State Sovereignty and International Human Rights

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I am skeptical of our ability to predict, or even forecast, the future—of human rights or any other important social practice. Nonetheless, an understanding of the paths that have brought us to where we are today can facilitate thinking about the future. Thus, I approach the topic by examining the reshaping of international ideas and practices of state sovereignty and human rights since the end of World War II. I argue that in the initial decades after the war, international society constructed an absolutist conception of exclusive territorial jurisdiction that was fundamentally antagonistic to international human rights. At the same time, though, human rights were for the first time included among the fundamental norms of international society. And over the past two decades, dominant understandings of sovereignty have become less absolutist and more human rights–friendly, a trend that I suggest is likely to continue to develop, modestly, in the coming years.

Sovereignty

Supremacy—especially supreme authority—is at the root of sovereignty. The *Oxford English Dictionary* defines "sovereignty" as "supremacy or pre-eminence in respect of excellence or efficacy" and "supremacy in respect of power, domination, or rank; supreme dominion, authority, or rule." Similarly, "sovereign" is defined as "of power, authority, etc.: supreme." International law replicates this understanding: "Sovereignty is supreme authority," write Robert Jennings and Arthur Watts; *Black's Law Dictionary* defines the term as "1) Supreme dominion, authority, or rule. 2) The supreme political authority of an independent state. . . . Supremacy, the right to demand obedience."

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Internal sovereignty involves supreme domestic authority. External sovereignty is a principle and set of practices for regulating the interaction of those who claim internal supremacy. Given my focus here on the international law and politics of sovereignty, I will be concerned only with external sovereignty. My focus is further limited to actual sovereignty practices, not philosophical theories or ideal-type models. For reasons of space, I will simply assert four preliminary conceptual points.

First, sovereignty is primarily a matter of authority—of the *right* to regulate or rule—not material capabilities. We certainly have good reason to be interested in both the authority of international actors and their capabilities. But they are very different things.

Second, sovereignty (supreme authority) comes in many different forms. Daniel Philpott usefully identifies three "faces" of sovereignty, which correspond to the three questions: "Who or what holds sovereignty?" "How does one become a recognized sovereign?" and "What rights do sovereigns have?"[1] Different international societies have answered these questions in very different ways, making "sovereignty" highly variable in its substance.

Third, external sovereignty is a matter of mutual recognition: sovereigns are those who are recognized by other sovereigns as sovereign. "Objective" criteria of statehood—for example, a government that exercises control over a territory and a population and participates in international law—are neither necessary nor sufficient conditions. Not all sovereign states meet these criteria: consider "failed" states, such as Somalia. And some entities that do, most notably Taiwan, are universally considered not to be sovereign. International recognition creates rather than acknowledges sovereigns and their rights.

Finally, external sovereignty is a status in international society. It is not, and never has been, an absolute right to do whatever one wishes. The rights of sovereigns are determined by the international society that authorizes those sovereigns.

The Post-World War II Construction of Sovereignty

Peace conferences concluding "general wars" often provoke efforts to reconstruct foundational international practices. Westphalia (1648) and Utrecht (1713) are typically seen as establishing "modern" international relations. Vienna (1815) set the tone for international relations in the nineteenth century. The states that came to San Francisco in 1945 to complete the drafting of the United Nations

Charter—deeply cognizant of their failures in Paris in 1919—made a serious (and surprisingly successful) effort to change some fundamental principles of international relations.

Consider Sections 3 and 4 of Article 2 of the Charter: "All Members shall settle their international disputes by peaceful means. . . . All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." War as an extension of politics by other means (what nineteenth and early-twentieth century legal manuals often called "the right of war"; that is, the right of each state to decide for itself when and why to fight) was replaced by the restriction of legitimate international force to self-defense. And such pious sentiments have been largely put into practice. Not only has no state been eliminated by force since at least 1950 (since 1945, if we accept the official Chinese story of Tibet), but few territorial changes imposed by force have been widely accepted.

Throughout most of human history, aggressive war was generally accepted as an inevitable reality. In the late twentieth century, however, it was effectively eliminated as a practice of international society, laying a foundation for a variety of other major structural changes (although, as we will see in more detail below, states remained "fully sovereign" when they lost their right of war). This normatively driven change was strongly supported by the introduction of nuclear weapons, which dramatically increased the risks of aggressive war. Doctrines of mutual assured destruction more or less intentionally maximized those risks, creating a powerful status quo bias in post-World War II international society—at least with respect to direct conflicts by the superpowers, especially in the core of the international system.

The principal exception was decolonization. The UN Charter implicitly accepted colonialism. During the 1950s, however, the balance of international opinion, even among colonial powers, shifted to favor rapid decolonization of Western overseas empires. Symbolic of the transition is the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (UN General Assembly Resolution 1514). In the 1960s and 1970s, decolonization (often expressed as "self-determination") was the principal exception to the restriction of the use of force to self-defense. Wars of national liberation from colonial domination were not considered violations of the political independence or territorial integrity of (Western) salt-water empire-states. Decolonization created scores of weak and often fragile states, which in earlier eras would have generated local

wars and foreign interventions to partition or eliminate many of them and to create relations of hierarchical subordination. (Nineteenth-century legal manuals called these semi-sovereign, part-sovereign, imperfectly independent, not-full sovereign, or half-sovereign states.) Almost all of these new postcolonial states, however, retained every square inch of territory held by the former colonial power. This was both a response to the emerging norm of territorial integrity and a powerful force in entrenching that norm. Furthermore, formal hierarchical inequalities between states were almost completely eliminated, again both in response to and contributing to the strengthening of the norm of sovereign equality.

Sovereignty, in other words, was constructed as equal, territorial, and exclusive. States, defined by an internationally agreed-upon territory, held sovereignty. Those states that existed in 1945, plus those entities subject to overseas colonial domination, were entitled to recognition as sovereign states. Their jurisdiction was exclusive over (and restricted to) their own territory. And formal legal inequalities between states were largely eliminated.[2] Sovereignty *thus understood* precludes international implementation and enforcement of human rights. (Human rights are largely about how a state treats its own nationals on its own territory, which, in the postwar construction of sovereignty, is a matter of the sovereign prerogative of states.) This understanding of sovereignty, however, is an historically contingent feature of the postwar—and especially the postdecolonization—era. Compare, for example, Europe at the time of the Peace of Westphalia (1648), which is usually taken as the dawn of modern international relations: the holders of sovereignty were dynasts (not states); formal distinctions between sovereigns were the norm; different sovereigns held different rights; territory was passed freely among dynastic rulers; and overlapping jurisdictions were common.

The Cold War Construction of International Human Rights

The Preamble of the UN Charter states a determination "to reaffirm faith in fundamental human rights." Article 1 declares one of the four principal purposes of the organization to be "to achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms." This was a sharp, and intentional, contrast to the Covenant of the League of Nations (and all earlier modern peace treaties).[3]

The Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948, quickly became an authoritative statement of the meaning of human rights for the purposes of international relations—in significant measure because it effectively codified the highest actually realized standards of human rights ideas and practices at the time. The 1966 International Human Rights Covenants substantially elaborated the rights contained in the Universal Declaration (and, in recognition of a rapidly decolonizing world, added a right of peoples to self-determination). Treaties on racial discrimination, discrimination against women, torture, and the rights of the child were also adopted. By the end of the cold war a rich and robust body of international human rights law was endorsed—in word at least—by virtually all states.

This normatively strong global human rights regime, however, was procedurally extremely weak.[4] Reflecting the absolutist construction of state sovereignty, cold war–era states created a system of exclusively national implementation of international human rights. The standard mechanism of "enforcement" in international human rights treaties was (and remains) the use of periodic reports submitted to a committee of experts that has no authority to determine compliance or noncompliance. And UN bodies that dealt with human rights were similarly limited to purely verbal means (which were usually employed in highly sovereignty-respecting ways[5]). In other words, in practice, the sovereign rights of states included the right to violate the human rights of their citizens with impunity. Nearly all states, by ratifying one or more international human rights treaties, voluntarily accepted authoritative international standards governing the treatment of their own nationals on their own territory. But they reserved to themselves an exclusive sovereign right to implement and enforce those rights on their own territories.

Beginning in the mid-1970s an increasingly robust bilateral and transnational international politics of human rights emerged. The means used, though, were largely restricted to words. "Shame and blame," the dominant NGO strategy for promoting human rights, describes most state actions at the time as well. "Middle powers" (for example, Canada, Norway, and the Netherlands) did increasingly link their development assistance to the human rights practices of recipient states. Even the United States sporadically altered its aid policies in response to human rights violations. Nonetheless, recalcitrant states had an absolute sovereign right to make the final determination of the adequacy of their human rights practices. This was almost universally agreed to be part of the "political independence" protected by state sovereignty. States, however, *chose* to

create a system of national implementation of international human rights. They also *chose* to construct sovereignty as radically equal, exclusive, and territorial. And in the 1990s they began to rethink those choices.

Genocide and the Reconstitution of Sovereignty

The end of the cold war fundamentally changed the context of international relations, both in general and for international human rights. The end of bipolar ideological and geopolitical rivalry removed many incentives for the United States and other Western countries to support rights-abusive regimes. In addition, the deepening penetration of international human rights norms created a much greater willingness of Western states to take advantage of a more permissive environment to pursue human rights more seriously in their foreign policies. Western (and other international) action also met a substantially reduced pushback. The Soviet Union was falling apart in the early 1990s, and the Russia that emerged was a much-reduced power. China was preoccupied with the domestic and international aftermath of the 1989 Tiananmen massacre (and still a long way from being widely seen as an emerging global power). And the near-universal support of Third World countries for a human-rights–hostile understanding of sovereignty was replaced by a substantial diversity of views among states of the global South (and Central and Eastern Europe).

The democratization and liberalization wave of the 1980s and 1990s created governments with often strong commitments to human rights and a memory of the value of international support for their efforts at reform. These governments were also more open to pressures from their populations, which had long been sympathetic to international human rights. Furthermore, fears of abusive manipulation of the language of humanitarian intervention were reduced by the end of the cold war rivalry and the deepening entrenchment of norms of nonaggression and territorial integrity. Although more aggressive international human rights action was inconsistent and often inept, the cumulative effect was a real restriction of the range of sovereign prerogatives. In February 1992 the United Nations began a series of interventions in response to genocidal ethnic conflict in the former Yugoslavia—involvement that continues today, under European Union auspices, in Bosnia-Herzegovina. And guilt over inaction in the face of the 1994 genocide in Rwanda, given that even a modest peacekeeping mission could have substantially lessened the carnage, provoked a fundamental rethinking of the rights

(and obligations) of states. As noted above, after World War II it became illegal for states to use force aggressively against other states. It has long been illegal for a state to kill foreign nationals on its own territory (or to kill civilians outside its territory). In the aftermath of Rwanda, it also became illegal for a state to kill large numbers of its own nationals quickly and arbitrarily on its own territory.

Theory and practice evolved with remarkable speed, the decisive events occurring in 1999. In response to ethnic cleansing in Kosovo, NATO launched an ultimately successful three-month campaign of air strikes against Serbia that was widely seen as, in the words of the Independent International Commission on Kosovo, "illegal but legitimate." And on June 11, just one day after the bombing stopped in Kosovo, the UN Security Council authorized a peacekeeping force in East Timor to stop Indonesian military and paramilitary violence against the local civilian population. *This* intervention was unquestionably legal and almost universally seen as legitimate. By the close of the decade, international society had largely accepted a right of armed humanitarian intervention against genocide, which at the beginning of the decade had been accepted by no states.

State sovereignty was further redefined by the creation of mechanisms for holding individuals criminally responsible for certain severe human rights violations. Ad hoc criminal tribunals were established for the former Yugoslavia (1993) and Rwanda (1994). In 1998 the Rome Statute established a permanent International Criminal Court (ICC), which began operating in 2002 with a mandate to prosecute individuals, especially state officials, responsible for genocide, crimes against humanity, and war crimes. In 1999, UN Secretary-General Kofi Annan nicely captured, and helped to consolidate, the new understanding of sovereignty reflected in these changes: "States are now widely understood to be instruments at the service of their peoples, and not vice versa . . . . When we read the [UN] Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them."[6] This was (and remains) an exaggeration. The United Nations is at least as much concerned with protecting the political independence and territorial integrity of its member states. Annan, however, accurately noted a fundamental shift in the balance between individual human rights and the sovereign rights of abusive states—at least in some extreme cases.

But only the gravest of crimes, such as genocide, crimes against humanity, and war crimes, are subject to international enforcement. All other human rights violations—that is, nearly all human rights violations—remain covered by the

principle of national implementation of internationally recognized human rights. Furthermore, even in these exceptional cases we have only a *right* of humanitarian intervention, not an obligation. (Talk of a responsibility to protect is prescriptive or aspirational, not descriptive.[7]) And the record of action over the past decade is mixed.

Consider Sudan. The government that has perpetrated genocide in the Darfur region remains in power and continues to exercise repressive control over Darfur, which has in considerable measure been ethnically cleansed. But a substantial UN and African Union peacekeeping presence, along with intense and extended diplomatic and public pressure, undoubtedly moderated the level of violence and significantly reduced the number of deaths. Furthermore, after a half-century of sporadic but often intense genocidal violence in the south of the country, South Sudan was allowed to secede, becoming an independent state in 2011.

The ICC in its first decade addressed situations in eight African countries.[8] Perhaps the most striking change in attitudes toward sovereignty is the first indictment of a sitting head of state—the President of Sudan, Omar al-Bashir—for war crimes, crimes against humanity, and genocide. Nonetheless, the concrete contributions of the ICC to the international protection of human rights have been negligible, and are likely to remain no more than exceedingly modest in the coming years. Furthermore, these new norms and practices concerning genocide and individual criminal responsibility have been treated as largely encapsulated exceptions. They show no signs of spilling over into comparable qualitative changes for human rights more generally. Hope for future progress, it seems to me, lies instead in the emergence of new patterns of global, regional, and transnational governance associated with globalization.

Globalization, Human Rights, and Sovereignty

Cold war-era "interdependence" spawned various international regimes to govern a huge range of international issues. By the turn of the century, though, it had become standard to talk not simply of interdependence but about "globalization," which was widely seen as marking a qualitative transformation of international relations. Organization on a global scale—in contrast to the largely state-scale forms of organization that predominated in the nineteenth and twentieth centuries (and that were politically and legally codified in the post-World War II practices of exclusive territorial jurisdiction)—has created an international environment much

more conducive to increasingly assertive and effective international human rights action.[9] In issue area after issue area, activities that previously were performed by states have come to be performed at least in part by regional and international organizations, and in some cases by private actors (for example, standards organizations, security contractors, and transnational humanitarian and development organizations). The world economy and its leading private participants have come to occupy a space that is global (spanning the whole globe), not merely international (between nation-states). Transnational noneconomic action has spread and deepened to the point at which it is now common to talk of a global civil society. And supranational identities have become increasingly important, especially in Europe.

The postwar/postcolonial vision of exclusive territorial jurisdictions now seems quaint—and absolute sovereignty obsolescent, even atavistic. But there has been no globally codified change in the sovereign rights of states even close to comparable to those changes associated with nonaggression, territorial integrity, and decolonization. Significant formal transfers of supreme authority to regional and international organizations have occurred in particular domains, and especially international economic relations. Consider, for example, the Dispute Settlement Body of the World Trade Organization, the Basel Committee on Banking Supervision of the Bank for International Settlements, and competition policy in the European Union. Such formal supranational supremacy, however, is rare both in general and in the case of human rights (where it has been restricted to genocide, war crimes, and crimes against humanity).[10] States that continue to insist on an absolutist conception of equal and exclusive territorial jurisdictions are in most domains, including human rights, fully within their legal rights.

The context within which sovereign rights are exercised, however, can significantly transform practice, and in the long run even formal legal rights. Consider the Inter-American Democratic Charter, adopted in 2001 by the Organization of American States (OAS), which proclaims that "the peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it." There is no formal enforcement mechanism. Nonetheless, the embedding of the regional democracy norm has seriously constrained the resurgence of dictatorship. For example, the military coup against Hugo Chavez in Venezuela in 2002 was almost universally condemned internationally—even the United States failed to support the takeover, despite its hostility toward Chavez—and was rapidly reversed. And in response to the military coup

against President Manuel Zelaya in Honduras in the summer of 2009, the OAS suspended Honduras' membership until Zelaya returned to Honduras in 2011. Although the "political independence" of American states has not been formally altered, it has been effectively constrained, to the great benefit of human rights in the region.

More generally, appeals to absolute sovereignty ring increasingly hollow. With an ever-growing range of state actions subject to formal and informal global, regional, and transnational constraints, and with national actors increasingly collaborating with international and transnational allies, more assertive international human rights pressures increasingly appear as just one small part of a new kind of globalized international relations. Globalization may even be reshaping the nature of international legal obligation. International law, until well into the twentieth century, was primarily customary, that is, based on a conjunction of a pattern of state practice and a sense of legal obligation (*opinio juris*). During the cold war era of equal and exclusive territorial sovereignty, treaties came to be seen, especially within the legal positivist mainstream, as the only fully acceptable mechanism for establishing international legal obligations. With absolutist conceptions of sovereignty on the wane, customary obligations based in state practice seem poised to make a comeback.[11]

Moreover, although states retain a formal legal right to judge the adequacy of their human rights practices, the international costs of gross and consistent human rights violations have grown, as illustrated by the pariah status of the regimes in North Korea, Belarus, and Zimbabwe. In a globalizing world, participation in international and transnational relations is increasingly central to material well-being and a rich social and cultural life. Nearly two decades ago Abram Chayes and Antonia Handler Chayes called this "the new sovereignty," centered around the right of states to participate in the development and implementation of international norms and practices.[12] Marginalized, or even merely disdained, states pay for exercising their sovereign right to flout international human rights standards with a decreased ability to enjoy the benefits of full international participation. And recognition of such costs can subtly but significantly constrain the behavior of all but the most shameless regimes.

Global governance, through varied and often complex webs of formal and informal rules, institutions, and practices, is the legal and political expression of globalization.[13] States and their sovereign rights have hardly been replaced, or even marginalized. In fact, the absolute rights and powers of states may be as

extensive as they were a half-century ago. But the *relative* status of states—the gap between their rights and powers and those of a whole range of nonstate actors—has declined. And the rights, powers, practices, and expectations of nonstate actors alter international relations and outcomes even where states continue to have "the same" (seemingly absolute) sovereign rights.

Expanding networks of global governance have helped to create more opportunities for international action, a greater willingness to take advantage of those opportunities, less resistance from most states, and a more enthusiastic embrace of international action by citizens whose rights are at stake. The result has been the increasing penetration of international human rights norms into national human rights practices in a wider and increasingly diverse range of states.[14]

Sovereignty and International Human Rights

I have consciously avoided (and thus implicitly rejected) a common formulation of the relationship between human rights and sovereignty, namely, that international human rights norms and practices have weakened,[15] assaulted,[16] challenged,[17] eroded,[18] undermined,[19] or violated[20] state sovereignty. Only if one conceives of sovereignty as an absolute right to do whatever one wants do the international law and politics of human rights compromise, challenge, or erode sovereignty. Sovereignty, however, has never been such an absolute general right. Indeed, such a Hobbesian right of every one to everything would be a foundation not for sovereignty but a war of all against all.

The standard story of the creation of sovereignty through the Peace of Westphalia roots state sovereignty in the *loss* of the right of sovereigns to impose a religion on their state or to seek to spread religion through international war (with other Christian states). *All* international law, and most of international relations, "compromises" the rights of a state to act as it prefers. There is nothing special—and thus nothing interesting—about human rights in this regard. In fact, the "compromises" to state willfulness are much less severe in the case of human rights than in many other issue areas, including international security and international economic relations.

States were no more sovereign in 1940, when they had a right of war, than in 1960, when they did not. Neither do states lose any sovereignty when they acquire treaty obligations to defend allies. In much the same way, international human rights norms and policies have not undermined the sovereignty of states. The

particular rights of sovereigns have always varied, both from era to era and from sovereign to sovereign. It is indeed significant that in the 1990s states lost the legal right to massacre their own citizens on their own territory. It is also significant that sovereignty by the end of the cold war provided little protection against international scrutiny and criticism of a state's human rights practices, and that globalizing entanglements are making international human rights practices even more a legitimate matter of international concern, further restricting the freedom of action (if not the supreme authority) of states to abuse their citizens. But states today are *differently* sovereign, not *less* sovereign, both in general and with respect to internationally recognized human rights in particular.

The cumulative effects of formally transferring supreme authority in many central domains might lead us to conclude that state sovereignty is being undermined rather than redefined, particularly if such formal transfers of authority are combined with extensive informal constraints on the ability or propriety of states to exercise the formal rights they retain. But nothing like this has occurred (or is on the horizon) in the area of international human rights. More generally, even in the increasingly globalized world of 2014 most states have nearly as wide a range of sovereign rights, and in many domains much more effective state control, than they did in 1914. And many of the things over which the average state is losing control today, such as the flow of people across borders, are things over which they had even less control in 1814 or 1714—when they were, in standard accounts, unquestionably "fully sovereign."

The Future of International Human Rights

The simplest form of forecasting is to extend current trends into the future. This is an attractive strategy when, as seems to me to be the case for human rights, we believe that existing trends have not yet played themselves out and when we have no reason to expect the rise of powerful countervailing forces. The appeal and salience of international human rights norms seems to be increasing, and multilateral institutions are at least as strong, or stronger, than before. (For example, the UN Human Rights Council is a modest but very real improvement over what the UN Commission on Human Rights had become in the early 2000s.) Regional human rights regimes have shown modest deepening in Europe and the Americas and striking, if still largely symbolic, progress in the Arab world and Southeast Asia. Transnational human rights activity continues to spread

and deepen. Furthermore, the continued development of globalizing forces should further constrain the effective freedom of action of states to abuse the human rights of their citizens with impunity (even where they retain supreme legal authority to do so).

What about countervailing forces? Above, I emphasized the permissive environment created by the end of the cold war. Fears that the "war on terror" would substantially interfere with either the range or the effectiveness of international human rights policies seem to have proved mistaken.[21] And the rise of China, the biggest structural change on the horizon, seems unlikely to provoke ideological justifications for the subordination of human rights or a scramble by repressive regimes to deflect or defuse international human rights scrutiny.

The future is thus likely to involve incremental changes from the present. Although far short of what is in some moral sense "needed," this is not an unappealing prospect. It will not prevent severe and systematic violations by willfully repressive regimes and failed or failing states. Even the relatively modest goal of substantial progress toward a real responsibility to protect citizens against genocide faces an unclear fate over the next decade or two. Nonetheless, we can anticipate that an increasingly robust international politics of human rights will provide valuable support to domestic human rights advocates, help to impede backsliding, and in at least a few cases be a decisive contributor that tips the balance in favor of human rights at moments of transition.

NOTES

[1] Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton, N.J.: Princeton University Press, 2001).

[2] Consider Sections 1, 4, and 7 of Article 2 of the UN Charter. "The Organization is based on the principle of the sovereign equality of all its Members. . . . All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . . . Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state"—that jurisdiction being understood territorially. Although Article 10 of the Covenant of the League of Nations also guaranteed territorial integrity and political independence against external aggression, these words never were supported by a pattern of state practice.

[3] Going back to Westphalia, particular issues that we today consider matters of human rights—most notably minority rights—were addressed. See Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 1999), ch. 3. A general concern for human rights, however, was first stated in the Charter.

[4] For introductory overviews of multilateral implementation mechanisms, see David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2012), ch. 3; and Jack Donnelly, *International Human Rights* (Boulder, Colo.: Westview Press, 2013). In much greater depth, see Philip Alston and Frederic Megret, *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, forthcoming).

[5] The principal exceptions were highly politicized campaigns directed at human rights abuses in South Africa, Israel, and Chile.

[6] Kofi Annan, "Two Concepts of Sovereignty," *Economist*, September 18, 1999.

[7] The central document outlining the doctrine of the responsibility to protect is the report of the Intentional Commission on Intervention and State Sovereignty (2001). For recent developments, see www.globalr2p.org/, www.responsibilitytoprotect.org/ and the journal *Global Responsibility to Protect*.

[8] Rather than an indication of regional bias, this largely reflects the intersection of the jurisdiction of the court (which must be voluntarily accepted) and the global geographical distribution of potential cases. Furthermore, four of the situations were referred by the governments of the states in question.

[9] The story I tell here focuses on *international* action on behalf of human rights. Globalization, however, may also have malign effects on the national enjoyment of human rights. Because enforcement is almost entirely reserved to states, reductions in state capabilities, which are widely seen as a consequence of globalization, may reduce their ability to provide human rights protections—unless alternative mechanisms of protection and provision are developed (which do not seem to me to be on the horizon).

[10] The strong regime of regional judicial enforcement of the Council of Europe is a cold war era creation that has only incrementally (although not insignificantly) expanded over the past two decades.

[11] The idea of "soft law" points in a similar direction, but with a problematic assumption that "hard" law is treaty law. Discussions of soft law also often focus excessively on paper norms (rather than state practice).

[12] Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, Mass.: Harvard University Press, 1995).

[13] The literature on global governance is immense and varied. For useful overviews, see Deborah D. Avant, Martha Finnemore, and Susan K. Sell, *Who Governs the Globe?* (Cambridge: Cambridge University Press, 2010) and Thomas G. Weiss, *Global Governance: Why? What? Whither?* (Cambridge: Polity, 2013).

[14] Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, (Cambridge: Cambridge University Press, 2009); and Thomas Risse, Steven C. Ropp, and Kathryn Sikkink, *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge: Cambridge University Press, 2013).

[15] Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2009), p. 5.

[16] Kurt Mills, *Human Rights in an Emerging Global Order: A New Sovereignty?* (New York: St. Martin's Press, 1998), p. 10; and Sonia Cardenas, "National Human Rights Commissions in Asia," in John D. Montgomery and Nathan Glazer, eds., *Sovereignty Under Challenge* (New Brunswick: Transaction Publishers, 2002), p. 57.

[17] William J. Aceves, "Relative Normativity: Challenging the Sovereignty Norm Through Human Rights Litigation," *Hastings International and Comparative Law Review*, 25, no. 3 (2002), pp. 261–78; Ann Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton, N.J.: Princeton University Press, 2010), p. 25.

[18] Frans Viljoen, *International Human Rights Law in Africa* (Oxford: Oxford University Press, 2012), p. 20.

[19] Peter Schwab and Adamantia Pollis, "Globalization's Impact on Human Rights," in Schwab and Pollis, eds., *Human Rights: New Perspectives, New Realities* (Boulder, Colo.: Lynne Reinner Publishers, 2000), p. 214.

[20] Stephen D. Krasner, "Compromising Westphalia," *International Security*, 20, no. 3 (1995), pp. 115–51.

[21] Jack Donnelly, "International Human Rights Since 9/11: More Continuity than Change," in Michael Goodhart and Anja Mihr, eds., *Human Rights in the 21st Century: Continuity and Change since 9/11* (Houndmills, Basingstoke: Palgrave Macmillan, 2011).