The founding instruments of the post-war order embraced both claims. The Charter of the United Nations, concluded in 1945, rests on the sovereign equality of its Members and forbids the Organization to intervene in matters essentially within the domestic jurisdiction of any State,[2] yet it also names the promotion of respect for human rights and fundamental freedoms among the purposes of the Organization.[3] Three years later, the Universal Declaration of Human Rights proclaimed a common standard of achievement for all peoples and all nations.[4]

The conventional reading sets these commitments against each other. States, on that view, invoke sovereignty to shield themselves from scrutiny, while victims and their advocates invoke rights to break through the shield, so that every gain for one principle is a loss for the other. The reading has intuitive appeal and describes a good deal of diplomatic rhetoric. As an account of the law, however, it is misleading. Sovereignty is not a pre-legal fact that human rights law then limits from outside. It is a status that international law confers and defines, and its content has shifted as the law has shifted.[5] Human rights obligations, for their part, are overwhelmingly the product of sovereign choices: States drafted the treaties, ratified them, and continue to supply the institutions that apply them.

This article argues that sovereignty and universal human rights are co-constitutive norms whose relationship is renegotiated through history, doctrine and adjudication, and that the most defensible resolution of the apparent paradox is a conception of sovereignty as stewardship: authority held on conditions of consent, legitimacy, relationality and accountability, for the

[1] *Island of Palmas* (Neth. v. U.S.), 2 R.I.A.A. 829, 838 (Perm. Ct. Arb. 1928) (Huber, Arb.) ("Sovereignty in the relations between States signifies independence.").
[2] Charter of the United Nations art. 2, ¶¶ 1, 7, June 26, 1945, 1 U.N.T.S. XVI [hereinafter U.N. Charter].
[3] U.N. Charter art. 1, ¶ 3; *id.* arts. 55(c), 56.
[4] Universal Declaration of Human Rights, G.A. Res. 217 (III) A (Dec. 10, 1948) [hereinafter UDHR].
[5] Louis Henkin, *That "S" Word: Sovereignty, and Globalization, and Human Rights, Et Cetera*, 68 FORDHAM L. REV. 1 (1999).

benefit of the persons over whom it is exercised.

The idea is not wholly new. Francis Deng and his colleagues advanced "sovereignty as responsibility" within the scope of internal displacement in Africa,[6] the International Commission on Intervention and State Sovereignty gave the idea institutional shape,[7] and Anne Peters has argued independence is best understood as a status held for the benefit of humanity, in real-world scenarios.[8] The contribution attempted here is narrower. It shows, from recent adjudication and State practice, that immunity claims are being eroded through identifiable legal mechanisms and not merely through moral pressure; it specifies the conditions on which a stewardship model can be defended; and it confronts directly the objection that the vocabulary of stewardship revives the trusteeship of the colonial era. Illustrations from Indian constitutional practice are applied throughout to reveal how a State that is guarding its independence closely has still absorbed international human rights norms into its domestic law, all things considered.

The argument traces the historical development of the tension, tests four theoretical accounts against it, examines three contemporary situations, analyses the doctrinal channels through which sovereignty and rights interact, addresses the principal critical perspectives, considers climate displacement and artificial intelligence as emerging frontiers, sets out the stewardship model and its limits, and concludes.

II. THE HISTORICAL TRAJECTORY OF THE TENSION

A. Westphalia and the Limits of Absolute Authority

It is conventional to date the modern doctrine of sovereignty from the Peace of Westphalia of 1648, which is said to have established the exclusive right of each political community to govern its own territory free from outside interference. The account was given its classic form in the twentieth century,[9] and it has since been challenged by historians who argue that the settlement was neither designed to create the framework of territorially exclusive States nor understood that way by its contemporaries.[10] The treaties themselves are instructive. The

[6] FRANCIS M. DENG ET AL., SOVEREIGNTY AS RESPONSIBILITY: CONFLICT MANAGEMENT IN AFRICA (1996).
[7] INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT ¶¶ 2.14–2.15 (2001) [hereinafter ICISS REPORT].
[8] Anne Peters, *Humanity as the A and Ω of Sovereignty*, 20 EUR. J. INT'L L. 513 (2009).
[9] Leo Gross, *The Peace of Westphalia, 1648–1948*, 42 AM. J. INT'L L. 20 (1948).
[10] Andreas Osiander, *Sovereignty, International Relations, and the Westphalian Myth*, 55 INT'L ORG. 251 (2001);

Treaty of Osnabrück included thorough provisions on the religious entitlements of subjects of the Empire's territorial rulers, so that the settlement regulated the relationship between ruler and ruled and not only that between ruler and ruler.[11] The Empire's constitutional ties also survived, which means that many of the supposedly sovereign princes remained embedded in a wider legal order.

The theoretical pedigree of sovereignty points the same way. Jean Bodin, to whom the modern concept is usually traced, described sovereignty as the absolute and perpetual power of a commonwealth, but he did not treat the sovereign as free from every restraint; the sovereign remained bound by divine and natural law and by its own covenants.[12] Absolute sovereignty, in the sense of authority answerable to nothing beyond itself, was therefore more a rhetorical position adopted in particular disputes than a settled description of the law.

There is a further and less comfortable point. The European model of sovereignty travelled outward through colonialism, and in the process, it was withheld from the peoples it was exported to. Nineteenth-century international law made recognition as a sovereign depend on conformity to a "standard of civilization" defined by the colonizing powers, with the result that sovereignty operated as a status for some and as a justification for subjugating others.[13] That history matters for what follows, because it explains why many States that emerged from colonial rule came to treat sovereignty as a shield and to regard rights-based intervention with suspicion.

B. The Post-1945 Settlement

The terms of the debate were, in effect, changed by the experience of the Second World War, all things considered. The judgment of the International Military Tribunal at Nuremberg rejected the argument that international law binds only States, holding that "[c]rimes against international law are committed by men, not by abstract entities," and that international law can be enforced only by punishing the individuals who commit such crimes.[14] The proposition that the individual is a subject of international law, which Hersch Lauterpacht had urged for

Derek Croxton, *The Peace of Westphalia of 1648 and the Origins of Sovereignty*, 21 INT'L HIST. REV. 569 (1999).
[11] Instrumentum Pacis Osnabrugensis art. V, Oct. 24, 1648.
[12] JEAN BODIN, SIX BOOKS OF THE COMMONWEALTH bk. I, ch. 8 (M.J. Tooley trans., 1955).
[13] ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW ch. 2 (2005).
[14] Judgment of the International Military Tribunal for the Trial of German Major War Criminals, Sept. 30–Oct. 1, 1946, *reprinted in* 41 AM. J. INT'L L. 172, 221 (1947).

years, ceased to be a heterodox view.[15]

The institutional response unfolded in stages. The Charter of 1945 placed human rights among the purposes of the United Nations; it did so in broad terms and left the substance to later instruments. The Universal Declaration followed in 1948, and the Convention on the Prevention and Punishment of the Crime of Genocide was adopted the day before it.[16] The Declaration was given binding treaty form in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966 and in force from 1976; together with the Declaration they make up what is known as the International Bill of Human Rights.[17] The International Court of Justice, for its part, had already observed in 1951 that the principles underlying the Genocide Convention are recognized by civilized nations as binding on States even without any conventional obligation.[18]

None of this displaced the Charter's protection of domestic jurisdiction. Article 2(7) survived, and it remains qualified only by the application of enforcement measures under Chapter VII. The post-war order thus embedded the tension in its constitutional text, and it did so deliberately. Its architects, who had witnessed totalitarian atrocity, were equally wary of creating new pretexts for great-power intervention. The domestic jurisdiction clause and the human rights clauses were, in this setting, companions in the same instrument, broadly speaking; also each was drafted with the other in view.

C. Decolonization and the Cold War

The picture was further complicated by decolonization. For newly independent States, sovereignty was both the prize of a long struggle and the principal defense against renewed domination. The General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960 treated the subjection of peoples to alien domination as a denial of fundamental human rights,[19] and the right of peoples to self-determination was written into

[15] HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS (1950).
[16] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].
[17] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].
[18] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 1951 I.C.J. 15, 23 (May 28).
[19] Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), ¶ 1

Article 1 common to both Covenants. Self-determination thus became at once a human right and a foundation of statehood, a conceptual bridge between the two tenets that is too often overlooked.

The same decades show how readily each principle could be turned against the other. The Declaration on Principles of International Law concerning Friendly Relations of 1970 restated the duty of non-intervention while also affirming equal rights and self-determination of peoples.[20] The Helsinki Final Act of 1975 placed "non-intervention in internal affairs" and "respect for human rights and fundamental freedoms" side by side as separate tenets in one text.[21] Governments in the Soviet bloc relied on the first, and dissident groups that organized themselves to monitor compliance relied on the second. Even the Asian and African States that met at Bandung in 1955 and made non-interference a central belief of their solidarity also pledged respect for fundamental human rights and for the purposes and tenets of the Charter.[22]

The Cold War also showed the selectivity with which both sides deployed the language of rights. Each superpower condemned abuses in the other's sphere and overlooked them in its own. The lesson of the period is that sovereignty has never been a fixed quantity. Its content has depended on the distribution of power and on the contests over norms that characterize each era.

III. THEORETICAL LENSES

A. Realism

Realist international relations theory treats sovereignty as a condition of survival in an anarchic system. Without a higher authority able to enforce agreements, States prioritize security and independence, and rights commitments are accordingly regarded as epiphenomenal.[23] On this view, governments adopt human rights commitments when it is convenient and discard them when it is costly, and rights-based intervention threatens the order on which co-existence

(Dec. 14, 1960).

[20] Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV) (Oct. 24, 1970).

[21] Conference on Security and Co-operation in Europe, Final Act, Aug. 1, 1975, 14 I.L.M. 1292, principles VI, VII.

[22] Asian-African Conference, Final Communiqué, Declaration on the Promotion of World Peace and Co-operation (Bandung, Apr. 24, 1955).

[23] KENNETH N. WALTZ, THEORY OF INTERNATIONAL POLITICS (1979); HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE (1948).

depends. Empirical work gives the realist some support. Studies of treaty ratification have found that ratification does not reliably improve practice and may in some circumstances coincide with worse performance, a pattern attributed to the low cost of symbolic commitment.[24] The difficulty is that realism cannot easily explain why governments expend so much diplomatic effort defending their records, or why they accept the costs of monitoring in the first place.

B. Liberal Institutionalism

Liberal institutionalists are more hopeful. They treat consent to treaty obligations as a rational choice through which States obtain credibility, cooperation and domestic stability.[25] The most developed version of the argument concerns the European Convention on Human Rights, which Andrew Moravcsik reads as an instrument by which newly established democracies bound themselves to external review in order to lock in their commitments against future domestic reversal.[26] Beth Simmons has correspondingly laid out that treaties are most effective where they are preparing domestic actors, such as courts, litigants and civil society, to demand compliance.[27] On this account sovereignty is not compromised by engagement with institutions but redefined by it: States trade a measure of autonomy for the benefits of a rule-governed order, and the human rights regime is one of the devices through which they do so.

C. Constructivism

Constructivists add that norms act not only as constraints on pre-formed interests but as constituents of identity. States come to understand what a legitimate State is through interaction with a normative environment, and human rights have become part of that environment.[28] The "spiral model" devised by Thomas Risse, Stephen Ropp and Kathryn Sikkink traces how a repressive State, subjected to transnational advocacy, moves from denial through the tactical concession toward the rule-consistent behavior, and proposes that even insincere engagement

[24] Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002); Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOCIO. 1373 (2005).
[25] ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY (1984).
[26] Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 INT'L ORG. 217 (2000).
[27] BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2009).
[28] ALEXANDER WENDT, SOCIAL THEORY OF INTERNATIONAL POLITICS (1999); Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887 (1998).

can set a State on a path from which retreat becomes costly.[29] The practical implication for sovereignty is considerable. If the boundary between what is internal and what is of international concern is socially constructed, it can have no permanent location, and the accountability of States to external norms becomes part of what sovereignty means.

D. Organized Hypocrisy

Stephen Krasner's account of "organized hypocrisy" is the most skeptical of the four. Krasner argues that the norms of sovereignty themselves, including the norms of non-intervention and of domestic autonomy, have been honored in the breach as often as in the observance, and that States have habitually separated what they proclaim from what they do.[30] Applied to human rights, the view finds support in the intermittent and selective enforcement of rights norms and in the exploitation of rights rhetoric for strategic ends. The criticism is serious. Still, it is not final. Norms invoked cynically still supply the standards against which conduct is later measured, and hypocrisy presupposes the existence of a norm whose breach requires concealment or excuse. In this broader context, the accumulated record of such calls is itself a source of legal pressure.

Each lens captures part of the picture. Realism explains why enforcement is uneven; institutionalism explains why States nonetheless bind themselves; constructivism explains how norms alter what States want; and the theory of organized hypocrisy explains why compliance remains partial. Taken together they support the proposition on which the rest of this article relies: sovereignty is not a fixed endowment but a practice, and its relationship with human rights is shaped by political and normative contestation.

IV. SOVEREIGNTY AND RIGHTS IN CONTEMPORARY PRACTICE

A. Myanmar and the Genocide Convention

The proceedings brought by The Gambia against Myanmar before the International Court of Justice are among the clearest recent tests of the relationship between sovereignty and universal accountability. The Gambia instituted proceedings on November 11, 2019, alleging that Myanmar's treatment of the Rohingya, and in particular the "clearance operations" carried out

[29] THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE ch. 1 (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 1999).
[30] STEPHEN D. KRASNER, SOVEREIGNTY: ORGANIZED HYPOCRISY (1999).

by its security forces from late 2016, breached the Genocide Convention.[31] The Gambia had no direct injury of its own. Its standing rested on the idea, constructed by the Court in earlier cases, that the obligations in the Convention are owed to all States parties, so that each has a legal interest in their performance.[32]

Myanmar's defense rested on sovereignty-based objections to the Court's jurisdiction and to admissibility, among them that the real applicant was the Organisation of Islamic Cooperation and that The Gambia lacked standing in the absence of a specially affected State. In its Order of January 23, 2020, the Court nonetheless indicated provisional measures, directing Myanmar to take all measures within its power to prevent genocidal acts against the Rohingya, to preserve evidence and to report to the Court.[33] In its Judgment of July 22, 2022, the Court rejected all of Myanmar's preliminary objections, holding that it had jurisdiction under Article IX of the Convention and that The Gambia was entitled to bring the claim.[34] Eleven States have since been admitted to intervene, and public hearings on the merits were held from January 12 to 29, 2026, after which the Court began its deliberations.[35]

The case is easily misread as a victory of rights over sovereignty. A more accurate reading is that the Court enforced a commitment that Myanmar had itself made. Myanmar ratified the Genocide Convention in 1956,[36] and the Court's jurisdiction rests on the compromissory clause in that treaty. The case therefore shows how consent given in the exercise of sovereignty can generate obligations that later governments cannot escape by pointing to the domestic character of the conduct complained of. It also shows how a rights regime that depends on State consent can be activated by States with no stake of their own beyond a shared legal interest.

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[31] Press Release No. 2025/57, Int'l Ct. Just., Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 11 States Intervening): Public Hearings on the Merits of the Case to Be Held from Monday 12 to Thursday 29 January 2026 (Dec. 19, 2025). On the underlying facts, *see* Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, U.N. Doc. A/HRC/39/64 (Sept. 12, 2018).

[32] *Questions Relating to the Obligation to Prosecute or Extradite* (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, ¶¶ 68–69 (July 20).

[33] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Gam. v. Myan.), Provisional Measures, Order, 2020 I.C.J. 3 (Jan. 23).

[34] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Gam. v. Myan.), Preliminary Objections, Judgment, 2022 I.C.J. 477 (July 22).

[35] Press Release No. 2025/57, *supra* note 31; Press Release No. 2026/1, Int'l Ct. Just., Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 11 States Intervening): Conclusion of the Public Hearings on the Merits Held from Monday 12 to Thursday 29 January 2026 (Jan. 29, 2026).

[36] Indep. Investigative Mech. for Myan., *The Gambia v. Myanmar*, https://iimm.un.org/node/119 (last visited Oct. 27, 2026).

B. China: Xinjiang, Hong Kong and Digital Sovereignty

China presents the contest in a different register. The Office of the United Nations High Commissioner for Human Rights concluded in August 2022 that the arbitrary and discriminatory detention of Uyghur and other predominantly Muslim communities in the Xinjiang Uyghur Autonomous Region may constitute international crimes, in particular crimes against humanity.[37] The Chinese government characterized external criticism as interference in its internal affairs, and on October 6, 2022, the Human Rights Council rejected, by 19 votes to 17 with 11 abstentions, a draft decision that would only have held a debate on the assessment.[38] The episode reveals the political weight that sovereignty arguments continue to carry even where the findings of the United Nations' own human rights office are not seriously contested on the facts.

The enactment of the National Security Law for the Hong Kong Special Administrative Region in 2020 raised related questions about the compatibility of national security legislation with the ICCPR as implemented in the territory, in actual application.[39] More distinctive is China's articulation of "cyber sovereignty." The Cybersecurity Law of 2016 lists the safeguarding of cyberspace sovereignty among its objectives,[40] and the Data Security Law of 2021 extends State control over data generated within the country's territory.[41] The claim is that the territorial logic of sovereignty applies to networks that are often described as borderless, and that State control of information flows is therefore a legitimate exercise of authority. Set against it are the universal digital rights of expression, privacy and access to information. The sovereignty-rights contest thus reappears in the technological sphere, where physical borders have become a poor guide to where effects are felt.

C. Russia and Ukraine

Russia's invasion of Ukraine in February 2022 yielded competing appeals to essential tenets

[37] U.N. Off. of the High Comm'r for Hum. Rts., OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China (Aug. 31, 2022).
[38] Human Rights Council, Draft Decision, U.N. Doc. A/HRC/51/L.6 (rejected Oct. 6, 2022, by 19 votes to 17, with 11 abstentions).
[39] Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (promulgated by the Standing Comm. Nat'l People's Cong., June 30, 2020) (China).
[40] Cybersecurity Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Nov. 7, 2016, effective June 1, 2017), art. 1 (China).
[41] Data Security Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., June 10, 2021, effective Sept. 1, 2021) (China).

of the international legal order, in the main. The Russian Federation justified its actions in part by reference to the protection of populations in eastern Ukraine, alleging genocide, and by invoking collective self-defense on behalf of the entities it had recognized.[42] Ukraine and a large majority of States characterized the invasion as a violation of the prohibition on the use of force and of Ukraine's territorial integrity, and the General Assembly deplored it by a vote of 141 to 5, with 35 abstentions.[43] Notably, when Ukraine instituted proceedings before the ICJ, the Court indicated provisional measures requiring Russia to suspend its military operations, and it observed that it doubted that the Genocide Convention authorizes the unilateral use of force in another State's territory for the purpose of preventing or punishing an alleged genocide.[44] The episode is a reminder that rights arguments can be deployed to justify the use of force as readily as to restrain it, and that the legal tests applied to such arguments must be demanding.

The International Criminal Court's issue, in March 2023, of arrest warrants for President Vladimir Putin and the Russian Commissioner for Children's Rights, in connection with the alleged unlawful deportation and transfer of children from occupied areas of Ukraine, is a further marker.[45] Article 27 of the Rome Statute denies relevance to official capacity,[46] and the Appeals Chamber has held that customary international law recognizes no head-of-State immunity before an international court.[47] The International Court of Justice had already recognized, in the *Arrest Warrant* case, that personal immunities before national courts do not amount to impunity, since they do not operate before certain international criminal courts.[48] The practical effect of such warrants is limited by the need for State cooperation, but their legal significance lies in the signal that sovereignty no longer insulates individual office-holders from responsibility for the gravest crimes.

Read together, the three situations support a measured conclusion. The scope of sovereign immunity from external scrutiny is narrowing through adjudication and international criminal

[42] Vladimir Putin, President of the Russian Federation, Address (Feb. 24, 2022), http://en.kremlin.ru/events/president/news/67843 (last visited Oct. 27, 2026).
[43] G.A. Res. ES-11/1, U.N. Doc. A/RES/ES-11/1 (Mar. 2, 2022).
[44] *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukr. v. Russ.), Provisional Measures, Order, 2022 I.C.J. 211, ¶ 59 (Mar. 16).
[45] Press Release, Int'l Crim. Ct., Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova (Mar. 17, 2023).
[46] Rome Statute of the International Criminal Court art. 27, July 17, 1998, 2187 U.N.T.S. 3.
[47] *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05-01/09-397-OA2, Judgment in the Jordan Referral re Al-Bashir Appeal (Int'l Crim. Ct. May 6, 2019).
[48] *Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3, ¶ 61 (Feb. 14).

process, and it is narrowing most reliably where it is the State's own consent, to the Genocide Convention or the Rome Statute, that supplies the legal basis. Where no such basis exists, or where the political organs of the United Nations are the forum, sovereignty arguments continue to prevail.

V. LEGAL AND INSTITUTIONAL DIMENSIONS

A. Treaty Regimes as Sovereign Consent

The human rights treaty system is, in the first place, a mechanism of consent. States that ratify the ICCPR undertake to submit periodic reports to the Human Rights Committee,[49] and States party to the Convention on the Elimination of All Forms of Discrimination against Women are subject to an equivalent reporting procedure.[50] These commitments are exercises of sovereign power, and the capacity to enter treaties has long been regarded as an attribute of sovereignty itself.[51] Once made, they bind: *pacta sunt servanda* is a basic rule of treaty law, and a State may not invoke the provisions of its internal law as justification for failing to perform a treaty.[52]

Two features of the regime bear on the argument. First, the obligations survive changes of government. The Human Rights Committee has taken the position that the ICCPR, which contains no denunciation clause, is not subject to denunciation or withdrawal,[53] so that a successor government that finds scrutiny inconvenient cannot escape it by rejecting the consent of its predecessors. Secondly, domestic legal systems have increasingly provided the channel through which such obligations take effect.

In India, Article 51(c) of the Constitution directs the State to foster respect for international law and treaty obligations, and Article 253 empowers Parliament to legislate to implement international agreements. The Supreme Court has gone further. In *Vishaka v. State of Rajasthan* it drew on the Convention on the Elimination of All Forms of Discrimination against Women to inform the content of Articles 14, 15, 19(1)(g) and 21 in the absence of legislation on sexual harassment at work,[54] and in *Justice K.S. Puttaswamy (Retd.) v. Union of India* it drew on

[49] ICCPR, *supra* note 17, art. 40.
[50] Convention on the Elimination of All Forms of Discrimination Against Women art. 18, Dec. 18, 1979, 1249 U.N.T.S. 13.
[51] *S.S. "Wimbledon"* (U.K., Fr., It. & Japan v. Ger.), 1923 P.C.I.J. (ser. A) No. 1, at 25 (Aug. 17).
[52] Vienna Convention on the Law of Treaties arts. 26–27, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].
[53] U.N. Hum. Rts. Comm., General Comment No. 26: Continuity of Obligations, U.N. Doc. CCPR/C/21/Rev.1/Add.8/Rev.1 (1997).
[54] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

international instruments in recognizing privacy as a fundamental right.[55] This sovereign State, acting through its own constitutional organs, thus embeds international human rights standards into the domestic order without any external compulsion, broadly speaking.

The consent model has limits that should be acknowledged. Consent may be given by governments that have no intention of complying, and the evidence that ratification alone improves practice is mixed.[56] Reservations can hollow out commitments, and some States remain outside the principal treaties altogether. The treaty regime is therefore a necessary part of the argument but not a sufficient one.

B. Obligations Erga Omnes and Peremptory Norms

The consent model is supplemented by a body of law that does not hinge on the consent of the particular State concerned, broadly speaking. In *Barcelona Traction*, the International Court of Justice distinguished obligations owed to the international community as a whole from those originating in diplomatic protection, and gave as examples the outlawing of aggression and genocide and the protection of the foundational rights of the human person, including protection from slavery and racial discrimination.[57] It has since confirmed that the prohibition of genocide is a peremptory norm,[58] and the Vienna Convention provides that a treaty conflicting with a peremptory norm is void.[59]

These concepts matter for the argument because they change the relationship between State and community. If an obligation is owed *erga omnes*, any State within the relevant group may invoke it, and the territorial State cannot answer that the matter is of exclusively domestic concern. The Gambia's standing in the Rohingya case is an application of the principle. So is the more recent opinion of the International Court of Justice on climate change, discussed in Part VII, which treated certain of the obligations concerned as owed *erga omnes*.

A further layer is added by international criminal law; the Rome Statute, together with the practice of the *ad hoc* tribunals, places responsibility for atrocity crimes on people, whatever

[55] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
[56] Hathaway, *supra* note 24.
[57] *Barcelona Traction, Light & Power Co.* (Belg. v. Spain), Second Phase, Judgment, 1970 I.C.J. 3, ¶¶ 33–34 (Feb. 5).
[58] *Armed Activities on the Territory of the Congo* (New Application: 2002) (Dem. Rep. Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, 2006 I.C.J. 6, ¶ 64 (Feb. 3).
[59] VCLT, *supra* note 52, art. 53.

their formal position, at least in practice. The significance of this development is that the State is no longer the only entity through which accountability is organized, and the language of immunity attaching to office must now contend with the language of personal responsibility.

C. The Responsibility to Protect

The Responsibility to Protect is the most definite doctrinal reformulation of self-rule in the human rights context. Its origins lie in the debate triggered by the NATO campaign over Kosovo in 1999, which an independent commission outlined as "illegal but legitimate,"[60] and in Secretary-General Kofi Annan's appeal for a recognition that independence could no longer be understood as protecting States from their obligations to people.[61] The ICISS reframed the issue by shifting attention from the right of outsiders to intervene to the responsibility of the State to protect its own people, with a residual responsibility falling on the international community when the State is unable or unwilling to discharge it.[62]

The doctrine was adopted in narrower form by the 2005 World Summit. Heads of State and Government accepted that each State has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and that the international community is prepared to take collective action, through the Security Council and in accordance with the Charter, where national authorities manifestly fail to do so.[63] The Secretary-General later organized the doctrine around three pillars: the protection responsibilities of the State, international assistance and capacity-building, and timely and decisive response.[64] Properly read, R2P does not create the broad right of humanitarian intervention; it confines coercive action to four crimes and needs Security Council authorization.

Its practice has been contested. Security Council Resolutions 1970 and 1973 in 2011 invoked the protection of civilians in Libya,[65] and the subsequent course of the intervention led several States to complain that a protective mandate had been stretched to achieve regime change. India

[60] INDEP. INT'L COMM'N ON KOSOVO, THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED 4 (2000).
[61] Kofi Annan, *Two Concepts of Sovereignty*, ECONOMIST, Sept. 18, 1999.
[62] ICISS REPORT, *supra* note 7, ¶¶ 2.14–2.15.
[63] 2005 World Summit Outcome, G.A. Res. 60/1, ¶¶ 138–139 (Sept. 16, 2005).
[64] U.N. Secretary-General, Implementing the Responsibility to Protect, U.N. Doc. A/63/677 (Jan. 12, 2009).
[65] S.C. Res. 1970 (Feb. 26, 2011); S.C. Res. 1973 (Mar. 17, 2011).

was among the five members that abstained on Resolution 1973.[66] Brazil responded with the idea of "responsibility while protecting," which sought stricter benchmarks of monitoring and accountability for the execution of mandates, in many respects.[67] Subsequent paralysis in the Council over other situations has fed the charge of selectivity. The General Assembly has tried to mitigate the effect of the veto by requiring a debate within ten working days after one is cast.[68] The practical record of R2P is thus mixed, but its conceptual contribution is lasting: it ties the legitimacy of sovereign authority to the performance of protective responsibilities and not merely to the possession of effective control over territory.

VI. CRITICAL PERSPECTIVES

A. The Postcolonial Critique

Scholars working within Third World Approaches to International Law (TWAIL) have offered the most searching critique of the universalist claim. They argue that the dominant conception of human rights reflects the historical experience, cultural assumptions and geopolitical interests of Western liberal societies, and that the rhetoric of rights has repeatedly been used to legitimize intervention in the Global South.[69] Makau Mutua's image of the human rights corpus as a script in which victims are saved from savages by saviours captures the complaint about its arrangement,[70] while Antony Anghie's historical work shows how the doctrines of sovereignty and civilization were fashioned to manage the relationship between colonial powers and the colonized.[71]

Three points should be drawn from the critique. First, selectivity is real: enforcement has fallen with disproportionate frequency on weaker States, while powerful States have escaped scrutiny for their own conduct. Secondly, a universalism that is not open to challenge from outside the Western tradition risks forfeiting the legitimacy it claims. Thirdly, TWAIL is not, in its better forms, an argument against human rights. It is an argument that the legitimacy of universal norms depends on the fairness of the processes through which they are articulated and applied. The stewardship model proposed below is designed to respond to that argument and not to

[66] U.N. SCOR, 66th Sess., 6498th mtg., U.N. Doc. S/PV.6498 (Mar. 17, 2011).
[67] Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General, U.N. Doc. A/66/551–S/2011/701 (Nov. 11, 2011).
[68] G.A. Res. 76/262 (Apr. 26, 2022).
[69] B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT'L CMTY. L. REV. 3 (2006).
[70] Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001).
[71] ANGHIE, *supra* note 13.

avoid it.

B. Cultural Relativism and Universalism

A related debate concerns cultural relativism. Relativists sustain that rights are culture-bound and that their imposition breaks the legitimate pluralism of societies, in real-world scenarios. Universalists respond that the core protections, such as freedom from torture, from arbitrary detention and from deprivation of the means of subsistence, express moral insights that are found, in different idioms, in every culture. International practice reflects a compromise between the two positions. The Bangkok Declaration of 1993 validated the universal nature of human rights while insisting that they be considered, within the scope of national and regional particularities, in real-world scenarios.[72] The Vienna Declaration and Programme of Action, adopted by consensus a few months later, accepted that national and regional particularities must be borne in mind but held that it is the duty of States, whatever their political, economic and cultural systems, to promote and protect all human rights.[73]

Two approaches help to move beyond the stalemate. Jack Donnelly's notion of "relative universality" treats the underlying rights as universal while allowing legitimate variation in their implementation.[74] Abdullahi An-Na'im's argument for "cross-cultural legitimacy" holds that rights gain durable authority when they are supported from within each tradition and not imposed from outside it.[75]

India's own experience illustrates the point. In this broader context, the fundamental rights in Part III of the Constitution were framed by a domestic Constituent Assembly, are enforceable by direct recourse to the Supreme Court, under Article 32, and have been read by that Court in a manner coherent with international standards. That history does not settle every question about the universality of particular rights, but it shows that rights need not be experienced as foreign impositions when they are articulated and enforced through domestic institutions with their own legitimacy.

[72] Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights ¶ 8, U.N. Doc. A/CONF.157/ASRM/8, A/CONF.157/PC/59 (Apr. 2, 1993).
[73] Vienna Declaration and Programme of Action pt. I, ¶ 5, U.N. Doc. A/CONF.157/23 (June 25, 1993).
[74] JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (3d ed. 2013).
[75] HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS (Abdullahi Ahmed An-Na'im ed., 1992).

C. Is Sovereignty Obsolete?

Some writers are claiming that the combined effect of human rights commitments, international criminal responsibility and global governance institutions has rendered independence mostly irrelevant, in many respects, and the conclusion is too quick. Sovereignty continues to perform functions that no alternative currently discharges: it structures political authority, protects communities from domination by others, and supplies the institutional framework within which rights are realized and disputes are settled. The contemporary indication, spanning the cases probed above, is revealing that even the most active enforcement of rights rests on State consent, State cooperation and State institutions.

The more exact claim is that independence is changing form. Abram and Antonia Chayes described a "new sovereignty" in which the capacity of a State to participate in international regimes is itself a core attribute of sovereignty, so that membership of institutions is a way of exercising sovereign power and not a way of surrendering it.[76] Anne-Marie Slaughter's account of government networks points in the same direction.[77] What emerges is a relational or networked sovereignty, marked by the interdependence of State power with other States, international organizations and the persons over whom authority is exercised.

VII. EMERGING FRONTIERS

A. Climate Displacement and the Right to Survival

Climate change poses perhaps the most urgent challenge to the established relationship between sovereignty and rights. International refugee law, as codified in the 1951 Refugee Convention, protects persons with a well-founded fear of persecution on specified grounds,[78] and it does not on its terms address displacement caused by sea-level rise or the failure of agricultural systems. Persons displaced in this way may fall outside its protection altogether. The Human Rights Committee confronted the issue in *Teitiota v. New Zealand*, where it accepted that the effects of climate change may in principle engage the non-refoulement obligations flowing from the right to life, although it found on the facts that the threshold had

[76] ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (1995).
[77] ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2004).
[78] Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

not been met.[79]

The conflict between a State's sovereign right to control its borders and the claim of persons rendered displaced by processes they did not cause is no longer abstract. In 2022 the General Assembly recognized the right to a clean, healthy and sustainable environment as a human right.[80] On July 23, 2025, the International Court of Justice delivered its advisory opinion on the obligations of States in respect of climate change, in which it held, unanimously, that States have obligations under treaty law, customary international law and international human rights law to protect the climate system, and treated certain of those obligations as owed *erga omnes*.[81] The opinion does not decide the status of climate-displaced persons, which was not the question put to the Court, but it confirms that responsibility for climate harm is not a matter confined to domestic jurisdiction, and it provides a legal basis on which claims by affected States and communities can be framed.

B. Artificial Intelligence and Digital Rights

Artificial intelligence systems operate across borders and increasingly shape decisions about employment, credit, criminal justice and access to public services. They expose the limits of regulatory sovereignty that is organized on territorial lines. When a system developed in one jurisdiction produces a discriminatory or opaque decision about a person in another, it is unclear which State's human rights obligations are engaged, and which forum is competent to review the decision.

Responses to date illustrate the tension. The European Union's Artificial Intelligence Act applies not only to providers established in the Union but also to providers and deployers elsewhere where the output of a system is used in the Union,[82] in what Anu Bradford has called the "Brussels effect."[83] India's Digital Personal Data Protection Act 2023 correspondingly applies to specific processing outside India where it is connected with offering goods or services to persons in India.[84] At the multilateral level, the Council of Europe's Framework

[79] *Ioane Teitiota v. New Zealand*, Human Rights Comm., Views, U.N. Doc. CCPR/C/127/D/2728/2016 (Jan. 7, 2020).
[80] G.A. Res. 76/300 (July 28, 2022).
[81] *Obligations of States in Respect of Climate Change*, Advisory Opinion (Int'l Ct. Just. July 23, 2025).
[82] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence, art. 2(1), 2024 O.J. (L 2024/1689).
[83] ANU BRADFORD, THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD (2020).
[84] Digital Personal Data Protection Act, 2023, No. 22 of 2023, § 3(b) (India).

Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, opened for signature in 2024, is the first binding international instrument on the subject,[85] and the General Assembly has adopted a resolution calling for safe, secure and trustworthy systems and for the protection of human rights online and offline.[86]

Each of these responses expresses sovereign authority, yet each also presupposes cooperation. The protection of privacy, non-discrimination and due process in transnational digital contexts requires new forms of jurisdictional cooperation that neither sacrifice sovereignty nor pretend that systems whose effects cross borders can be governed by territorial jurisdiction alone. The pressures generated by climate change and cyberspace are of the same kind: global commons problems that exacerbate the underlying tension between sovereignty and rights and cannot be resolved by either principle in isolation.

VIII. RECONCEIVING SOVEREIGNTY AS STEWARDSHIP

A. The Elements of Stewardship Sovereignty

The analysis above suggests that neither the defense of absolute sovereignty nor its abandonment is adequate to the present international order. What is needed is a normative re-conceptualization that preserves the legitimate functions of sovereignty within a framework of shared responsibility for human dignity. The model proposed here may be called stewardship, or relational, sovereignty. It has four elements.

First, stewardship sovereignty is *consent-based*. Authority is legitimate when it is exercised through treaty commitments and democratic authorization, and not merely because it is effective. The consent in question is that given through constitutional processes and through the ratification of treaties, and it includes the continuing consent that States express through their participation in international institutions.

Secondly, it is *legitimacy-based*. The authority of a State depends on its capacity and willingness to meet its duties of protection toward those it governs, and not on its raw ability to suppress opposition. Peters has argued that the State holds its sovereignty as a status in the service of humanity, which is a stronger formulation, but the minimum implication is the one

[85] Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, Sept. 5, 2024, C.E.T.S. No. 225.
[86] G.A. Res. 78/265 (Mar. 21, 2024).

on which the R2P consensus rests: a State that commits or tolerates atrocity crimes forfeits the presumption of non-interference in respect of those acts.[87]

Thirdly, it is *relational*. State power is entangled with other States, international organizations, civil society and the individuals whose rights it is meant to uphold. This does not describe a loss of authority. It describes the conditions in which authority is now exercised, and it follows the analysis of the new sovereignty set out in Part VI.

Fourthly, it is *accountability-oriented*. States that exercise authority over persons are answerable for it both domestically and internationally. Accountability here is not confined to the courts. It includes treaty-body review, parliamentary and judicial scrutiny, and the political and legal responses of other States.

The model does not describe the collapse of sovereignty into a system of global governance. States continue to perform their essential functions as guarantors of rights, managers of collective goods and mediators of competing interests. The difference is that they do so as participants in a common enterprise concerned with human dignity, and may be held to account when they fall short.

B. Objections and Limits

The stewardship model is vulnerable to three objections, each of which deserves a direct reply.

The first is that stewardship language echoes the trusteeship of the colonial era. The Covenant of the League of Nations described the government of colonized peoples as a "sacred trust of civilization,"[88] and Anghie has shown how the mandate system translated paternalism into law.[89] The objection is a serious one, and the choice of the word "stewardship" is open to it. The reply is that the model differs structurally from trusteeship in three respects. The duties it describes run toward the persons governed, and not toward a hierarchy of civilized and uncivilized States. They bind powerful States equally. And they are anchored in consent and in the existing law of treaties and peremptory norms, so that no State is empowered to assess the legitimacy of another's government by its own standards. The International Court of Justice has also made clear that the use of force is not an appropriate method for monitoring or ensuring

[87] Peters, *supra* note 8.
[88] Covenant of the League of Nations art. 22, June 28, 1919.
[89] ANGHIE, *supra* note 13, ch. 3.

respect for human rights,[90] a position that the model retains. Stewardship in this sense is a standard of legitimacy and a basis for lawful response, and not a license for unilateral intervention.

The second objection is indeterminacy. A criterion of legitimacy based on the protection of the governed could be applied expansively by any State that wished to justify interference. The response is to anchor the measure in positive law and not in free-standing moral judgment, including treaty obligations that the State has accepted, obligations owed *erga omnes*, and peremptory norms. The cases considered in Part IV, in which determinations were made by courts applying treaties that the respondent State had joined, are the model for how the standard should be applied.

The third objection is that the model does nothing about selective enforcement; that is partially correct. Stewardship sovereignty is a normative standard and not an enforcement mechanism, and it cannot remove the political obstacles that currently shape the responses of the Security Council. Under these conditions, what it can do is supply a uniform measure against which selectivity can be spotted and criticized, which is a precondition of reform. Measures such as the General Assembly's veto debate mechanism are small steps in that direction.

IX. CONCLUSION

This article began from a paradox: the same international order that recognizes the sovereignty of States also proclaims the universality of human rights. The analysis has not dissolved the paradox, but it has reframed it. Sovereignty and universal human rights are not simply in conflict. They are structurally intertwined. The international human rights regime was created by sovereign States and rests on their continuing participation, and the legitimacy of State authority is increasingly assessed by reference to the protection it affords to those subject to it, in actual application; a State that systematically violates the rights of its own people is losing, in a meaningful sense, the moral and increasingly the legal basis for its claim to be shielded from external scrutiny.

In this light, the claim to absolute sovereignty is descriptively inaccurate and normatively unsound. It is descriptively inaccurate because no State has ever exercised unlimited power.

[90] *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Merits, Judgment, 1986 I.C.J. 14, ¶ 268 (June 27).

Every polity operates within a web of obligation, custom and mutual recognition that constrains its rulers, as the history of the Westphalian settlement itself shows. It is normatively unsound because, in practice, it protects the perpetrator from answering for his conduct and leaves the victim exposed to the one who inflicted the injury.

International law does not need to dilute sovereignty, nor to treat it with reverence. It needs to integrate it, step by step, within a framework of shared custodianship of human dignity. States will remain the principal actors in that project, but as stewards of a common commitment and not as sovereigns answerable to no one. The paradox endures, but its creative tension has become the impetus for a more accountable international order.