



**How to cite this article:**

Rahimi, F., Gorji Azandriani, A. A., Rahmatifar, S., & Habibi, A. (2026). Rethinking the Concept of Sovereignty in Light of the Responsibility to Protect Principle. *Journal of Historical Research, Law and Policy*, 4(4), 1-16. <https://doi.org/10.61838/jhrjp.249>



Article history:  
Original Research

**Dates:**

Submission Date: 12 November 2025

Revision Date: 10 February 2026

Acceptance Date: 17 February 2026

First Publication Date: 29 May 2026

Final Publication Date: 01 July 2026

# Rethinking the Concept of Sovereignty in Light of the Responsibility to Protect Principle

1. Fathollah. Rahimi <sup>1</sup>: Department of Law, NT.C., Islamic Azad University, Tehran, Iran
2. Ali Akbar. Gorji Azandriani <sup>2</sup>: Associate Professor, Department of Public Law, Shahid Beheshti University, Tehran, Iran
3. Samaneh. Rahmatifar <sup>3</sup>: Department of Public Law, Ha.C., Islamic Azad University, Hamedan, Iran
4. Alireza. Habibi <sup>4</sup>: Department of Public Law, NT.C., Islamic Azad University, Tehran, Iran

\*corresponding author's email: [himif\\_law@yahoo.com](mailto:himif_law@yahoo.com)

## ABSTRACT

Since the adoption of the Universal Declaration of Human Rights in 1948 and subsequent human rights agreements and programs, cooperation in the field of human rights has steadily expanded (United Nations, 1948). It is evident that the end of the Cold War and the expansion of globalization processes facilitated opportunities for states and other actors to consolidate their efforts in addressing a wide range of global concerns, including human rights. During the 1990s, a renewed international commitment emerged, which by the end of that decade was, to some extent, referred to as the “age of human rights.” Now, at the beginning of the twenty-first century, contemporary human rights policies seek to prevent stagnation in the development of relevant actors and related issues. Seventy years after the adoption of the Universal Declaration of Human Rights by the international community and approximately thirty years after the end of the Cold War, the present moment provides an appropriate opportunity to reassess achievements in the field of human rights and to reflect upon the remaining challenges and emerging opportunities. The present study seeks to contribute to the broader discourse on the relationship between national sovereignty and human rights in the contemporary world. This dissertation carefully examines the dynamic interaction between national sovereignty and human rights. The contentious nature of these issues arises from the fact that they require states to increasingly relinquish their traditional sovereign privileges in matters relating to human rights; alternatively, these processes are increasingly driven by non-state actors; or simply because such developments, taken together, tend to marginalize national governments. Specifically, national governments continue to seek to maintain their position as primary actors in this process; however, as analyzed in the present study, traditional national sovereignty is undergoing erosion and transformation, while the role of non-state actors has expanded significantly. In order to fully and effectively protect human rights under contemporary conditions, emphasis must be placed on the process of establishing a supranational system and, to some extent, a form of global governance, since state sovereignty has frequently served—and continues to serve—as a pretext for impunity in relation to crimes against humanity and systematic violations of human rights.

**Keywords:** *National sovereignty, equality of states, immunity of rulers, responsibility to protect, human rights.*

## Introduction

One of the most complex and challenging legal issues in the contemporary world is the establishment of a balanced and reasonable relationship between state sovereignty and human rights. It is well recognized that, at present, the primary violators of human rights are states themselves, which invoke sovereign immunity as a



justification to absolve themselves of responsibility (1, 2). The present study seeks to examine what the conscience of humanity has conceived and undertaken in response to the suffering and injustices inflicted upon individuals by their own rulers. This research aims solely to present an analytical depiction of the current situation, as well as the ideas and solutions that have been developed in response to these challenges.

In order to clarify the discussion, the study first presents a concise overview of the historical experience of humanity concerning the state and sovereignty, and the impact of these conceptual frameworks on international law. The notion of human rights in the present study refers to universally recognized legal norms as articulated in the Universal Declaration of Human Rights and its subsequent instruments (1, 3). The central issue addressed herein concerns the widespread and systematic violations of human rights perpetrated by sovereign authorities that consider themselves immune from accountability and punishment. These sovereign authorities exist despite the contemporary moral understanding that the fundamental purpose of governance is to serve individuals and to promote their maximum welfare and dignity.

From this point of departure, the discussion proceeds to examine the foundations underlying the emergence of the theory of state responsibility for the protection of human rights, which has been seriously developed since the 1990s and formally endorsed by heads of state and government in 2005 (3, 4). Subsequently, the legal basis and nature of the Responsibility to Protect (R2P) within the international legal order are analyzed, and its conceptual and normative dimensions are examined in detail.

In the second part of the study, the practical record of the Responsibility to Protect is evaluated, along with the criticisms and challenges raised against its implementation (5, 6). Finally, the study considers the necessity of revisiting the concept of sovereignty in light of the Responsibility to Protect, the institutionalization of this principle within the framework of structural reforms of the United Nations, and the increasingly significant role of regional organizations in the protection of human rights.

### **State Sovereignty and Human Rights Challenges**

The concept of sovereignty has never possessed a universally agreed-upon meaning since its inception. Sovereignty constitutes one of the foundational elements of the state and distinguishes it from other institutional entities. In its most concise and fundamental sense, sovereignty refers to supreme political authority. This concept has provided the foundation for the modern international system and serves as the basis of legitimacy for the contemporary state system (7, 8). At its most basic level, sovereignty denotes control over a defined population and geographical territory. Such control is typically exercised through governmental structures, and historical developments demonstrate a continuous expansion of sovereignty by national governments accompanied by the consolidation of centralized authority.

Throughout most periods of human history, sovereignty was embodied in a single individual or a small group within a political unit. During this stage, sovereignty was grounded in power and depended upon the material capabilities of political leaders. Consequently, various forms of political organization emerged, ranging from multi-ethnic empires to monarchies, city-states, and theocratic systems. Authority during this period was not institutionalized as a function of the state but was instead personal in nature, residing in individual rulers and their capacity to exercise control (9, 10).

In the following discussion, the concept, foundations, and historical evolution of state sovereignty are examined in order to establish the theoretical basis relevant to the objectives of the present research.

### *The Concept of State Sovereignty*

The traditional concept of sovereignty was developed between the sixteenth and seventeenth centuries by major political philosophers such as Jean Bodin and Thomas Hobbes, who sought to legitimize absolute monarchy through their theoretical formulations. Their writings defined sovereignty as supreme political authority derived from the will of the state, possessing inherent autonomy, unaffected by external authority, and exercising ultimate authority within its territorial domain (7, 9). Hans Morgenthau, a prominent realist theorist of international relations, identified four distinct historical stages in the development of the concept of sovereignty, emphasizing its evolution in response to changing political realities (9). The concept of sovereignty first emerged in the second half of the sixteenth century, referring to the newly formed territorial state, which exercised centralized authority and possessed the power to legislate and enforce laws within defined territorial boundaries. During the sixteenth and seventeenth centuries, sovereign power was exercised by absolute monarchs, whose authority became supreme and largely immune from both internal and external challenges (9).

The notion of sovereignty as supreme authority within a defined territory emerged in a specific historical context during the late sixteenth century, coinciding with the conclusion of prolonged religious conflicts in Europe. It is essential to distinguish between the political and legal dimensions of sovereignty. Initially, sovereignty was primarily a political reality, representing the highest authority within a political system. According to political doctrine, the sovereign was the supreme authority responsible for legislation and governance within its territorial jurisdiction. This authority was recognized as the political essence of sovereignty, particularly in European monarchies such as France, England, and Spain. Each sovereign ruler exercised authority independently within their own territory while recognizing the independence and sovereignty of other states (7, 8).

Approximately one century after its emergence, the concept of sovereignty underwent a transformation in its interpretation. What had originally been understood as a political fact gradually evolved into a legal fact. In its legal dimension, sovereignty referred to the authority of the sovereign—typically the monarch—as the ultimate source of positive law, distinguishing it from natural law. Although sovereign rulers were not strictly bound by the laws they enacted, their authority was not entirely unlimited. Sovereign authority was constrained by divine law, which manifested through moral conscience and rational principles recognized as natural law. Consequently, sovereignty, which had initially been conceptualized as a political doctrine following the conclusion of Europe's religious wars, was subsequently incorporated into legal doctrine and became a foundational principle of legal and political order (9, 11).

During the period between the late nineteenth century and the early twentieth century, the political doctrine of sovereignty, which had been emphasized in earlier centuries, began to decline due to the difficulty of identifying a single individual possessing absolute legislative and executive authority. This shift was influenced by the emergence of liberal political thought, which challenged the concentration of absolute authority and emphasized the distribution of power among multiple institutions. The liberal recognition of pluralism viewed the state as one institution among many within society rather than the sole repository of authority. This transformation contributed to the gradual erosion of the traditional conception of sovereignty and reinforced the development of legal and institutional constraints on state authority (12, 13).

Another significant transformation in the understanding of sovereignty occurred as a result of political developments during the period between 1914 and 1930. Although sovereignty had previously been challenged

and its authority weakened, this period witnessed a reassertion of sovereign power in response to changing political conditions and the restructuring of the international system.

The relationship between the concept of sovereignty and the development of international law can help explain why the concept of sovereignty has been subjected to continuous revision and criticism not only since the mid-twentieth century but even to the present day. One of the most significant functions of international law is the imposition of legal limitations upon states. This understanding of international law appears incompatible with the recognition of state sovereignty, which traditionally conceives sovereign states as supreme authorities possessing ultimate legislative and executive power and operating independently of external legal constraints (7).

The Charter of the United Nations, adopted in the mid-twentieth century, not only contributed to a significant increase in the number of nation-states worldwide but also reaffirmed the sovereign rights of states, declaring them inviolable. Article 2(1) of the United Nations Charter affirms that “the Organization is based on the principle of the sovereign equality of all its Members.” Furthermore, Article 2(4) provides that “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, or in any other manner inconsistent with the purposes of the United Nations.” Additionally, Article 2(7) stipulates that “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,” while recognizing exceptions under enforcement measures provided in Chapter VII (3, 14).

Thus, the United Nations, by codifying and regulating principles related to sovereignty, has imposed certain limitations upon it in comparison to its earlier, more absolute conceptualization. Outside the framework of the United Nations, the twentieth century witnessed the expansion of communication and interaction among political systems that had previously operated independently and in isolation. Although these developments imposed certain constraints on state sovereignty, such limitations were generally partial rather than fundamental.

National sovereignty in the post-Westphalian era has increasingly been subjected to constraints arising from global forces and transnational developments. At least from a legal perspective, sovereignty continues to be regarded as an essential and constitutive feature of nation-states. States formally remain the primary actors in international relations, and international law continues to emphasize the doctrine of sovereignty, including its fundamental characteristics of internal autonomy and external independence. The domestic order remains grounded in sovereignty, in contrast to the decentralized and anarchic nature of the international system, which lacks a centralized supreme authority capable of establishing a global sovereignty above states (7, 8).

At the same time, the profound impact of globalization on national sovereignty cannot be denied. Throughout the historical evolution of sovereignty since the Peace of Westphalia, international forces—such as regional organizations, power balances, and international institutions—have influenced national sovereignty, and sovereignty has never been entirely absolute. For example, during the bipolar structure of the Cold War, the dominance of the two superpowers constrained the sovereignty of other states. Likewise, the United Nations Charter, while emphasizing sovereignty, provides mechanisms under Chapter VI and Chapter VII that allow for intervention in situations involving threats to peace, peacekeeping, and enforcement actions, thereby potentially limiting state sovereignty (5, 13). It must be acknowledged, however, that at no previous historical period has national sovereignty been subjected to pressures as significant as those arising from contemporary globalization.

Today, national sovereignties, while remaining intact, have also acquired an international dimension. Whereas sovereignty in the past was primarily shaped by domestic forces, it is now significantly influenced by international

dynamics. Consequently, national sovereignty increasingly requires constructive engagement with international processes in order to effectively regulate domestic and external affairs. In the economic sphere, for example, a form of supranational governance has emerged in the form of the global economy, particularly through institutions such as international trade regimes. While these developments have not eliminated national economies as core components of sovereignty, they have compelled states to interact with transnational economic frameworks through processes such as deregulation, competitiveness, and privatization. This transformation reflects not the disappearance of sovereignty but rather a shift in the nature and expression of national interests and identity within an interconnected global system (8, 12).

An important point is that although the structure of national sovereignty has evolved and globalization has created conditions conducive to the emergence of supranational governance in political, economic, and cultural domains, this does not imply uniform interaction among all states. While global systems influence all states, the degree and nature of this influence depend significantly on the responses of individual states themselves. Some states adopt cooperative and integrative approaches, while others maintain skeptical or resistant positions due to structural vulnerabilities, institutional weaknesses, or political considerations. Nevertheless, many states have increasingly recognized the practical necessity and benefits of engagement with transnational systems, particularly in the economic sphere, reflecting a gradual adaptation of sovereignty to contemporary global realities (8).

#### *Human Rights and Humanitarian Challenges to Sovereign Immunity*

Human rights represent a significant challenge to state sovereignty because they question the fundamental assumption that the state constitutes the ultimate political and legal authority within its territory. This raises critical questions regarding how the established rules of sovereignty evolve and what factors drive such transformations. The present discussion examines how humanitarian principles—particularly in their legal form—have gradually eroded one of the central elements of traditional sovereignty, namely the immunity of state officials from legal accountability for acts performed in their official capacity, and have contributed to the emergence of new institutional arrangements governing the relationship between states and individuals (2, 15).

The establishment and development of the international human rights regime during the second half of the twentieth century constitute one of the most significant transformations in international relations. The recognition and condemnation of human rights violations have increasingly been grounded in universally accepted humanitarian norms and expectations, which place sovereign states within a broader framework of international legal and social accountability (1, 5).

The human rights regime has transformed the institution of state sovereignty in two fundamental ways. First, the recognition of certain human rights as universal has narrowed the legitimate scope of domestic sovereignty, particularly by limiting the exclusive jurisdiction of states over their internal affairs and increasing their accountability to the international community. In recent years, efforts have been made to institutionalize the norm of conditional sovereignty, linking the legitimacy of sovereign authority directly to the protection of citizens and their fundamental rights (3, 4). Second, individuals have increasingly been recognized as subjects of international law capable of asserting claims against states. Although early international human rights conventions were initially viewed with skepticism regarding their practical effectiveness, these instruments have significantly enhanced the capacity of individuals to pursue remedies at the international level and have limited the ability of states to act with absolute legal immunity within their own territories (16, 17).

### State Sovereignty Confronting Extraterritorial Judicial Jurisdiction

Increasingly, rulers can no longer claim absolute immunity against the involvement of other states—whether within their own borders or even beyond them. This applies both to state agents in general and to the head of state specifically. The traditional institution of state sovereignty has granted officials who act on behalf of the state within the territory of other states absolute immunity from the laws and courts of those states, regardless of the nature of the act committed. The traditional concept of state sovereignty implies that states possess authority only to apply their own laws to their citizens and to foreign private persons and to subject them to judicial proceedings; however, they do not have such authority over representatives of foreign states, even after those representatives have left office. At the same time, this institution also limits state responsibility: sovereign states bear no responsibility toward other sovereign states for acts carried out within the scope of their sovereign powers or by their agents. For centuries, incumbent and former heads of state enjoyed absolute immunity from prosecution by foreign courts, unless they personally consented to appear before such courts.

The rule of absolute immunity of rulers was first challenged in relation to private commercial transactions carried out by state agents. In 1952, the United States replaced the doctrine of absolute immunity with the doctrine of restrictive immunity, under which sovereign immunity should not be granted in matters relating to immovable property or in cases concerning the administration or location of inherited property, even where a foreign sovereign is a beneficiary. This restrictive doctrine of immunity was later codified in the 2005 United Nations convention concerning the jurisdictional immunities of states and their property. Although the exclusion of private financial transactions from governmental acts can be readily explained through the logic of reciprocity and cooperative policy considerations, in practice the distinction has never been easy to apply (2).

The current practice of states in excluding official human rights abuses from state immunity cannot be explained with the same clarity and rational precision. A transformation has occurred in the boundaries of sovereignty such that widespread human rights violations have increasingly been brought within the scope of extraterritorial jurisdiction, thereby undermining the exclusive jurisdiction of states over persons within their territory. This development has become the focal point of a traditional dispute between governments and judicial authorities.

### Immunity of the Governing Elite and International Law in National Courts

This shift in the boundaries of immunity for the governing elite has not occurred without governmental awareness. The boundary between the governing elite and human rights is now intensely contested. In 2002, the International Court of Justice ruled in favor of the Democratic Republic of the Congo, holding that senior government officials—such as accredited diplomats, incumbent heads of state (or heads of government such as prime ministers), and incumbent ministers of foreign affairs—are entitled to temporary immunity from the criminal jurisdiction of foreign states during their term of official responsibility; however, after leaving office, their immunity is removed (18). Governments have used this judgment as an opportunity to restrict the possibility of exercising universal jurisdiction over allegations of human rights violations against former officials, and to re-establish political rather than legal criteria for the granting of immunity. In 2008, the African Union condemned the abuse of universal jurisdiction against suspected African leaders and declared that arrest warrants issued under this principle against African leaders would not be executed by member states (6).

Several European states have developed specialized police and investigative units to address international crimes, including human rights violations. The European Union has established a “network” for units responsible for dealing with genocide, crimes against humanity, and war crimes in order to facilitate extensive cooperation among member states in the investigation and prosecution of international crimes, and it has emphasized the need for member states to pursue such cases. Following the increase in prosecutions based on international jurisdiction, Interpol has, since 2004, begun organizing specialized meetings on responses to such crimes. Latin American states have participated in a “justice cascade,” seeking to remove immunities of former officials and to prosecute them for human rights violations. Many states have affirmed, within domestic law, the possibility of exercising universal jurisdiction for human rights violations (17).

### The Erosion of Rulers’ Immunity in the Face of International Human Rights

A substantive transformation has occurred in the institution of rulers’ immunity that reduces, though does not eliminate, contestation over the acceptance of universal jurisdiction. This transformation has three dimensions. First, courts increasingly affirm their jurisdiction over events occurring within the sovereign territory of another state by making stronger use of the principle of passive personality, that is, the nationality of victims. Traditionally, states did not claim extraterritorial jurisdiction primarily on the basis of victims’ nationality, and victim personality was at best a secondary ground for extraterritorial jurisdiction. Nevertheless, legislative practices over the past two decades indicate that states are now more determined to disregard claims of immunity by rulers in cases involving violations of their own citizens’ rights. Second, states and courts more regularly accept jurisdiction over allegations against officials of former regimes, whereas such officials were previously immune both during and after their service. Third, courts now claim authority to adjudicate the acts of such officials, even though such acts were formerly treated as integral to official functions (and thus covered by immunity). Today, these acts are increasingly characterized as violations of international human rights law and therefore no longer protected by the immunity of the governing elite. Even commercial transactions are no longer treated as public or official acts.

Despite these developments, the full realization of universal jurisdiction that human rights advocates anticipated from this threefold shift has not been achieved, and the process remains laden with significant political implications. Nonetheless, states increasingly accept that their sovereign rights may be constrained by human rights norms, and domestic courts now apply universal jurisdiction in human rights cases. What has made these changes possible is the development of other institutions, particularly the emergence of a new category of crimes—crimes against humanity—within international humanitarian law and the strengthening of these norms through the growth of international criminal law (16).

### Crimes Against Humanity and the Erosion of Rulers’ Immunity

Challenges to the absolute immunity of rulers did not begin with a direct assault on sovereign immunity itself. Rather, they began with an innovation at the boundaries of the institution known as the law of armed conflict, or international humanitarian law, which ultimately led to the establishment of a new institution: international criminal law.

The law of armed conflict constrained the discretion of military officers and their political leaders in engaging in conduct that had long been treated as a legally exclusive prerogative of states—war. This body of law seeks to limit

the freedom of those who initiate war by specifying humanitarian constraints that states cannot disregard, and by subjecting the rules applicable in wartime to institutionalized humanitarian limitations.

This boundary shift was formally recognized in the Nuremberg Charter adopted in August 1945. Under the Nuremberg Charter, the Allied powers, in addition to exercising jurisdiction over war crimes committed in Germany and other territories, recognized jurisdiction over crimes against humanity. While crimes against peace and crimes against combatant forces (the law of armed conflict) reflect the traditional conception of war as a common practice among states, crimes against humanity constituted a distinct subject matter. This innovation granted foreign states the right to prosecute German officers for crimes committed against German citizens and for German crimes that did not fall under the law of armed conflict. It also asserted jurisdiction even where the relevant acts might not be considered crimes under domestic law (15). In practice, the Nuremberg Charter dismantled the sovereignty barrier shielding state conduct toward its own citizens during wartime. It imposed a set of international social values (humanitarian principles) upon state agents and limited sovereign authority in regulating and organizing society through inhumane measures.

Although the Nuremberg Charter initially limited international jurisdiction over crimes against humanity to those committed in connection with war crimes or crimes against peace, this linkage was soon broken, and humanitarian constraints on state authority over its own citizens were extended from periods of inter-state armed conflict into peacetime. The Allies developed a unified legal framework for prosecuting Nazi war crimes in occupied territories, within which crimes against humanity were separated from purely wartime activities. This effectively removed a temporal limitation that had restricted crimes against humanity to wartime contexts and also weakened a geographic limitation that confined such crimes to areas of inter-state conflict. A new structure of international law thus emerged: international criminal law.

This expansion of extraterritorial jurisdiction over crimes against humanity was articulated in the United Nations Security Council statute establishing the International Criminal Tribunal for the former Yugoslavia, which empowered the tribunal to prosecute crimes committed in either international or internal armed conflicts. This temporal extension was further institutionalized in the statutes of the International Criminal Tribunal for Rwanda and the International Criminal Court, which provide that the relevant acts need not be committed during armed conflict, but must instead constitute part of a “widespread or systematic attack against any civilian population” (15). All three instruments underscore that no state may commit genocide or crimes against humanity, and that such crimes are prosecutable regardless of whether an armed conflict exists. Since Nuremberg, no restrictive condition has remained that would prevent individuals from pursuing accountability for crimes against humanity.

Another major breach of traditional sovereignty and rulers’ immunity, initiated at Nuremberg, was the principle of individual criminal responsibility for state crimes. The tribunals of Nuremberg, Yugoslavia, Rwanda, and the International Criminal Court all legitimized the principle that responsibility extends not only to officials who issue orders but also to direct perpetrators, accomplices, and accessories. This principle further prevented state rulers from relying on official capacity or socially conferred authority as a shield against accountability and reconfigured power relations by subjecting state authority to legal institutions.

The most controversial of these institutions is the International Criminal Court. The tribunals of Nuremberg, Yugoslavia, and Rwanda can all be understood, at least in part, as instances in which victors imposed new rules on defeated parties. The International Criminal Court, however, constituted a new creation: a global regime applicable to all member states from July 2003 onward. The Rome Statute entered into force on 1 July 2002. The

Court began receiving complaints in 2004, and its first trial commenced in January 2009. This judicial institution enabled individuals to submit communications to the Prosecutor to initiate proceedings, resembling earlier proceedings such as the Spanish Pinochet case and prosecutions involving Argentine officials (2). The International Criminal Court has also directly challenged the scope of immunity for the governing elite by explicitly rejecting immunity for incumbent or former rulers. Article 27(2) of the Rome Statute provides that “immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person” (15).

## **The Responsibility to Protect and the Limitation of State Sovereignty**

### *The Responsibility to Protect*

The preceding section explained that, alongside the recognition and development of human rights and their elevation at the international level, the concept of sovereignty has been transformed both domestically and internationally. On the one hand, the recognition and formation of human rights and their domestic demand contributed to the transformation of sovereignty from absolutism and personal despotism toward democratic governance. On the other hand, the internationalization of human rights, the growth of humanitarian thinking, and the conceptual expansion of these ideas within a horizontal system based on sovereign equality and coexistence among states ultimately produced a widespread and “natural” response to protect human beings from brutality through “humanitarian intervention” in the anti-human events of the 1990s (5, 13). This response generated a perceived contradiction between “sovereignty” and “human rights,” and the doctrine of the Responsibility to Protect was advanced.

The doctrine of “sovereignty as responsibility” was first explicitly articulated in the 1990s by Francis Deng, the Special Adviser for the Prevention of Genocide, together with Roberta Cohen, in a book titled *Sovereignty as Responsibility: Conflict Management in Africa* (1996). Since that specific source is not included in the provided reference list, the closest conceptual basis within the supplied sources is the broader redefinition of sovereignty through humanitarianism and the evolving linkage between sovereignty and protection obligations (5, 13).

The concept of sovereignty as responsibility is the product of a gradual shift in the understanding of sovereignty. In this regard, the contribution of two former Secretaries-General of the United Nations to the evolution of sovereignty has been especially consequential. The definitions of sovereignty they advanced during their tenure reflect a gradual transformation in the interpretation of the principle of sovereignty.

According to Boutros Boutros-Ghali, a former Secretary-General of the United Nations, sovereignty is a conditional concept rather than an absolute one. He argued that sovereignty—both legally and in practice—is by no means immune; instead, it may be limited by customary and treaty-based obligations in international law and relations, and it may even be violated by powerful actors (19). Similarly, Kofi Annan treated borders as barriers that should not shield criminal conduct by state officials. Because borders are not absolute obstacles, state leaders can no longer rely on privileges of judicial immunity. His argument reflects an evolution in the understanding of sovereignty: in particular circumstances—such as the production of weapons of mass destruction by rogue states, the commission of genocide within the territory of a sovereign state, or the absence of effective territorial control by incapable governments—the traditional understanding of sovereignty becomes profoundly contested (3, 4). The relevant literature becomes sharply critical of traditional sovereignty when confronted with atypical forms of

sovereignty such as fragile states, failed states, and quasi-states. Annan's central claim is that sovereignty implies responsibility—specifically, the responsibility of states to protect their own citizens. Where a state is unable or unwilling to secure its citizens' rights, or where it itself commits large-scale violations, the international community must be understood as bearing the responsibility to protect those citizens (3, 4). He is also credited with advancing the well-known distinction between two concepts of sovereignty: the first focuses on the state, while the second focuses on the people. Under the second conception, states are understood as instruments serving their citizens rather than as ends in themselves (5, 13).

### *Revisiting the Concept of Sovereignty*

Today, we are witnessing a crisis within the foundations of international law—one that is particularly connected to the concept of sovereignty and its core components (domestic jurisdiction, legal equality, and non-intervention). For example, the concept of domestic jurisdiction has increasingly lost its force in the face of international jurisdiction. Similarly, once the extraordinary imbalance of military power and material capabilities among states is recognized, the persuasiveness of the principle of legal equality among them is weakened. Finally, the United States–led military attack on Iraq and several other countries constitutes a living illustration of the crisis of the principle of non-intervention—an principle that is itself a derivative implication of the legal equality of states. In light of the crisis affecting the core elements of sovereignty and the implications created by the emergence of the Responsibility to Protect principle, many political theorists emphasize the need to move away from the notion of **sovereignty as control** toward the notion of **sovereignty as responsibility**. The concept of sovereignty—central to both international legal theory and international relations theory—has always been politically sensitive and inherently contested.

The tension between the traditional concept of sovereignty and international law necessitates the evolution and structural refinement of sovereignty. Revisiting sovereignty seeks to achieve greater compatibility between prevailing understandings of sovereignty and recent developments in international law. In essence, the purpose is to re-examine sovereignty in light of the Responsibility to Protect—an emerging general norm in international law. The development of human rights norms aimed at protecting human dignity has had a major impact, on the one hand, on the evolution of the Responsibility to Protect as a norm, and on the other hand, on the way sovereignty is understood. Human rights norms that are now accepted as basic elements of human dignity were designed, vis-à-vis the notion of “state immunity,” to foreground the **immunity of individuals**. Recognizing human rights as an element of human immunity provides justification for adopting a new way of understanding sovereignty.

The concept of sovereignty has expanded so as to encompass not only the rights, priorities, and immunities of sovereign states (including jurisdictional immunity), but also their responsibilities to protect people's fundamental rights and to regulate political and economic affairs. The concept of sovereignty as responsibility has increasingly been codified in international human rights instruments and recognized in state practice. Since 1948, the adoption of several prominent international human rights instruments has prescribed legal standards for state conduct and has established a global legal regime tasked with the national and international protection and promotion of individuals' rights (1, 3).

Several implications of understanding sovereignty as governmental responsibility can be identified. The first implication is that state agents are responsible for policies that ensure the protection of their citizens and improve

their level of welfare. Second, states are obligated toward their own people and toward the international community. Finally, government officials are responsible for their decisions and are accountable for their actions.

All instruments aimed at exerting pressure on a state to ensure that it respects international legal norms—such as diplomatic tools, intervention, and similar measures—do not necessarily endanger the territorial sovereignty of the state that violates international legal norms. Thus, it is clear that the enforcement of international legal norms cannot, in itself, place a state's territorial jurisdiction at risk. The exception to this rule arises in situations of war, which constitutes the final form of law enforcement under international law.

### *Fragile States, Failed States, and Quasi-States*

“Drawing inspiration from the Fourth Geneva Convention, it is understood that the Responsibility to Protect is primarily focused on the law of human rights. The lack of state capacity—characteristic of fragile states—represents the erosion of the inviolability of the core of sovereignty's legal structure. The Responsibility to Protect is part of a broader systemic shift in international law, mainly an increasing tendency to recognize that the principle of state sovereignty faces limitations when it comes to ensuring human security. This requires revisiting sovereignty for the purposes of the twenty-first century” (20).

More recently, the concepts of fragile and failed states have become associated with situations in which domestic sovereignty is endangered and the capacities of the relevant sovereign authority have been weakened. At the same time, the impact of weakened domestic sovereignty—often accompanied by weakened external sovereignty—has led to the emergence of another concept. In order to reach a legal definition of the Responsibility to Protect, the status of the fragile/failed state must be determined in relation to the legal concept of sovereignty. The theoretical discourse surrounding both state responsibility and humanitarian intervention confronts the problem of delineating, on the one hand, situations in which the withdrawal or collapse of the responsible state justifies external intervention, and, on the other hand, situations in which external intervention becomes foreign occupation. It is precisely at this convergence that the Responsibility to Protect intersects with fragile/failed states in order to establish a point of decline for identifying such states as an instance of **suspended sovereignty**.

The need to rethink sovereignty—which includes sovereign capacities (domestic jurisdiction), independence, and legal equality—arises from multiple factors. Failed states are characterized by anarchy, severe disorder, and civil war without adherence to the law of armed conflict. These features prevent the state from exercising effective authority over its territory. Such states lose the substantive conditions stated in Article 4 of the Charter regarding the ability to carry out obligations required for membership in the United Nations. State failure may have catastrophic humanitarian consequences.

Another exceptional case that challenges state sovereignty is described as a “quasi-state.” A quasi-state challenges traditional images of state sovereignty because it refers to states that are unable to exercise effective authority over their territory and population. In such cases, the legal presumption of sovereignty does not align with actual political capacity (8).

In reality, an important dimension of the sovereign institution is the exercise of effective control over its territory. State authority is a basic condition for safeguarding fundamental rights. A minimum level of authority and capacity is a prerequisite for the continuity of domestic and international order and justice. Therefore, at times, sovereignty is merely a social construct that may carry misleading implications. Sometimes politicians and the media instrumentalize the concept of sovereignty in order to avoid confronting real-policy issues in their own countries.

The discourse on fragile/failed states and the Responsibility to Protect is both political and legal in nature. The concept of sovereignty constitutes the basis of debates concerning fragile/failed states as well as the emerging general norm of the Responsibility to Protect.

A hypothesis may be advanced according to which the situations of fragile/failed states and the Responsibility to Protect represent two sides of the same sovereignty coin. A precise articulation of criteria for fragile/failed states and the Responsibility to Protect is necessary to realize the condition of “suspended sovereignty” and to devise legal instruments for rebuilding the capacities of the sovereign state.

The concept of the Responsibility to Protect, first raised in the 2001 ICISS report, has expanded alongside the two concepts of fragile and failed states. In fact, the concept of the failed state has been used—especially after the 11 September attacks—for states that are seen as posing threats to other states.

“Fragile states are states in whose territory terrorist organizations and transnational crime networks can grow and develop” (21). Fragile states are weak states that are incapable of performing the fundamental functions of government—administration, courts, police, and armed forces—functions that are necessary to guarantee citizens’ security and welfare and to ensure the smooth functioning of the international system. Fragile states are vulnerable to domestic and external crises and conflicts; they possess institutions that generate crisis conditions, and in some cases such crises become chronic. For example, economic institutions may be stagnant or exhibit low economic growth rates, or there may be extreme inequality in the distribution of welfare, assets, and other resources necessary for a standard life (21).

Social institutions within a fragile state may face profound inequality in access to healthcare and education. Political institutions may consist of exclusive power coalitions based on ethnicity, religion, or regional categorizations. A state is fragile when its institutions are not capable of guaranteeing the security, development, and welfare of its citizens. Fragile states are the opposite of stable states, which can withstand domestic and external attacks and crises. By contrast, fragile states are not only very weak in performing their duties but are also in a process of collapse (although it is mistaken to equate failed states with fragile states).

It is evident that failure must be interpreted within a historical context and with attention to each state’s historical conditions; that is, state failure is the final stage of a gradual process of weakening governance capacity. A state may be considered failed when it is no longer capable of ensuring basic security and the set of functions that enable economic, social, and political development, and when it is no longer able to exercise effective control over its territory and borders. It may even be said that fragility is a preliminary stage and collapse is the final stage of fragility. One hypothesis proposed to explain fragility and state failure is the extraordinary increase in the number of states during the second half of the twentieth century.

In practice, although the concept of the failed state is understandable, it becomes an extremely complex and far-reaching concept once all the diverse dimensions in which failure may occur are taken into account.

In reality, advancing the Responsibility to Protect doctrine becomes possible only after the weakening of the traditional notion of sovereignty. Gal-Or aligns—on this point—with critics of the Responsibility to Protect, arguing that the Responsibility to Protect reflects a new awareness of the limits of external sovereignty. The concept is contingent upon continuous evolution. Gal-Or in particular refers to the Responsibility to Protect as presented in the report titled “A More Secure World: Our Shared Responsibility” (3, 4). In that report, the Responsibility to Protect is only one aspect of the broader concept of human security.

In her paper, Gal-Or points to a passage in the same document stating that the emerging norm of protecting citizens from large-scale violence is primarily the responsibility of states (national authorities). When a state becomes unable to protect its citizens, the international community bears a responsibility to act through humanitarian operations, monitoring missions, diplomatic pressure, and ultimately—if necessary and as a last resort—the use of force in situations of conflict, which also implies an explicit international commitment to rebuilding collapsed societies (3, 4).

Although the terms “fragile” and “failed” do not appear in the 2004 report, and the Responsibility to Protect is not limited to fragile/failed-state situations, the concept was designed to prevent circumstances that may be described as fragile or failed states. A cluster of situations describable as fragile or failed states—where governmental capacities are substantially weakened—are typically treated by the international community as conditions that may even amount to threats to international peace and security.

Since the end of the Second World War, the concept of sovereignty has undergone significant evolution. The most important change has been the expansion of the concept to encompass not only the government but also its citizens.

At present, the concept of the fragile/failed state remains primarily political, but a number of international law scholars are attempting to develop legal definitions of these concepts.

The Responsibility to Protect is also linked to weak governance capacity—one of the defining features of fragile and failed states—and may exert strong normative influence on the contours of the legal concept of sovereignty. On the one hand, sovereignty-as-responsibility reflects the growing tendency of the international community to recognize that sovereignty faces limitations when weighed against the protection of human security. This emerging tendency encourages rethinking the legal concept of sovereignty in relation to the goals and challenges of the twentieth century (3, 4).

### *Critique of the Concept of Sovereignty*

The concept of sovereignty, since its initial formulation, has been subject to continuous reconsideration, primarily by legal and political theorists. The philosophical meaning of sovereignty has never been examined in a fully comprehensive manner. Since the 1950s, debates surrounding sovereignty have intensified significantly. One of the most controversial unresolved issues concerns the question of whether sovereignty ultimately resides in the state or in the international community (8, 9).

This issue is particularly relevant in the context of the emerging norm of the Responsibility to Protect, which is based on the assumption that states bear the primary responsibility for protecting their populations; however, when a state is unwilling or unable to fulfill this responsibility, that responsibility shifts to the international community. In light of this development, the traditional concept of sovereignty now faces multiple challenges, some of which are fundamentally legal in nature (3, 4).

The first example of these legal challenges is the difficulty of reconciling certain international legal norms—such as the Responsibility to Protect—with the principle of sovereignty. The second challenge concerns the difficulty of reconciling sovereignty with the imposition of binding legal obligations upon sovereign states under international law. A further challenge emerged with the establishment of international criminal tribunals and the adoption of the Rome Statute, which created mechanisms to prosecute international crimes committed within the domestic

jurisdiction of states. These developments directly challenge the traditional assumption that sovereign states possess exclusive authority over criminal matters occurring within their own territory (2, 15).

Today, due to the emergence of *erga omnes* obligations, the independence of sovereign states from the international community is no longer absolute. These universal obligations are grounded in the recognition of values that are shared by the entire international community. The existence of such shared values implies that states may, in certain circumstances, be held accountable to the international community when their conduct violates these common values. This development reflects a fundamental transformation in the structure of international law, in which sovereignty no longer provides unconditional protection against external legal scrutiny (1, 18).

Political theorists generally agree that the transition from the traditional concept of sovereignty to the concept of sovereignty as responsibility occurred during the 1990s. The idea that responsibility must be embedded within the concept of sovereignty itself became evident as early as the Nuremberg trials. During those proceedings, judges applied principles resembling natural law in order to evaluate the moral legitimacy of positive law, suggesting that legal norms derive their ultimate validity from their conformity with fundamental principles of justice and humanity. This marked a decisive departure from the classical conception of sovereignty as an absolute and unrestricted authority and established the foundation for the contemporary understanding of sovereignty as conditional upon compliance with universal human rights norms (5, 15).

## Conclusion

States, by virtue of their sovereignty, bear a legal responsibility to protect their populations from genocide, war crimes, crimes against humanity, and ethnic cleansing, and they cannot remain indifferent to the occurrence of such crimes in other countries. Rather, they are obligated to respond in some manner to help bring an end to such situations. Although this obligation may encompass a spectrum of measures, including softer responses such as formal condemnation or economic sanctions rather than direct military intervention, these actions collectively reflect the current operational foundation of the Responsibility to Protect.

The Responsibility to Protect, as an emerging norm of customary international law, is likely to exert increasing influence on global political practice, such that states can no longer selectively or inconsistently fulfill their legal obligation to protect their populations. The political significance of this shift in jurisdictional authority inherent in the Responsibility to Protect has not gone unnoticed by state actors. In particular, certain governments have sought to reinforce the classical doctrine of sovereign immunity in response to the growing acceptance of universal jurisdiction over crimes against humanity. Efforts to resist the authority of international judicial institutions and to limit the reach of international humanitarian and human rights obligations illustrate the intensity of political contestation surrounding the evolving boundaries of sovereignty. The distribution of power among states continues to influence which actors—whether states or individuals—exercise authority both domestically and internationally. These disputes have emerged precisely because of the significant transformations affecting sovereignty as an institution, particularly through the gradual development of international criminal law from the intersection of humanitarian law and human rights law, which has progressively weakened the traditional doctrine of sovereign immunity.

The consequences of this erosion of state sovereignty and the shifting boundaries of sovereign authority have extended beyond the advancement of human rights protection and the reduction of impunity for authoritarian rulers. These developments have fundamentally altered the legitimate scope of authority exercised by both states and individuals. On the one hand, states are increasingly subject to limitations on their exclusive sovereign authority

and are held to higher standards of international accountability. On the other hand, states have expanded the scope of domestic judicial jurisdiction into areas that were traditionally regarded as fully protected by sovereign immunity. As a result, individuals now possess greater access to national and international courts to seek remedies for violations committed by state officials. The institutional boundaries of state sovereignty have become more permeable. Although sovereignty may never have been fully institutionalized as a purely internal legal construct, the transformation of its once-sacrosanct character through the development of international law has produced tangible political consequences—not only those already visible, but also those likely to persist into the future.

### **Acknowledgments**

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

### **Authors' Contributions**

All authors equally contributed to this study.

### **Declaration of Interest**

The authors of this article declared no conflict of interest.

### **Ethical Considerations**

All ethical principles were adhered in conducting and writing this article.

### **Transparency of Data**

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

### **Funding**

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

### **References**

1. Hashemi SM. Human Rights and Fundamental Freedoms. Tehran: Mizan Publishing; 2005.
2. Robertson G. Crimes Against Humanity. New York: The New Press; 2002.
3. United N. A More Secure World: Our Shared Responsibility: Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change. New York: United Nations, 2004.
4. Annan K. A more Secure World: Our Shared Responsibility 2004.
5. Weiss TG. Humanitarian Intervention: Ideas in Action. Tehran: IPIS Publications; 2007.
6. Assembly of the African Union. Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction Doc. Assembly/AU/14 (XI). Sharm El-Sheikh, Egypt 2008.
7. Krasner SD. Westphalia and All That. In: Goldstein J, Keohane RO, editors. Ideas and Foreign Policy. Ithaca: Cornell University Press; 1993. p. 235-64.
8. Jackson RH. Quasi-states: Sovereignty, International Relations, and the Third World. Cambridge, New York: Cambridge University Press; 1990.
9. Morgenthau H. Problem of Sovereignty Reconsidered. Columbia Law Review. 1948:341-65.
10. Albert-Colliard C. Institutions of International Relations. Tehran: Nashr-e-No; 1989.

11. Albert-Colliard C. International Organizations. Tehran: Fakhteh Publishing; 1992.
12. Williams M. Rethinking the concept of sovereignty: The impact of globalization on state sovereignty. Journal of Political-Economic Information. 2000(155 & 156):132-41.
13. Clunan AL. Redefining Sovereignty: Humanitarianisms Challenge to Sovereign Immunity. In: Shawki N, Cox M, editors. Negotiating sovereignty and human rights: actors and issues in contemporary human rights politics. Burlington: Ashgate Publishing; 2009. p. 7-26.
14. Ganji M. The United Nations. Tehran: Franklin Publishing; 1973.
15. Orentlicher D. The Law of Universal Conscience: Genocide and Crimes Against Humanity. Washington, D.C.: United States Holocaust Memorial Museum; 1998.
16. Bhuta N, Schurr J. Universal Jurisdiction in Europe: The State of the Art. Human Rights Watch Report, 2006.
17. Amnesty International. Universal Jurisdiction: The Duty of States to Enact and Implement Legislation. 2001.
18. International Court of Justice. Case Concerning the Arrest Warrant of April 2000 (Democratic Republic of the Congo v. Belgium). 2002. p. 295.
19. Ghali BB. An Agenda for Peace 1992.
20. Gal-Or N. Enforcement of Occupation Law in Domestic Courts. Hebrew University International Law Research Paper No. 19-08, 2008.
21. Di John J. [Working Title/Report]. 2008.