Revisiting State Sovereignty in the Context of Global Obligations

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This article revisits the concept of state sovereignty in the context of expanding global obligations under international law. While sovereignty traditionally denotes the supreme authority of states over their territory and population, its scope and meaning have evolved alongside the rise of international institutions, human rights law, and environmental obligations. The research problem addressed in this article concerns the tension between sovereign autonomy and the binding nature of global norms, particularly those of an erga omnes character, such as obligations to prevent transboundary harm to the climate system. The central research question asks how contemporary international law reconciles the classical notion of sovereignty with collective responsibilities owed to the international community as a whole. The article argues that modern sovereignty is best understood as a form of accountable authority – legitimate only when exercised in conformity with universal legal norms. Through historical, theoretical, and jurisprudential analysis, including the ICJ's 2025 Advisory Opinion on climate change, the study demonstrates that sovereignty today functions both as a shield of autonomy and a framework of responsibility. It concludes that the future of sovereignty lies in its capacity to adapt to shared global challenges through legal cooperation and respect for peremptory international norms.

Keywords: Sovereignty, international law, domestic law, climate change, human rights, ICJ

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Introduction

Sovereignty has long stood as a foundational principle of international law, representing the authority of states to govern themselves, exercise control over their territories, and interact as equals in the global arena. Although the modern understanding of sovereignty is often taken for granted, its historical development reveals a complex evolution shaped by political, religious, and legal transformations over centuries.

The concept of sovereignty, as understood in contemporary international law, emerged most prominently with the Peace of Westphalia in 1648,[1] which concluded the devastating Thirty Years' War in Europe. The Westphalian treaties established a new framework in which states were recognized as territorially bounded, legally equal entities, free from external interference except by mutual consent. This marked a decisive shift away from the universalistic authority of the Pope and the hierarchical legal order that had dominated Europe for centuries, paving the way for a system of secular, territorially defined states.

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Despite the formal establishment of sovereign equality, theological and philosophical concepts continued to influence the early practice of international relations. These developments reflected the dual influence of earlier legal theories, such as Bodin's conception of absolute sovereignty, and emerging norms of non-interference, exemplified by the Peace of Augsburg in 1555. Westphalia thus not only ended armed conflict but also laid the foundations for the multilateral legal order that continues to shape the contemporary international system.

In the modern era, sovereignty continues to play a central role in regulating international relations, though its scope has evolved. States are no longer isolated actors; they operate within a complex legal system that includes international and regional organizations, treaties, customary law, and, increasingly, norms addressing non-state actors such as corporations and individuals. Sovereignty now encompasses both internal and external dimensions: internally, it grants states the authority to legislate and govern populations within their borders; externally, it protects them from coercive interference by other states.

1 Britannica, "Peace of Westphalia", available at: https://www.britannica.com/event/Peace-of-Westphalia (Accessed: August 16, 2025).

Yet, the expansion of international law, the rise of human rights, and the development of peremptory norms (*jus cogens*)[2] have gradually constrained the unfettered exercise of state authority, requiring a careful balancing of national discretion and international obligations. Growing interdependence among states, especially in areas such as climate protection and human rights, further highlights the tension between sovereignty and global legal responsibilities.

Despite abundant scholarship on sovereignty, international obligations, and global governance, a persistent research gap remains in systematically connecting the classical concept of state sovereignty with the emerging body of global obligations, particularly those of an *erga omnes* or universal character, such as climate and human rights duties. While traditional analyses often treat sovereignty as a static principle of authority, this article contends that it is a dynamic legal concept undergoing reinterpretation in response to collective international responsibilities.

Accordingly, the central research question of this article is: *How does the modern international legal order reconcile the principle of state sovereignty with the growing set of binding global obligations owed to the international community as a whole?* The central argument advanced here is that sovereignty today functions not merely as a shield of autonomy but as a framework of accountable authority – one that derives legitimacy from a state's capacity to exercise power in conformity with global legal norms, particularly those safeguarding human rights and the environment.

The goal of this article is to provide an overview of the historical evolution and contemporary legal foundations of sovereignty, tracing its development from Westphalia to the modern international legal order. Hence, this **article** provides an analysis of the interaction between sovereignty and international obligations, the ways in which national and international legal orders intersect, and the practical implications of sovereignty in light of emerging global challenges, including obligations recognized by the International Court of Justice (ICJ).[3]

2 Under Article 53 of the Vienna Convention on the Law of Treaties, "A peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" (United Nations, Treaty Series, Vienna Convention on the Law of Treaties, May 23, 1969, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed: September 7, 2025).

3 On 23 July 2025, the International Court of Justice (*ICJ*) issued a landmark *Advisory*

To address this question, the article proceeds in three parts. The first section traces the historical evolution of sovereignty and its legal foundations from the Peace of Westphalia to the modern international order. The second part explores the interaction between international and domestic legal systems through the monism–dualism debate, revealing how constitutional structures mediate global commitments. The third part analyses the ICJ's 2025 Advisory Opinion on climate change to illustrate how *erga omnes* obligations redefine the practice of sovereignty in light of global challenges. The **article** concludes by synthesizing these findings and reflecting on the implications for the future of sovereignty and international cooperation.

The legal foundation of sovereignty: Historical development and modern international law

The concept of sovereignty emerged from the Peace of Westphalia in 1648, which marked the starting point of modern international law in Europe. Westphalia gave rise to the modern European state system, which later spread around the world through European colonialism.[4]

The Peace of Westphalia decisively curtailed the Pope's secular authority over other states, establishing Catholic and Protestant states as sovereign and equal under no higher power. Noteworthy, this marked a shift away from a universal Christian-based law that had dominated

Opinion on the obligation of States in respect of climate change. Several main findings and brief explanations: Climate Change Treaties are embedded in international law - UNFCCC, Kyoto, and Paris Agreements are binding and impose strict duties, but don't override customary international law. International duties to cooperate and exercise due diligence are stringent and binding all States. States must show ongoing, due-diligent efforts under broader international frameworks. NDCs are not just aspirational, but binding obligations of conduct or result. To prepare, communicate, maintain, and improve national climate plans (NDCs) is an obligation. For one, States must actively legislate and regulate to control private-sector emissions under national law. States risk international responsibility if they don›t oblige. NDCs must reflect each country's highest possible ambition and be measurable against the 1.5°C target. Right to a clean, healthy, and sustainable environment to emphasize the intersection between environmental law and human rights law. Climate protection is now a human rights imperative under international law, being a precondition for enjoying fundamental rights like life, health, privacy, and water. Internationally wrongful climate (in)action can lead to reparations and the damage of the injured individuals. According to the ICJ, international law is flexible to encompass to the specific elements involved in climate change damage.

4 G. Hernandez, International Law (Oxford: Oxford University Press, 2019), p. 5; Beaulac, S. "The Westphalian Legal Orthodoxy – Myth or Reality?", Journal of the History of International Law, Vol. 2, No. 1 (2000), p. 148.

international relations through the sixteenth century.[5] Nevertheless, theological concepts persisted; for example, Francisco de Vitoria argued that indigenous peoples in the Americas could not be sovereign, as they could not wage a 'just war', thereby facilitating Spanish conquest.[6]

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Moreover, Westphalia granted states – including the many entities of the Holy Roman Empire – the freedom to choose their official religion (*cuius regio, eius religio*). States were recognized as equal and sovereign in their interactions, free from external interference unless expressly consented to, typically through a treaty. Although the idea of sovereignty drew on Bodin's sixteenth-century theory of 'absolute sovereignty'[7] and the non-interference principle of the 1555 Peace of Augsburg,[8] Westphalia was groundbreaking in establishing the state as a territorial entity capable of guaranteeing its commitments. In addition to ending the war, the treaties laid the foundation for a future multilateral legal order.

International law has traditionally centred on regulating relations between states, which, while composed of individuals, are treated as autonomous entities capable of expressing collective will and interests. Notably, states are characterized by effective governance, territorial control, and authority over a population. In addition to states, international law governs international and regional organizations, such as the United Nations, and increasingly addresses other actors, including individuals, corporations, and NGOs, although these remain secondary to the primacy of states.

A cornerstone of international law is the principle of sovereign equality, enshrined in Article 2(1) of the UN Charter.[9] This principle ensures that all states, regardless of size or power, enjoy equal rights and obligations, a concept famously illustrated by Vattel: "a small republic is no less a sovereign state than the most powerful kingdom."[10] Sovereignty

5 A. Nussbaum, *A Concise History of the Law of Nations* (Macmillan, 1954), pp. 17-23; S. Neff, *Justice Among Nations: A History of International Law* (Harvard UP, 2014), p. 94.

6 A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (CUP, 2005), p. 26.

7 J. Bodin, *Six Books of the Commonwealth* (Tooley, Basil Blackwell, 1967).

8 Britannica, *Peace of Augsburg*, **Available at:** https://www.britannica.com/event/Peace-of-Augsburg (Accessed: August 16, 2025).

9 United Nations, *The Charter of the United Nations*, Available at: https://www.un.org/en/about-us/un-charter (Accessed: August 19, 2025).

10 E. Vattel, Le *droit des gens*, ou Principes de la loi naturelle, appliqués à la conduite *et* aux affaires des Nations *et* des Souverains (Londres, 1758), 2 vols. Vol. 2,

encompasses both external and internal dimensions: externally, it shields states from coercive interference by others; internally, it confers exclusive authority to govern territory and population, including legislating and establishing institutions. Moreover, while globalization has increased interdependence among states, sovereignty continues to serve as a key lens for understanding their authority and role in the international system.

The external aspect of sovereignty implies that, as long as they respect the sovereignty of others, states possess broad discretion in their actions. They may structure their political and economic systems as they see fit and legislate according to the values they wish to uphold. Historically, this freedom was extensive, with recourse to war once regarded as a legitimate instrument of foreign policy. Over time, however, states increasingly undertook obligations that narrowed their scope of unilateral action. Today, this freedom is constrained by the UN Charter and other multilateral treaties, which prohibit the use of force and require respect for fundamental human rights. In addition, the rise of '*peremptory norms'* (*jus cogens*) has entrenched certain obligations from which no derogation is permitted.

From a classical perspective, the binding force of international obligations rests primarily on state consent.[11] In this sense, states are bound only by those commitments to which they have expressly agreed. Consent is closely linked to the principle of reciprocity: states accept limitations on their freedom in exchange for similar restrictions on others. Thus, legal regulation has always been relational, with reciprocity serving as a pragmatic safeguard of state interests.[12] Alongside consent and reciprocity stands the principle of good faith, now codified in Article 2(2) of the UN Charter, which requires states to honour their obligations sincerely and without malice.[13] This principle is reaffirmed in Article 26 of the Vienna Convention on the Law of Treaties,[14] which enshrines the maxim *pacta sunt servanda*, requiring states to perform their treaty commitments in good faith.

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p. 26; For an introductory summary in English, see E Jouannet, "Emer de Vattel" in B Fassbender and A Peters (eds), *Oxford Handbook of the History of International Law* (OUP, 2012), pp. 1118–1122.

11 H. Lauterpacht, *Oppenheim`s International Law* (8th edn. Longman and Sons, 1955), p.15.

12 J. Combacau and S. Sur, Droit International Public (LGDJ, 2016), p. 28.

13 United Nations, "The Charter of the United Nations", Available at: https://www.un.org/en/about-us/un-charter (Accessed: August 19, 2025).

14 United Nations, Treaty Series, Vienna Convention on the Law of Treaties, May 23, 1969, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (Accessed: September 7, 2025).

Finally, to understand the evolving nature of sovereignty, it is essential to recognize the decentralized structure of modern international law. Unlike domestic legal systems, where authority is vested in a single sovereign, international law functions among multiple sovereign and equal states. With no central legislature above them, it remains a horizontal legal order in which new obligations emerge only through the collective will of states, expressed in treaties or customary international law.

In order to understand sovereignty, it is also necessary to examine how international law interacts with domestic legal systems.

Interactions between legal orders: Monism versus dualism

In order to understand sovereignty, it is also necessary to examine how international law interacts with domestic legal systems. While the international legal order claims primacy over national legislation, it ultimately leaves to state constitutions the determination of how international norms are incorporated and enforced within domestic legal systems. This interaction has long been framed through the classical debate between monism and dualism, each offering a distinct perspective on the relationship between international and national legal orders. Although some commentators dismiss this debate as overly formalistic and of limited practical value,[15] the concepts nonetheless provide useful insights into how different legal orders interact.

Dualism emphasizes the independence and self-contained nature of municipal legal systems, grounded in the idea of the state as sovereign. From this perspective, international and domestic law are distinct spheres, with neither possessing the authority to alter or generate rules for the other.[16] For an international rule to be effective within the domestic sphere, it must first be accepted or incorporated by the state, which retains the authority to determine how conflicts between international and national norms are resolved.[17] This approach has historically been associated with common-law countries, such as the United Kingdom and the United States, where international treaties typically require legislative incorporation or judicial recognition before

15 G. Fitzmaurice, *The General Principles of International Law Considered from the Standpoint of the Rule of Law* (1957) 92-II Recueil des Cours 1, p. 71.

16 K. Strupp, *Les règles générales du droit international de la paix* (1934) 47 Recueil des Cours pp. 258, 389.

17 R. Jennings and A. Watts, *Oppenheim's International Law* (9th edn Stevens & Sons, 1992), p. 53.

acquiring domestic effect.[18] While this strict separation was once practical, when the domains of international and domestic law rarely overlapped, it appears increasingly limited today, particularly given the rise of international norms that directly affect individuals, most notably in the field of human rights.

In contrast, monist theories depict international and domestic legal orders as parts of a single, integrated system, deriving their authority from a common source. The practical implication of monism is that international rules can operate directly within national legal systems without the need for legislative transformation. Civil law jurisdictions such as France, Spain, Germany, and the Netherlands exemplify this approach, incorporating international law automatically by virtue of constitutional provisions. In this sense, international norms are considered 'self-executing'.[19]

The Austrian jurist Hans Kelsen advanced the most influential version of monism, arguing that both legal orders draw their validity from a single foundational norm – the *Grundnorm*.[20] For Kelsen, this meant that international and municipal law ultimately form a unified system of norms, with international law providing the overarching framework. Although Kelsen himself did not fully resolve the content of the *Grundnorm*, his theory implied that international norms apply automatically in domestic systems, and that conflicts with domestic rules result not in the invalidity of the latter, but in the international responsibility of the state.[21]

Building on Kelsen's ideas, Sir Hersch Lauterpacht argued for a monist view that placed international law at the apex of the hierarchy.[22] He maintained that national law must conform to international obligations, especially as both are directed toward the protection of individuals. From this perspective, monism not only underscores the universality of law but also attributes to international law a moral dimension rooted in human rights and the promotion of human welfare.[23]

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18 G. Hernandez, *International Law* (Oxford: Oxford University Press, 2019), p.79.

19 Ibid.

20 H. Kelsen, *General Theory of Law and State*, (2nd edn 1967, Transaction reprint, 2005), p. 559.

21 Ibid, p. 564.

22 H. Lauterpacht (ed), *Oppenheim's International Law* (8th edn Longman, 1955), p. 38.

23 H. Lauterpacht, *International Law and Human Rights* (OUP, 1950), p. 70. For a more recent exponent of this position, see A Cassese, *International Law* (2nd edn, OUP, 2005), p. 215.

Monism and dualism offer fundamentally different perspectives on the link between international and domestic legal systems. A common critique of both approaches is that they fail to fully capture the actual practices of international and national courts, which are crucial for understanding the interaction between international and municipal law.[24] Ultimately, it is up to each state, through its constitutional framework, to determine whether its legal system follows a monist or dualist approach. This indicates that the debate does not concern the inherent nature of international law itself, but rather how its relationship with domestic legal orders can be interpreted.

Sovereignty in practice: Lessons from the ICJ Advisory Opinion

In practice, the legal exercise of sovereignty is not absolute. Thus, states must continuously navigate the tension between their national interests and binding international obligations.

While sovereignty grants states discretion over their internal and external affairs, participation in the international legal order entails commitments that may limit this discretion. Treaties, customary law, and peremptory norms impose duties that states cannot unilaterally disregard, requiring careful alignment with domestic policies. Courts, both domestic and international, play a crucial role in interpreting and reconciling these obligations, often shaping the manner in which international norms are implemented at the national level.

At the same time, states may invoke reservations, declarations, or derogations as legal tools to preserve core aspects of sovereignty while maintaining compliance with international law. Globalization and interdependence further complicate this balancing act, as transboundary issues – ranging from human rights to environmental protection – demand coordinated action that may constrain unilateral decision-making. Ultimately, the practice of sovereignty in a legal sense is inseparable from the responsibilities and limitations that arise from participation in the global legal community, highlighting the dynamic interplay between state authority and international norms.

In its landmark Advisory Opinion issued on July 23, 2025, the ICJ affirmed that states have legal obligations under both treaty and customary international law to prevent significant harm to the climate system.[25]

24 J. Crawford, *Brownlie's Principles of Public International Law* (8th edn, OUP, 2012), p. 50.

25 International Court of Justice, "*Obligations of States in respect of Climate Change*",

The Court emphasized that failure to take adequate action to mitigate greenhouse gas emissions constitutes an internationally wrongful act, engaging state responsibility. This responsibility encompasses not only cessation of harmful conduct but also guarantees of non-repetition and full reparation, including restitution, compensation, or satisfaction, provided there is a clear and direct causal link between the act and the damage.[26]

The Court further recognized that these obligations are of an *erga omnes* nature, meaning "they are owed to the international community as a whole" and "can be invoked by any state, regardless of direct injury".[27] In the same way, treaty obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and Paris Agreement are *erga omnes partes*, on the basis that they "protect the essential interest of all states in the safeguarding of the climate system, which benefits the international community as a whole".[28]

Hence, the Court connects the *erga omnes* nature of these obligations to the nature of the environment as a 'global common good'. This development underscores the evolving nature of sovereignty, in which national interests must increasingly align with global environmental imperatives, compelling states to reconcile their sovereign rights with their duties under international law.

The ICJ's recognition of *erga omnes* climate obligations vividly illustrates the tension between national interests and international duties. While states retain discretion to design policies reflecting domestic priorities, this discretion is no longer unfettered; the imperative to prevent significant harm to the global climate system imposes binding legal constraints that cannot be ignored without engaging international responsibility.

In practice, reconciling national interest with international obligations requires careful policy calibration, in which measures to achieve economic or social objectives are designed in ways that do not violate

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Advisory Opinion, 23 July 2025, Available at: https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf (Accessed: September 12, 2025).

26 Ibid.

27 Mustafayeva, N., "Multilateral Diplomacy for Shaping the International Environmental Regime: Key Landmark Conferences and COP29 in Azerbaijan", *Caucasus Strategic Perspectives*, Vol. 3, Issue 1, (Summer 2022), p. 76.

28 Paddeu F., and Jackson M., "State Responsibility in the ICJ's Advisory Opinion on Climate Change", *EJIL*, 25 July 2025, available at: https://www.ejiltalk.org/state-responsibility-in-the-icjs-advisory-opinion-on-climate-change/
(accessed: August 28, 2025).

collective environmental responsibilities. This dynamic demonstrates that sovereignty in the contemporary legal order is not merely the exercise of power within territorial borders but a **responsible authority** exercised in dialogue with the international community.

By framing climate obligations as *erga omnes*, the ICJ emphasizes that even in areas traditionally associated with domestic discretion – such as energy production, industrial regulation, or land use – states must account for transboundary consequences, thus aligning sovereign decision-making with global legal norms.

Conclusion

This article set out to examine how the principle of sovereignty has evolved in international law and to what extent it can coexist with emerging global obligations. Its main objective was to trace the historical and legal development of sovereignty, explore how international and domestic legal systems interact, and evaluate how contemporary challenges – exemplified by the ICJ's Advisory Opinion on climate change – are reshaping our understanding of sovereign authority. The analysis has shown that sovereignty is no longer a doctrine of absolute independence but a principle conditioned by legal responsibility.

As argued in this article, sovereignty has evolved from the absolute authority of states over their territories and populations to a nuanced principle that balances national discretion with binding international obligations. From the Peace of Westphalia to the contemporary international legal order, sovereignty has guaranteed territorial integrity and sovereign equality while being gradually constrained by treaties, customary law, and the peremptory norms (*jus cogens*) of international law.

The analysis in this article further demonstrates that the interaction between international and domestic legal orders, conceptualized through monism and dualism, underscores both the discretion states retain and the responsibilities they must uphold. While the traditional dualist and monist positions may appear increasingly strained, it would be simplistic to dismiss dualism as mere legal nationalism or to valorize monism as an ideal of committed internationalism. Monism indeed carries a universalist aspiration, yet dualist systems have cultivated practical mechanisms to manage conflicts arising from the engagement of multiple legal orders.

In today's technologically interconnected world, where individuals and activities routinely cross borders and states act beyond traditional domestic spheres, the monism–dualism debate can seem somewhat antiquated compared to urgent global challenges. Ultimately, the relationship between municipal and international regimes may not hinge on full harmonization but rather on pragmatic accommodation, reflecting the ongoing coexistence of multiple overlapping legal systems.

The international legal order brings with it the promise of universality, harmonization, and cooperation. Thus, the ICJ's Advisory Opinion on climate change illustrates how *erga omnes* obligations require states to reconcile domestic policies with global imperatives, showing that modern sovereignty entails not only authority but also accountability.

In sum, as submitted in this article, contemporary sovereignty functions both as a protector of state autonomy and as a framework for fulfilling collective international responsibilities, with legitimacy measured by a state's capacity to govern internally while upholding global legal norms.