
THE SOVEREIGNTY CONFLICT: RECONCILING STATE AUTONOMY WITH UNIVERSAL HUMAN RIGHTS IN A FRAGMENTING WORLD

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ABSTRACT

This article looks at the core issue within modern international law called the "sovereignty conflict." It's the big clash between Westphalian state sovereignty, which stops other countries from interfering in domestic matters, and the idea that everyone's human rights are more important and apply globally. The piece drops into the legal roots of this disagreement, like the UN Charter's Article 2(7)¹ and human rights treaties such as the ICCPR² and ICESCR³. It also maps how the Responsibility to Protect (R2P) principle grew in popularity but then led to a big pause in action.

The article uses recent examples to show how the usual defence of state independence is getting challenged. It looks at how universal jurisdiction is used in European courts against state actors, pushback from regional human rights tribunals, transnational digital rights issues, and transboundary climate lawsuits. The paper concludes that we won't see one approach succeeding over the other. Instead, the future of international law involves continuous changes in a world with many nuclei of power.

Keywords: sovereignty conflict, Article 2(7) UN Charter, Responsibility to Protect (R2P), Extraterritorial Jurisdiction, ICCPR, ICESCR

¹ U.N. Charter article 2(7).

² International Covenant on Civil and Political Rights, December, 16, 1966, 999 U.N.T.S. 171.

³ International Covenant on Economic, Social and Cultural Rights, December, 16, 1966, 993 U.N.T.S. 3.

Introduction

Modern international law faces a big issue. It's based on a key contradiction between state sovereignty and universal human rights. The idea of sovereignty comes from the Peace of Westphalia in 1648 and is cemented in the UN Charter's Article 2(7). This article says each and every country gets to handle their own affairs without outside interference. At the same time, we have The Universal Declaration of Human Rights (UDHR) of 1948. This document states that everyone has certain rights that all nations need to respect and protect.

The struggle created by this is what legal scholars call the sovereignty conflict. For decades, international laws tried to balance these competing ideas, stating that true sovereignty means the duty to protect the citizens. Yet, in today's geopolitics, this equilibrium is cracking. Rising nationalism, the big-power rivalry coming back, and using domestic laws as weapons have renewed the conflict between a country's right to isolation and the world's duty to step in when rights are infringed.

The Legal Foundations of the Conflict

First up, there's the United Nations (UN) Charter. Designed mainly to stop wars between countries, not to tackle how those countries treat their people, it lays down some key rules. According to Article 2(4), countries can't threaten or use force against another's territorial integrity or political independence. Even more clear-cut, Article 2(7) says the UN can't interfere in issues that are basically domestic matters for any state.

For folks who follow traditional realist views, this Charter is like an unbreakable shield. They believe each government handles its own people however it wants, since international legal or physical intervention isn't allowed within a country's borders.

The Human Rights Sword: The Expanding Treaty Framework

The international human rights regime looks at individual dignity as a global concern. What started as the non-binding customary law in the Universal Declaration of Human Rights⁴(UDHR) transformed pretty fast. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

⁴ G.A. Resolution 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

turned these ideals into actual enforceable treaty laws.

When states ratify these treaties, they agree to answer to international bodies like the UN Human Rights Committee. Because of this, a state can't argue anymore that human rights abuses are simply "domestic issues." Once a treaty is signed, those internal matters become international issues. States now face accountability on a global scale for how they handle human rights.

The Rise and Fall of the "*Responsibility to Protect*" (R2P)

The creation of the Responsibility to Protect (R2P) doctrine which was adopted unanimously at the 2005 UN World Summit, R2P aimed to change the meaning of sovereignty from power to responsibility.

Three key parts to R2P:

First, a country must protect its people from great outrages like genocide, war crimes, ethnic cleansing, and crimes against humanity. Secondly, the global communities need to help these countries build the needed capacities before things get out of hand. Finally, if a state can't or won't protect its citizens—and might even be the one hurting them—the world must step in. This requires collective action by the international community, involving force, and authorized by the UN Security Council.

That's how R2P lays out these obligations—to prevent the worst kinds of suffering and maintain some level of order globally.

The Institutional Breakdown-

R2P might sound great on paper, but it hasn't worked out well in real life. Its use in Libya in 2011 showed some success when trying to stop mass killings in Benghazi (UN Resolution 1973)⁵. Yet, NATO then went ahead with regime change, which angered Russia and China. They thought that protecting human rights was just a trick for western nations to advance their own interests. Because of this, the UN Security Council now struggles when facing big humanitarian disasters. The main issue lies with the council's structure; the veto power of the

⁵ S.C. Resolution 1973, (4) (Mar. 17, 2011).

five permanent members often hampers decision-making. This means if a P5 member or one of their buddies commits rights violations, nobody in the council can actually do anything to intervene collectively.

CASE 1 – Extraterritorial Jurisdiction & Universal Jurisdiction⁶

Universal jurisdiction poses a big challenge to state sovereignty because national courts can use it to prosecute folks for serious crimes against international law, no matter where these crimes happened or who the culprit or victim is.

For instance, take the case of Anwar Raslan. He was tried in Germany for committing crimes against humanity in Syria while working as a former intelligence officer there. The German court in Koblenz found him guilty.

From Syria's viewpoint, though, this was not right. They thought Germany overstepped its bounds and unlawfully interfered with Syrian judicial sovereignty.

On the flip side, German prosecutors contended that terrible crimes like those Raslan is accused of aren't just Syria's problem; they affect all of us. That's why, according to them, any state has the right to put the perpetrator on trial when they set foot in that country's territory.

CASE 2 - Regional Human Rights Courts vs. Domestic Supreme Courts

Friction isn't just about big events like military stuff or criminal cases; it happens every day in European and Inter-American laws too. Take the European Court of Human Rights (ECtHR)⁷; this court can tell countries what to do, and they have to follow.

Recently, the UK⁸ and Poland have been butting heads with the ECtHR, mainly over how they handle immigrants, let prisoners vote, and keep their courts independent. When a country's top court or parliament decides to ignore an international human rights court's ruling, it shows how international law depends on countries playing along to work. Without their cooperation, enforcing these rules becomes really tough.

⁶ Oberlandesgericht Koblenz [OLG Koblenz] [Higher Regional Court of Koblenz] January, 13, 2022, 1 StE 9/19 (Ger.)

⁷ Xero Flor w Polsce sp. z o.o. v. Poland, App. No. 4907/18, Eur. Ct. H.R. (2021).

⁸ N.S. v. United Kingdom, App. No. 45901/21, Eur. Ct. H.R. (2022).

Emerging Frontiers: Technology and Environmental Rights

As the international legal order fractures along traditional lines, new frontiers are emerging that completely bypass classic definitions of geographic sovereignty.

Digital Sovereignty vs. Transnational Digital Rights

The digital world doesn't follow national boundaries. Authoritarian countries use extreme surveillance tech, like Pegasus, or build national firewalls to limit info access. They call this "digital sovereignty."

But international human rights groups say internet access, encryption, and privacy are basic rights under the ICCPR's Freedom of Expression article. This leads to a new conflict zone: Are data centres and cables subject only to national laws? Or should they be controlled by global human rights rules too?

Ecocide and Climate Litigation

Climate change has also changed laws on human rights. The UN General Assembly officially declared that each and every person has the right to a healthy, clean, and sustainable environment. So, this creates space for lawsuits on an international scale.

Now, when small island nations or groups of countries take bigger polluters to court in the ICJ or ITLOS, it shakes up traditional ideas about sovereignty. These cases say that a country can't use sovereignty as shield if their policies hurt people far away. For example, if they help the fossil fuel industry at home but it harms the health and lives of folks abroad.

Matrix of Competing Legal Doctrines

To visualize how these principles systematically oppose one another, the following comparative breakdown highlights the primary legal mechanisms and viewpoints utilized by each paradigm across five key dimensions which are as follows:

Dimension 1: The Law's Origin: Competing Legal Sources

In line with the philosophical conflict described above, this difference can be seen right at the origin of the international legal order in terms of the main sources of law used by each

paradigm. According to the Westphalian Sovereignty Paradigm, the basis for law lies in the state-based documents and customs, in particular Article 2(7) of the Charter of the United Nations. As per this article, the UN cannot intervene in issues of an essential domestic nature for any individual state. With the support of non-intervention customary law, the Westphalian Paradigm assumes that internal issues of states belong entirely to their domestic concerns.

Contrastingly, the Universal Human Rights Paradigm does not use state-related legal means but seeks its legitimacy in human dignity itself. For example, it is preserved in international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, the corner of this Paradigm is the jus cogens norms or peremptory norms which are absolutely mandatory and non-derogatory, thus, they include bans on torture, genocide, and slavery.

Dimension 2: Position of Authority

As a result of the opposition in their foundations, the two paradigms have entirely different concepts regarding what entity is considered the final locus of legitimate power. According to the Westphalian framework, the locus of legitimacy can be found solely within the state apparatus and national governments. The state is seen as the fundamental element of international relations, being endowed with the exclusive authority of legitimacy in its territories. Consequently, international law is perceived as a horizontal mechanism established by states for other states through their consent.

Contrary to the above-mentioned model, the locus of authority in the universal human rights paradigm is moved away from the state into the individual human being. From this standpoint, human rights should not be thought of as privileges granted by any government; they exist inherently outside state intervention. As a result, when a state violates the rights of individuals, the locus of legitimacy moves up to supra-national tribunals and international human rights courts which alone can adjudicate complaints made by the citizen against their own government.

Dimension 3: Enforcement Mechanism

The actual differences between these two worldviews become apparent when examining how

legal rules are implemented. The paradigm of the Westphalian states' sovereignty requires only internal and local means of coercion for the maintenance of order. It is accomplished by using local courts, strict border control, and national armies. The state enforces its laws on its own population with its police forces, while its army ensures that it can defend any foreign attempts to interfere. Here, no outside entity is legally capable of punishing a sovereign state for the way it deals with its citizens.

This paradigm does not share the insularity of Westphalia. On the contrary, it acknowledges that reliance upon domestic courts alone makes it easy for any regime to get away with committing gross human rights violations with absolute immunity. This paradigm makes use of radically coercive international mechanisms of global responsibility, among which one can note the idea of universal jurisdiction, or a legal principle that allows any state to prosecute individuals responsible for international crimes anywhere and irrespective of their nationalities. Apart from this, this paradigm also makes use of economic sanctions aimed at specific countries and the concept of Responsibility to Protect (R2P).

Dimension 4: View on Borders

In direct contradiction, this duality of approaches influences each paradigm's understanding of geopolitical borders. The Westphalian theory considers borders to be impenetrable boundaries. Here, borders are seen not only as a means of preventing foreign legal aggression but also as obstacles that could stop powerful countries from making moral claims about interfering in other countries' internal matters. In the Westphalian tradition, a border was considered a barrier that protected the domestic political sphere.

In contrast, the Universal Human Rights approach sees borders as purely fictional lines that should not hinder investigations into the crimes committed within such countries. The use of borders as a way to hide the systematic violations of law is absolutely unacceptable. In cases when crimes against humanity are perpetrated by governmental authorities within certain borders, such borders automatically lose their legal inviolability, and the country can be subjected to criticism and intervention from other countries.

Dimension 5: Core Value

In summary, this whole debate revolves around the confrontation of two distinct and opposing

fundamental values: international stability vs. global justice. For instance, under the Westphalian approach, international stability takes precedence over any other value. Its main philosophy is that the international arena is always chaotic and threatening. The only surefire strategy for avoiding catastrophic conflicts between nations is by strictly maintaining a balanced power system through total non-interference. In this regard, tolerance of oppression in one's own territory is a necessary evil that needs to be sacrificed for international stability.

On the other hand, global justice is the central and supreme principle of the Universal Human Rights Paradigm. According to this view, true and lasting peace cannot be attained without adherence to the human right values. Stability achieved through oppression is seen as a mere illusion. Consequently, this paradigm requires accountability at both the government and individual level. This paradigm expects the international law to advance from being an instrument of protecting regimes into a framework of safeguarding the dignity of humanity.

Conclusion

The link between international law and human rights is really shifting around. After the Cold War, there was this hopeful idea that we'd see a global legal system grow where human rights would slowly take precedence over national sovereignty. But that didn't last. Now, we have a much darker view of a world where countries mostly defend for themselves and use sovereignty to stop outside criticism.

Still, full national control like we saw before 1948 isn't coming back either. Global criminal justice, stronger regional courts, plus issues like climate change and internet stuff mean nations can't just ignore international rules.

Moving forward, it's probably not going to be about one side totally winning out. Instead, expect a bunch of trial and error as everyone tries to figure things out. Human rights will keep making inroads against total state power, while countries try to stretch how far their own autonomy goes. For the international legal system to work, it needs to find a way to grow in this back and forth. It must make sure that protecting national sovereignty doesn't turn into letting abusive governments off the hook.