**STANDING AUTHORIZATIONS FOR PRO-DEMOCRATIC INTERVENTIONS AND THE PARADOX OF EXTERNAL SOVEREIGNTY[[1]](#footnote-1)\***

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**Table of Contents**

[Introduction 2](#_Toc191740721)

[1. The legal concept of sovereignty and the paradox in treaty-making 6](#_Toc191740722)

[1.1. The legal concept of sovereignty 7](#_Toc191740723)

[1.1.1. Sovereignty is a political-legal concept 9](#_Toc191740724)

[1.1.2. Sovereignty is an institutional concept 10](#_Toc191740725)

[1.1.3. External sovereignty is a normative concept 11](#_Toc191740726)

[1.1.4. Sovereign authority is reconcilable with the authority of international law 13](#_Toc191740727)

[1.2. The paradox of sovereignty and voluntaristic consent theories 14](#_Toc191740728)

[1.3. An alternative to the theory of consent and the mechanics of the erosion of sovereignty 17](#_Toc191740729)

[2. Standing Authorizations and the Paradox of Sovereignty 24](#_Toc191740730)

[2.1. A framework of values 25](#_Toc191740731)

[2.1.1. Self-determination 26](#_Toc191740732)

[2.1.2. Popular sovereignty 27](#_Toc191740733)

[2.1.3. Subsidiarity 29](#_Toc191740734)

[2.2. Interventions by Invitation 30](#_Toc191740735)

[2.2.1. Who issues the invitation 31](#_Toc191740736)

[2.2.2. Who makes recognition decisions 39](#_Toc191740737)

[2.2.3. The requirements of consent 41](#_Toc191740738)

[2.3. Assessing the two routes 42](#_Toc191740739)

[2.3.1. Risks of abuse because standing authorizations lack specificity and meaningful revocability, and fail to capture the contemporaneous will of the state 43](#_Toc191740740)

[2.3.2. The intervening states or organizations lack features respecting subsidiarity and justification for standing to make mistakes 45](#_Toc191740741)

[2.3.3. Standing authorizations do not require legitimacy assessments and do not better serve basic values of the system 48](#_Toc191740742)

[Conclusion: A way forward? 49](#_Toc191740743)

# Introduction

In August 2023, following a military coup that overthrew Nigerien President, Mohammed Bazoum, ECOWAS announced the deployment of a Standing Force and threatened to invade Niger, if Bazoum was not restored to office. A use or threat to use force is illegal under article 2(4) of the UN Charter, unless the force is pursuant to UNSC authorization or in exercise of the legitimate right of self-defense under article 51 of the Charter. Military force can also be deployed in a third state with that state’s consent, under the doctrine of ‘intervention by invitation’. This is not construed as a ‘use of force’ in ‘international relations’ as prohibited in art. 2(4), and thus is not considered a violation of or exception to art. 2(4).[[2]](#footnote-2)

In line with the doctrine of intervention by invitation, some scholars argued that the deployment could be justified under article 25 of the 1999 Lome Protocol, which provides a standing authorization to ECOWAS to intervene in any member state (including Niger, at that point) if a democratically elected government is overthrown.[[3]](#footnote-3) Article 25 was thus supposed to have conferred ECOWAS with a ‘right’ of intervention in the event of a coup, making any use or threat to use force against Niger legal, if it aimed at reinstating Bazoum.[[4]](#footnote-4)

Such standing authorizations for pro-democratic interventions (i.e., interventions aimed at reinstating ousted democratically-elected leaders), stand in contrast to authorizations for humanitarian interventions (where the intervention seeks to end the commission of the gravest international crimes).[[5]](#footnote-5) While legal arguments have been advanced for treaty-based standing authorizations to serve as standalone bases for intervention[[6]](#footnote-6) (hereafter referred to as the ‘Prior Consent Route’), certain authors still insist that standing authorizations must be bolstered by prior UNSC authorization or the ad hoc consent of the rightful head of the concerned state[[7]](#footnote-7) (hereafter called the ‘Ad Hoc Authorization Route’).

In this paper, I will not wade into the legal debates surrounding these provisions. Instead, I will assess the normative desirability of the two routes in respect of pro-democratic interventions.[[8]](#footnote-8) The situation in Niger is a useful launchpad for a discussion about their normative merits, because as of 2025, Bazoum remains deposed, ECOWAS has not intervened, and Niger has withdrawn from ECOWAS.[[9]](#footnote-9)

In carrying out this assessment, I will have recourse to the concept of external sovereignty. Indeed, most scholarly work has been framed around sovereignty concerns. Proponents of the Prior Consent Route argue that a state’s consent to intervention is an expression of sovereign will, and its treaty-making ability is a sovereign power.[[10]](#footnote-10) Mere consent should thus validate treaty-based authorizations and bind states to their legal consequences.

Opponents, however, argue that standing authorizations are rendered abstractly, and much in advance of the actual situations for which intervention is desired. Consequently, they may be substantively irreconcilable with sovereignty because they can effectively cement choices of political systems,and give specific governments the power to entrench their regimes with external military support.[[11]](#footnote-11) In their current form, they confer a **right** of military intervention on the third state(s),[[12]](#footnote-12) regardless of the nature of the internal resistance to the government i.e., regardless of whether the governmental overthrow has taken place as a result of civil war, popular revolution, or military coup. Such authorizations therefore seem impervious to the organic political changes that take place within a state as expressions of popular sovereignty and national self-determination – the very values that international law purports to protect through the institution of sovereignty.

This internal tension in sovereignty, between the ability of a state to bind itself to legal commitments through expressions of its will, and the contemporaneous autonomy of the state’s political community to seek change contrary to those legal commitments, captures the ‘paradox of sovereignty’. The paradox lies at the heart of all treaty commitments, and invokes questions reminiscent of contract law: Why are treaties binding? Is there a point at which a treaty obligation, through the operation of its substance, can extinguish sovereignty? Just as law limits the manner in which autonomy can be enjoyed – for example, contracts of slavery are proscribed and void ad initio – does international law limit the purposes for which a state’s sovereignty can be used?

In this paper, I use the paradox as a conceptual device to analyze the compatibility of standing authorizations for pro-democratic interventions with the political-legal concept of sovereignty.[[13]](#footnote-13) I confine my inquiries to how the paradox manifests in the international legal order, in the context of external sovereignty.[[14]](#footnote-14) I also focus on the paradox only in relation to the assumption of treaty obligations.[[15]](#footnote-15) The thrust of my argument is that treaty-based standing authorizations are not inherently antithetical to sovereignty, but in their present form, they fail to forestall *erosions* to the concept of sovereignty. [[16]](#footnote-16) Accordingly, it may be valuable to consider substantive safeguards that protect the values at the core of sovereignty.

My argument proceeds in two parts. In Part 1, I interrogate the concept of external sovereignty under international law and identify its nature as a political-legal and normative concept. I then apply this understanding of sovereignty to resolve the paradox that arises when the state – which is supposed to have ultimate authority – is subjected to the authority of international law. I explain how a purely procedural grounding of treaty-commitments in state consent fails to explain international law’s authority over states. Rather, law’s authority is justified by its furtherance of the values incorporated by sovereignty. As a consequence, unjustified international legal commitments can erode sovereignty.

In Part 2, I examine treaty-based standing authorizations for pro-democratic interventions within the framework of the solution to the paradox, showing that standing authorizations are not inherently incompatible with sovereignty by virtue of being treaty obligations, but their structural defects pose risks of erosion to sovereignty. I demonstrate this by showing how standing authorizations can deprive the state of sovereign competences in matters where the beleaguered state would be better disposed to further the values underpinning the international legal order.

# The legal concept of sovereignty and the paradox in treaty-making

Although there is no universal definition of sovereignty,[[17]](#footnote-17) historically, the concept emerged as the idea of supreme political authority in a state.[[18]](#footnote-18) In modern international law, it consists of two dimensions – supreme internal authority over a state’s territory (internal sovereignty), and absolute external independence from interference by other states or entities on the international plane (external sovereignty).[[19]](#footnote-19)

Juxtaposed against international legal commitments, the concept of external sovereignty naturally prompts certain questions. How can treaty restrictions remain binding on states when their interests no longer dictate faithfulness to them? Are all legal agreements subject to the state’s absolute will to the contrary, or does state consent bind the state absolutely? Does sovereignty as absolute political authority entail the power to completely alienate that authority through treaty?

The paradox of sovereignty is internal to the concept and pertains to its nature. Therefore, a resolution to the paradox demands that we engage with the meaning and content of sovereignty, its legal and political dimensions, and the manner in which it relates power to authority.

In this section, I will attempt to identify international law’s resolution to the paradox of sovereignty, and the upshots of that solution. I begin by distilling the legal concept of sovereignty through a limited inferential analysis of international law sources.[[20]](#footnote-20) I then seek to identify an explanation for how international law’s authority can be reconciled with external sovereignty – one that accounts for not just why states can enter into treaties, but when and why the resulting international legal obligations can authoritatively bind states without denuding their sovereignty.

## The legal concept of sovereignty

Concerns echoing the tension between sovereignty as absolute independence, and sovereignty as the ability to enter into and be bound by treaties, cropped up before the PCIJ in the early 20th century. In the classically cited Wimbledon judgment (1923), the PCIJ explained that restrictive treaty commitments could be reconciled with the concept of sovereignty, by separating the possession of sovereignty from its constituent characteristics, and grounding restrictions on sovereign rights in state consent. As a sequitur, the right of entering into treaties was considered an “attribute of sovereignty”.[[21]](#footnote-21)

In further decisions, the PCIJ appeared to view states as existing *ipso facto* in a state of freedom, with their legal obligations constituting restrictions on such freedom.[[22]](#footnote-22) Thus, the infamous Lotus principle (derived from a 1927 case) held that states are free to do whatever they want, in the absence of an international legal rule prohibiting it.[[23]](#footnote-23) The Lotus principle suggested that sovereignty as a legal construct entails a residual permissive rule – permitting all state actions absent contrary prohibitions.

However, more contemporary readings of the judgement repudiate the Lotus principle, arguing that instead of recognizing a ‘presumption of unrestrained sovereignty’,[[24]](#footnote-24) the PCIJ merely meant to reject a presumption of restrictions on freedom.[[25]](#footnote-25) This concords with other opinions within the ICJ, which insist that the PCIJ merely intended to emphasize the limits of sovereignty within the international legal framework, and never sought to create an uninhibited freedom which would allow for all actions in the absence of prohibitive rules.[[26]](#footnote-26) Importantly, Judge Shahbuddeen in the 1996 Nuclear Weapons Advisory opinion identifies these limits as “[t]he existence of a number of sovereignties side by side” which create “an objective structural framework”, and constrain the rights and actions of states, so that they cannot “act as if the others did not exist”.[[27]](#footnote-27)

Other decisions in international fora have further illuminated the nature of sovereignty. The 1928 Island of Palmas arbitral award described external sovereignty as independence in the relations between states.[[28]](#footnote-28) Examining the more specific principle of territorial sovereignty, the award associated it with the ‘right’ of ‘exclusive competence’ to exercise the functions of a state on a territory to the exclusion of other states.[[29]](#footnote-29)

In the Austro German Customs Unit case (1931), Judge Anzilotti identified external sovereignty as ‘*suprema potestas’,*[[30]](#footnote-30) and explained that the independence that a state has by virtue of this continues to exist as long as the state is not subordinated to the legal authority of another state, with the exception of the state’s subordination to international law or the assumption of contractual engagements.[[31]](#footnote-31) Essentially, sovereignty means that “*the State has over it no other authority than that of international law*”.[[32]](#footnote-32) Further, in the 1986 Nicaragua judgment, the ICJ reiterated that accepting a limitation in an area where a sovereign has freedom, is consistent with its possession of sovereignty. The acceptance of obligations would not reduce sovereignty by that fact alone.[[33]](#footnote-33)

Four main conclusions can be drawn from these cases, about the concept of sovereignty:

### Sovereignty is a political-legal concept

As evinced by the juxtaposition of ‘right’ and ‘competence’ (The Island of Palmas Arbitration), and the discussions of sovereignty as the relationship between legal restrictions and political freedom (the Lotus Case, and Judge Shahabhuddeen in the Nuclear Weapons Advisory Opinion), it is clear that external sovereignty is a political-legal concept. In a legal sense, sovereignty consists of legal rights to exercise functions, and in its political form, it entails the actual power or competence to execute these functions. This is reinforced by Judge Anzilotti’s identification of external sovereignty as *suprema potestas,* implying that it is not merely power but also rightful authority.[[34]](#footnote-34)

Since *potestas* weds the ideas of legal and political authority, it offers an insight into the mechanics of the constitution of external sovereignty. An analogy to internal sovereignty serves well here.

For the constitution of internal sovereignty, Loughlin argues that the law transforms the political power of a political community into legal relations between the ruler and ruled through a ‘double juristic claim’.[[35]](#footnote-35) First, the absolute political authority of the political community takes a legal institutional form (*potestas*), and the government emerges as the constituted sovereign. Through the operation of the political right, the government gets the legal authority to rule.[[36]](#footnote-36) Second, under rightful authority, the government channels the competence (*potentia*) to govern through positive law.[[37]](#footnote-37) Sovereignty is then the ‘dialectical interplay’ between potestas and potentia,[[38]](#footnote-38) where “*potestas refers to the institutional arrangement in virtue of which the sovereign has authority and legitimacy, while potentia indicates the actual power to produce effects, regardless of the political context*”.[[39]](#footnote-39) This tracks the distinction between the ability or capacity to govern (potentia) and the right to govern (potestas), with sovereignty remaining intact, as long as the potestas is retained by the state.[[40]](#footnote-40) This is what allows for the enduring possession of sovereignty, even when sovereign rights and competences are limited or alienated.

Similarly, external sovereignty is legally constituted by international law, while simultaneously acting as a source of international legal restrictions on sovereign competences.[[41]](#footnote-41) International law emerges from the exercise of pre-legal political power by political communities.[[42]](#footnote-42) International law constitutively recognizes the state and its sovereignty. Subsequently, the state, through the juristic concept of external sovereignty, performs a continuous ontological function in re-defining political communities,[[43]](#footnote-43) and creates further rules of international law which multiply, channel, and limit sovereign powers. For this reason, external sovereignty has both political and legal dimensions[[44]](#footnote-44) and may be conceived of as a juristic conduit to the political domain.

### Sovereignty is an institutional concept

External sovereignty, being a legally constituted status, is an inherently institutional concept. Sovereignty as a legal status implies that it is conceptually separable from the legal rules and consequences which flow from it.[[45]](#footnote-45) Legal rules may stipulate entry and exit conditions for sovereign status, such as the proposition that only entities which have met the legal criteria of statehood under international law can acquire de jure sovereignty.[[46]](#footnote-46) Legal consequences are the competences, permissions, duties and obligations, which flow from sovereignty, like the power to enter into international agreements and to exercise sovereign functions on a state’s territory, and the duty of non-intervention in the internal affairs of other states.[[47]](#footnote-47) Further, the post-World War system governed by the UN Charter is constructed on a relational community of states, where the effectiveness of external sovereignty or ‘sovereign equality’ is contingent on international recognition.[[48]](#footnote-48) Thus, sovereignty is the legal status of rightful power and authority held by a state that is recognized under international law.

### External sovereignty is a normative concept

Being fundamentally concerned with the *summa potestas* or ‘rightful authority’, external sovereignty is a normative concept.[[49]](#footnote-49) This point hinges on a distinction between the value of sovereignty, and the normative content of the concept.

The sovereignty of the state has been likened to the autonomy of the human person in that both concepts offer freedom to their subjects. But sovereignty cannot be valued in the same way that the individual values autonomy, because states themselves are ‘not the bearers of ultimate value’.[[50]](#footnote-50) Sovereignty is not a first principle of international law.[[51]](#footnote-51) States are valued instrumentally to the extent that they promote the good of their political communities.[[52]](#footnote-52) The state can only do this, if it has a certain degree of freedom from external interference. Therefore, sovereignty is the composite authority and autonomy needed by a state to ultimately promote the interests of its subjects[[53]](#footnote-53) and discharge the functions of a state.

It is here that sovereignty transforms into a normative concept. Sovereignty not only incorporates a number of values, but it also seeks to implement these values in practice.[[54]](#footnote-54) The normative practices of the members of the international community indicate the manner and mode in which states should respond to these values.[[55]](#footnote-55) These values include (non-exhaustively), the representation and political participation of state subjects in international relations[[56]](#footnote-56) human rights, equality of states, self-determination of political communities,[[57]](#footnote-57) political pluralism,[[58]](#footnote-58) popular sovereignty,[[59]](#footnote-59) the co-existence and cooperation of states, and subsidiarity.[[60]](#footnote-60)

The justificatory practice of sovereignty can be observed in rules of international law which capture the attitudes of the international community towards these incorporated values. This includes rules that proceed as corollaries of sovereignty and reflect its normative content, such as the state’s obligations to protect human rights, the right of self-determination, the rule of non-intervention in the affairs of other states, and the general principle of international law of subsidiarity and comity. We also have the contemporary formulation of ‘sovereignty as responsibility’,[[61]](#footnote-61) which has catalyzed the acceptance of doctrines like Responsibility to Protect (under which the state has a primary duty to protect its citizens, and third states have a residual duty to do so),[[62]](#footnote-62) which has served as a justification for humanitarian interventions and responses in Libya, Liberia, Mali, and Somalia, *inter alia*.[[63]](#footnote-63)

Therefore, rules of international law confirm that sovereignty’s value and limits are circumscribed to the promotion of the good of political communities. This functions as a normative guide to the state’s exercise of sovereignty.

### Sovereign authority is reconcilable with the authority of international law

Theauthority of international law is reconcilable with the concept of sovereignty. This is possible because of the distinction between the potestas and the potentia, or a distinction between ‘the possession of sovereignty *in abstracto,* and the exercise of sovereignty *in concreto*’,[[64]](#footnote-64) which allows for the sharing[[65]](#footnote-65) and restriction of sovereign powers by virtue of the possession of sovereignty itself.[[66]](#footnote-66) As a result, accepting a restriction on sovereign rights does not amount to a restriction on or a diminution in sovereigntyper se, but rather is the function of a competence that emanates from sovereignty.

Thus, as a first step, the potestas-potentia distinction explains how legal and political authority can together comprise sovereignty, and how a state can be subject to the authority of international law, without a loss of sovereignty. Nevertheless, it does not explain *when* international law has *authority* over a state, and *why* this is consistent with sovereignty. Further, is there a point at which the authority of international law begins to denude sovereignty? These are important questions for the resolution of the paradox, and the ones to which I now turn.

## The paradox of sovereignty and voluntaristic consent theories

What explains the authority of international law over a sovereign state? One popular account is the state’s consent. Under the consent paradigm, state consent serves as the basis of state obligations, and the powers that constitute sovereignty can technically be signed away, while a state still remains sovereign.[[67]](#footnote-67) In the Wimbledon case, and subsequently in the SS Lotus case, the court considered consent emanating from the “free will” of states, as the basis of international law.[[68]](#footnote-68)

This rationale of consent as an expression of sovereign will[[69]](#footnote-69) tided over concerns about the compatibility of treaty obligations with sovereignty for much of the 20th century.[[70]](#footnote-70) And as a theory of international law, it certainly has its strengths. It retains the juridical concept of sovereignty without entrenching it in any particular philosophical view of the purposes of the state or other legal concepts. It prevents the mistaken equation of sovereignty exclusively to power,[[71]](#footnote-71) and it assuages concerns about ideological domination and value-skepticism, by rooting the validity of a rule in a formal rather than substantive criterion.[[72]](#footnote-72)

But if self-limitation is a justification for the coherence between sovereignty and restriction by treaty, we are driven to a choice between law and power.[[73]](#footnote-73) Rooting the authority of law entirely in consent – in self-legislated limitation – thus reformulates. the paradox into a dilemma.[[74]](#footnote-74) This semantic distinction has great bearing for our discussion. Paradoxesconcern contradictions which correspond to truths about a concept - in our case, it tells us that sovereignty is at once both political *and* legal with no order of priority between these dimensions.[[75]](#footnote-75) A ‘dilemma’ on the other hand, confronts the theorist with two alternatives – law, and power – and asks her to make a choice between them for the purposes of arranging them into logical priority.[[76]](#footnote-76)

If the institution of sovereignty is viewed as entirely legally constituted i.e., as a rule within a legal system that is neither justified by extra-legal facts nor constituted by social or political attributes,[[77]](#footnote-77) we would neglect the political right and political values which lend sovereignty its legitimacy. But alternatively, if we adopted a purely extra-legal conception of sovereignty as sheer empirical power,[[78]](#footnote-78) where the state’s political sovereignty lacks legal constraints[[79]](#footnote-79) and the sovereign is “he who decides on the exception”,[[80]](#footnote-80) then consent is merely tokenistic, and obligations are devoid of meaning – for legal agreements signify no assurance of a state’s commitment, and do not provide a moral basis for third party enforcement.

The consent paradigm thus does not really offer a solution to the paradox, because it resists certain aspects of the nature of sovereignty. Sovereignty may be a juridical concept, but it has a distinctly political dimension. It is also a value-laden, normative concept. As a result, a solution to the paradox can neither reside entirely in the legal domain, nor remain unanchored to value judgements.

Further, consent neither explains the basis of obligation, nor offers a meaningful explanation for phenomena within international practice. States are not always bound by obligations that reflect their will, and they certainly cannot forswear them through will alone.[[81]](#footnote-81) The emergence of jus cogens norms, the obligations *erga omnes* that stem from them, and their invalidating effects on substantively conflicting treaties, are not accounted for by a consent-based source of obligation. This explanatory vacuum persists for the expansive, almost corrosive jurisdiction of supranational organizations, and the ability of non-state actors to assume international legal personality and operate on the international plane.[[82]](#footnote-82)

A consent theory also does not tell us if a state’s consent is sufficient to validate every kind of international legal rule, regardless of its content or repercussions for the state, and it does not explain whether autonomous rules of international law erode sovereignty or are legitimate reasons for states to concede losses of sovereignty. This is because these are normative questions, and consent theorists disavow normative commitments in their resolution of the paradox.

The defects of a voluntarist explanation of international law were highlighted by Judge Shahbuddeen in the Nuclear Weapons Advisory Opinion. He recognized that the Lotus principle, by allowing for any exercise of freedom unless expressly prohibited, would essentially entitle states to behave both internally and externally in a manner that was “horrid or repugnant to the sense of the international community” or which could “deprive the sovereignty of all other States of meaning”.[[83]](#footnote-83) Therefore, he rejected the possibility that sovereignty entailed unrestrained freedom in the absence of a voluntarily assumed prohibition.

Indeed, the consent theory would merely tell us that if formal conditions for rendering consent to treaty-based standing authorizations are met, then such authorizations bind states until the point of intervention. However, this does not respond to our principal concerns - why should a state submit to the authority of international law when it has rendered its consent to a rule? What impact does a standing authorization have on the sovereignty of the consenting state? Is there a morally significant difference between an agreement to restore a head of state against popular will merely because they had democratic origins, and an agreement to allow for third state intervention if the government egregiously violates the basic human rights of its people? Consequently, should we treat such agreements differently?

To answer these questions, we need a theory that provides a normative explanation for the authority of international law. My next sub-section focuses on such an account.

## An alternative to the theory of consent and the mechanics of the erosion of sovereignty

From the preceding discussion, we can conclude that sovereignty is a right of independence from external interference, dependent on mutual recognition, and valued to the extent it helps the state promote the good of the people under its care. Since sovereignty has such instrumental value, it is compatible with legal and moral limits to its amplitude.[[84]](#footnote-84)

The limits to the value of sovereignty represent normative limits to the concept, and would help determine what, when, or where sovereign powers *ought* to be exercised or curbed. In this regard, Endicott argues that in the same way that the freedom of a person is complete to the extent it enables leading a good life, the sovereign autonomy/independence[[85]](#footnote-85) of a state is complete to the extent it helps the state be a good state.[[86]](#footnote-86) This would explain why treaties which violate jus cogens norms, like the prohibition of genocide, are void ab initio – because states cannot use their autonomy contrary to the good of their communities.[[87]](#footnote-87)

Endicott’s analogy is of course imperfect. The autonomy of a person and a state cannot be valued in the same way. The individual person is the final situs of moral worth, both in relation to individual autonomy and state autonomy. Resultingly, the value of sovereignty derives from the value of autonomy of the political community and the subjects constituting it.[[88]](#footnote-88) In this sense, individual autonomy would have instrumental and intrinsic value,[[89]](#footnote-89) but the state’s sovereignty only has instrumental and extrinsic value.[[90]](#footnote-90)

Nevertheless, I invoke the analogy to make two points. First, external sovereignty is required for a state to promote the flourishing of its community, and it is limited to the independence needed for that. Second, external authority can be compatible with sovereignty if it accords with the normative justification for sovereignty.

In conjunction, this helps us identify a better theoretical explanation than the consent theory, for international law’s authority– the Razian service conception of authority.[[91]](#footnote-91) Under this conception, international law would have authority over a state when its directives provide reasons for compliance that are (i) content-independent; and (ii) exclusionary in nature.[[92]](#footnote-92) This authority would be justified when (i) the directives reflect reasons that already apply to the state (‘the dependence thesis’); (ii) the state would better conform to the reasons which already apply to it, if it complied with the directives, rather than following the reasons which directly apply to it (the normal justification thesis “NJT”); and (iii) the directives pertain to matters in regard to which it is better to conform to reason than to decide for oneself (‘independence condition’).[[93]](#footnote-93)

The service conception is considered consistent with autonomy because it applies reasons that already apply to the subject.[[94]](#footnote-94) Thus, international law has authority over a state, without the law’s authority affecting the sovereignty of that state, when it enhances the state’s autonomy, by binding it to reasons which already apply to it. International law would not have justified or legitimate authority over the state where its directives fail the NJT condition. It may still have the backing of enforcement power, but this would just be brute force or illegitimate authority. Indeed, it is possible for a legitimately constituted authority to exercise illegitimate authority when it flouts the NJT.[[95]](#footnote-95) However, this is not to deny that the legitimacy of an authority may have to be supplemented by other normative, including moral, reasons, aside from the satisfaction of the NJT condition.[[96]](#footnote-96)

Besson offers a robust account of a modified Razian service conception that encompasses democratic coordination among states on issues of common concern, as one of the foremost grounds of justification for international law’s authority. Democratic coordination is considered intrinsically valuable for respecting ‘basic political equality’.[[97]](#footnote-97) Besson argues that international law may be recognized for its coordinative function before it issues any directives that substantively meet conditions for legitimacy. However, this still meets the NJT condition because the justification of authority for a large number of people (or states) is distinguishable from a situation where the NJT applies to one individual (or state). She terms this an ‘epistemic’ account of democratic coordination, which incorporates further justifications like epistemic expertise and volitive ability.[[98]](#footnote-98)

This version resonates with the normative role of external sovereignty in the international sphere – ensuring equality,[[99]](#footnote-99) peaceful coexistence, and cooperation, in a world where states are marked by significant disparities in size, power and resources.[[100]](#footnote-100) Judge Shahabuddeen noted that external sovereignty’s cooperative function is prudentially justified by the existence of sovereign states next to each other as ‘co-existing independent communities’. But he also implied that it is morally justified, generating duties of respect and co-existence, because every state has an equal moral claim to the well-being of its population.[[101]](#footnote-101) External sovereignty thus aims at securing juridical equality, the rights inherent in full sovereignty, respect for the personality of states, territorial integrity and political independence, and the undertaking by states of international duties and obligations.[[102]](#footnote-102)

In addition to accounting for international law’s authority, the service conception offers answers to questions about the limits of sovereignty which the consent-theory dodges.

To begin with, the consent theory suggests that the potentia can be alienated through the state’s will, without prejudice to the possession of sovereignty. And if the state consents to the surrender of potestas – if it gives up its sovereign right – then the state ceases to exist. This is what happens in the case of consensual mergers through state succession. However, the consent theory does not tell us whether such a surrender of potestas is justified. It simply explains that sovereignty is extinguished in fact. The service conception however, postulates that authority is justified when the dependence condition and NJT condition are fulfilled i.e., when the dictates of international law improve the state’s compliance with reasons which already apply to it. The normative purpose of the state is the well-being of individuals and the good of its political community. Therefore, international law should promote these ends, to be authoritative. The service condition then, might tell us, that the surrender of potestas is justified in the context of decolonization or remedial secession, where the surrender of the sovereign right by a colonizer or a rights-abusing state is necessary for the good of the political community.[[103]](#footnote-103)

Additionally, it is possible for the potentia to be so alienated, that a state’s potestas is stripped of its meaning as ‘representative of the autonomy of the political realm’.[[104]](#footnote-104) This has been termed an ‘erosion’ of sovereignty, because it mirrors a loss in the meaning of the concept without a simultaneous loss of claim to rightful authority.[[105]](#footnote-105) The consent theory does not tell us at what point a consensual loss of potentia leads to an erosion of sovereignty, because it does not concern itself with the justification of the potestas. Such normative guidance is indispensable, because sovereign rights should not be exercised so as to *“deprive the sovereignty of all other States of meaning.”[[106]](#footnote-106)* The service conception remedies this defect. For starters, the service conception accounts for the possibility that the potentia might be excessively surrendered – through a state’s own error in judgement, the deployment of illegitimate external force against the state, or even through a good decision to subscribe to a treaty obligation which subsequently, through a change in circumstance, is no longer coherent with the purposes of a good state. By providing an account of the reasons which bind a state, the service conception offers normative standards to test the content of state obligations. As a result, it can help detect an impending erosion of sovereignty.

The service conception offers a better explanation of the varied phenomena and practices of international law. The consent theory quickly collapses into an idea of treaty-making as contractual in nature. But multilateral treaties have frequently contributed to the formation of customary international law which binds states even outside of the corresponding treaty framework.[[107]](#footnote-107) Hence, multilateral treaties have juris-generative aspects more akin to legislating, than to contractual arrangements among individuals.[[108]](#footnote-108)

The service conception accounts for why jus cogens norms, which may have emerged without the specific consent of some states, can still authoritatively bind those states through the operation of their substantive moral justifications. It reflects the contemporary ‘humanized’ conception of sovereignty, embodied in doctrines such as the responsibility to protect, where sovereignty is accorded an output legitimacy on the basis of how the state uses its sovereign powers to discharge its functions towards state subjects.[[109]](#footnote-109) It explains when, on a balance of reasons, it may be valuable for a state to comply with customary international law that does not neatly align with its will or interests. One of the foremost content-independent, exclusionary reasons to comply with international law is securing democratic coordination among states on issues of common concern.[[110]](#footnote-110)

It even captures how trade-offs in competences do not amount to a diminution in sovereignty. Under this conception, the encroachment of international law in the sphere of internal sovereignty, for example, by setting human rights standards, does not signify a loss of sovereignty. Rather, a restriction in how autonomy can be exercised, furthers the good of the political community, both by procuring increased participation rights at the international level for the state, and by promoting the respect of human rights.[[111]](#footnote-111) It recognizes that while consent is an important part of the creation of international law, and it could increase the legitimacy of international law, it does not explain its authority per se. [[112]](#footnote-112)

Further, it tackles the proceduralist objection that the NJT only explains authority if it improves the subject’s conformity to reason in terms of the matter the directive regards.[[113]](#footnote-113) Raz clarifies that the NJT may be satisfied if on the balance of reasons, it is more important to render obedience to an institution than to take a specific substantive stance.[[114]](#footnote-114) Thus, Raz is essentially arguing that the NJT is met if the directive improves conformity to reasons which bear on the circumstances covered by its directives.[[115]](#footnote-115) This helps him account for how political authorities might claim legitimacy on the basis of the value of their procedures and processes of decision-making as opposed to the content of the ultimate decisions themselves.[[116]](#footnote-116) This could explain why decisions of the UNSC bind states or why additional weight is given to the practices of ‘specially affected states’ in the creation of customary international law.

There are, of course, other objections to the adequacy of the service conception as an explanation for authority.[[117]](#footnote-117) It is beyond the scope of this paper to mount a defense against all of them. My quest for an explanation of international law’s authority was limited to trying to understand when international law could retain authority over a state without eroding its sovereignty. Therefore, I will end my discussion on the service conception here, by noting that it offers a theoretical basis to proceed: to identify which of the two - the Prior Consent Route or the Ad Hoc Authorization Route – is more desirable, we must see which of these routes better cohere with the universe of institutional values and norms that bind sovereign states.

# Standing Authorizations and the Paradox of Sovereignty

Our objective is to determine whether a rule of international law recognizing the sufficiency of standing authorizations for pro-democratic interventions, is morally and prudentially desirable. We can do this by adopting Buchanan’s method of institutional moral reasoning. [[118]](#footnote-118) Essentially, this involves identifying the effects that a proposed new rule of international law would have on morally defensible principles and values of existing institutions of international law, to assess whether there are good reasons to introduce the new rule.[[119]](#footnote-119)

My argument is that if we adopt the Prior Consent Route to treaty-based standing authorizations in their *current form*, then we risk eroding the political-legal concept of external sovereignty. This is because the values that such interventions seek to protect, are better protected by the state’s exercise of sovereign powers, but a standing authorization under the Prior Consent Route would *legally* deprive the state of the rights and powers it needs to protect those values.

To make this argument, I first identify and describe some core values implicated by standing authorizations for pro-democratic interventions (**2.1.**)**.** I then explore how and why existing rules of international law protect these values by deferring to the sovereignty of states (**2.2.**). Thereafter, I turn to the two routes to treating standing authorizations, and compare their features against the core values, to determine which route better coheres with the institutional values underwriting sovereignty. I conclude that the Ad hoc Consent Route builds on existing morally defensible values better than the Prior Consent Route, and that significant safeguards would have to be introduced to improve the feasibility of the latter route (**2.3.**)

## A framework of values

Although Lefkowitz argues that institutional moral reasoning must be holistic – a goal that is empirically infeasible – identifying at least *some* moral and prudential concerns offers a useful starting point to determine whether there is good reason for change. For the purposes of this paper, I will limit my discussion to three of the innumerable values that justify sovereignty, in an effort to contribute to normative assessments of standing authorizations.

In our case, we find that standing authorizations for pro-democratic interventions affect primarily a political community’s choice of their own political system and government, and the question of who is best placed to make and/or enforce those decisions. Within the international legal order, autonomy in relation to these choices is protected by the values of self-determination, popular sovereignty, and subsidiarity. These are values that are not exclusive to external sovereignty, but generally underpin the international legal order. For example, the value of self-determination plays a part in justifying other legal concepts in international law including the human right to self-determination, the right of remedial secession, and legal claims to decolonization, internal self-government, and legitimate statehood.[[120]](#footnote-120)

The legal concepts and institutions we employ within international law necessarily implicate the interests of the individuals constituting the political community of the state, and therefore need to be ultimately morally justified in terms of what is good for the human person.[[121]](#footnote-121) I will assume for the purposes of the paper, that these three goods have value for political communities and ultimately promote the flourishing of their members. While scope precludes addressing the full extent of their rational justifications, I will briefly explore their normative value and their relationship to state sovereignty.

### Self-determination

I take self-determination to mean the capacity of a group to make decisions for itself about its political, economic, social, and cultural systems.[[122]](#footnote-122) Self-determination protects the autonomy of the political community,[[123]](#footnote-123) and although often associated with democratic representation, it is really agnostic to form of government, entailing the freedom to decide against a democratic system.[[124]](#footnote-124)

The value of self-determination derives from the autonomy of individuals – their interests in directing their lives as rational agents and “co-authors” of the political institutions that govern them.[[125]](#footnote-125) It is not equivalent to each individual’s interest in autonomy but is rather the product of individual interests in exercising autonomy through a group.[[126]](#footnote-126)

Self-determination only has meaning in community. Not all groups draw self-determination rights, but only those ‘peoples’ which have a common character and culture, and offer a distinctive membership that is important to the well-being and self-identity of individual members.[[127]](#footnote-127) The individual holds an interests in the flourishing of the group as a whole,[[128]](#footnote-128) and self-determination ensures that the rules of the community reflect the values and priorities of its subjects together.[[129]](#footnote-129) Since self-determination is ultimately compatible with value individualism, a state or community would draw a moral right to self-determination only if it can show a willingness to protect and respect the good of its members.[[130]](#footnote-130)

A very large part of sovereignty’s value comes from its ability to provide a structure for communal life and all that it implies – a territorially limited social life which provides more than just the goods essential for survival, but which also provides opportunities for community-defined relationships, selfhood and participation in decision making.[[131]](#footnote-131) The deontological character of the moral right to self-determination precludes third-party interference in its exercise, even when the third party may make more effective decisions.[[132]](#footnote-132) Accordingly, a system of sovereign states facilitates peaceful coexistence by allowing political communities to subscribe to different values and ideals, while guaranteeing mutual non-interference in the exercise of self-determination.[[133]](#footnote-133)

### Popular sovereignty

Although self-determination is sometimes cited as the international law analogue of popular sovereignty,[[134]](#footnote-134) I will treat the two values as related albeit distinct, because of important differences in their normative role and consequences in international law.

Contemporary international law protects the ‘people’s sovereignty’ and not the ‘sovereign’s sovereignty’.[[135]](#footnote-135) Popular sovereignty is the specific conception that locates the authority and legitimacy of a government in the unified will of the people.[[136]](#footnote-136) It thus presumes the existence of a single political community that possesses and exercises sovereignty through a government which acts as its agent.[[137]](#footnote-137)

International law also fosters a ‘human rights-based conception of popular sovereignty’.[[138]](#footnote-138) One where the legitimation of the government cannot be satisfied by the formalistic consent of the populace or by rule of the majority, but is rather contingent on the capacity and willingness of the government to discharge a *responsibility* towards every member of the community – to uphold the good and promote human rights. To promote popular sovereignty is to promote institutional structures that facilitate the pursuit of the good of the community, however they may decide to do that. Thus, popular sovereignty permits communities a substantial measure of freedom in deciding how to pursue the common good.

As a principle of legitimacy, popular sovereignty is relevant for the international recognition of both states and specific governmental regimes.[[139]](#footnote-139) In international law, it is anchored in two primary senses. In an external sense, it is instantiated in the sovereign equality of states and the rule of non-intervention.[[140]](#footnote-140) In an internal sense, it has a foothold in the UDHR’s almost aphoristic refrain that “the will of the people shall be the basis of the authority of government”.[[141]](#footnote-141) These two related meanings have driven the development of international legal doctrines that seek to respect the outcome of internal political processes where they reflect popular will.

In relation to the sovereign state, popular will is discerned through the shorthand of an ‘input’ and ‘output’ legitimacy,[[142]](#footnote-142) requiring representative governments, but not necessarily democracy,[[143]](#footnote-143) and facilitating internal ‘pluralism’, while allowing for a limited range of decisions to be made outside the confines of a state[[144]](#footnote-144) when it is necessary to secure the well-being of the people.

This reveals a ‘qualitative difference’[[145]](#footnote-145) between the principles of self-determination and popular sovereignty. Self-determination is concerned with allocating a right to determine one’s destiny in and through a distinct community.[[146]](#footnote-146) Popular sovereignty is a principle that (de)legitimates governments on the basis of their ability and willingness to secure the good of their populations. Self-determination is often captured as a right *against* an existing regime, while popular sovereignty is the legitimation *of* an existing regime. These two principles also place value in different places – self-determination focuses on the value of decision-making in preserving valuable forms of community life, and popular sovereignty assesses the quality of governmental institutions on the basis of their ability to facilitate the good of the people. Both principles are valence neutral to form of government but are circumscribed by the limits of morality.

### Subsidiarity

Our final framework value supplements the two previous ones by addressing the separate questions of who should make decisions, and who should enforce those decisions. In the context of states, subsidiarity is premised on two considerations: (1) that other states and non-state organizations are usually not as good as the state in deciding the values and purposes it should pursue; (2) that other states and non-state organizations are not as effective as the state in rectifying injustices and securing peace, order and good government.[[147]](#footnote-147) This makes the principle of subsidiarity, a ‘more radically important value in international law’ than in domestic law.[[148]](#footnote-148)

Subsidiarity manifests in both substantive and procedural principles, and is concerned with justifications for action at a specific level or institution, whether based on efficiency, efficacy in obtaining objectives, or other values.[[149]](#footnote-149) This does not mean that subsidiarity is a consequentialist principle, concerned with outcomes alone. Subsidiarity is also linked to human dignity, in allowing individuals to freely form social associations within a hierarchy, where each institution or association performs tasks appropriate to its level.[[150]](#footnote-150) It recognizes that “*the value of the individual human person is ontologically and morally prior to the state or other social groupings*” and as a result, all forms of association, including the community of states, need to be oriented towards the good of humans and should help each other achieve their purposes.[[151]](#footnote-151) Subsidiarity then entails both negative and positive dimensions. The negative dimension requires that higher associations refrain from interfering in the functions of the lower associations without good cause, and the positive dimension justifies such intervention where the lower associations cannot achieve their ends on their own.[[152]](#footnote-152) In international law, subsidiarity is implicit in the norm of non-intervention, and the scheme of the UN Charter.[[153]](#footnote-153)

## Interventions by Invitation

I now turn to a more specific question: under what circumstances are pro-democratic interventions normatively justified? Our objective is to understand how existing rules of international law, protect the three enumerated values incorporated by sovereignty.

Of relevance here is the doctrine of intervention by invitation, which allows states to legally invite pro-democratic interventions. Although unilateral pro-democratic interventions are proscribed under international law,[[154]](#footnote-154) a state may invite a third state or inter-state organization to directly militarily intervene on its territory in order to fight armed groups and terrorist organizations, to assist in humanitarian crises, to prop up interim transitional governments that have garnered international recognition, or to restore constitutional governments.[[155]](#footnote-155) Such interventions do not violate the peremptory norm in article 2(4) for states to “*refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state”* because interventions by invitation are not considered uses of force in *‘international relations’*.[[156]](#footnote-156)

Additionally, interventions which occur within the bounds of *valid* invitations are presumed to reflect sovereign will.[[157]](#footnote-157) Validity is contingent on the invitation preceding the action, being issued by the highest state representative, and being specific, valid, and freely given.[[158]](#footnote-158) I examine these elements in more detail below.

### Who issues the invitation

Since interventions relate to the fundamental independence of the state, only the highest state representative, may issue an invitation.[[159]](#footnote-159) Such consent is viewed as consistent with sovereign will, because the legitimate government is considered to represent the interests of the state on the external plane.[[160]](#footnote-160)

However, identifying who forms the legitimate government is not always a straightforward task. Three hard cases come to mind. (1) A democratically elected government loses effective control of the state’s territory and governmental institutions due to a military coup or another form of internal unrest; (2) a democratically elected government turns despotic, and entrenches its power through farcical elections; and (3) the legitimacy of election results are internally contested, and there is a violent tussle for power between the incumbent who has lost elections and the apparent winner. If these governments were to invite intervention to reinstate them or stave off threats to their rule, should support be rendered, and if so, when? International law provides some guidance in this regard.

1. *The effective control test*

Historically, recognition was accorded to the entity that managed to establish effective control over territory and governmental functions, regardless of how that control was established.[[161]](#footnote-161) Effective control entails the establishment and maintenance of a “peaceful administration with the acquiescence of the people for a substantial period of time”.[[162]](#footnote-162)

The effective control test was conceived as a proxy for popular sovereignty,[[163]](#footnote-163) since it presumes some factual level of acceptance or acquiescence from the people.[[164]](#footnote-164) As a criterion of recognition, it has marshalled extensive support because it is factually verifiable, evinces some level of unity between the government and the people constituting the political community, and reconciles popular sovereignty with ideological pluralism.[[165]](#footnote-165) In line with popular sovereignty, the effective control test also enables the recognition of governments which have ascended to power through revolutions and therefore lack the legitimate backing of constitutions.[[166]](#footnote-166)

Nevertheless, its sufficiency as a gauge of self-determination has been questioned. While proponents argue that political communities could conceivably prefer to be ruled by “domestic thugs rather than by foreigners announcing benevolent intentions”,[[167]](#footnote-167) critics note that it essentially amounts to a ‘might is right’ approach.[[168]](#footnote-168) Indeed, evidence of acquiescence does not mean that the self-determination rights of sub-communities within the state are being guaranteed in any meaningful sense. Peace, as merely the absence of protest could conceivably result from insidious oppression and resource imbalances between political sub-communities. International law has not remained indifferent to these risks.

1. *Legitimacy and Popular resistance*

International law generally affords a presumption of continuity in *de jure* status to a government that has lost effective control to a non-state group, until the ousted government can clearly no longer mount a resistance.[[169]](#footnote-169) This presumption has benefitted governments in Haiti (1990 and 1994), Sierra Leone (1997), Guinea Bissau (1999), Mali (2013), Libya (2014) and South Sudan (2014), all of which have received external military support in the face of civil wars and internal unrest.[[170]](#footnote-170) Yemen’s President Mansur Hadi was also considered entitled to invite intervention in 2015, when he fled to Saudi Arabia on losing control to the Houthis.[[171]](#footnote-171)

But the presumption is overturned when a new government demonstrates control over the territory and population, governmental administrative capabilities, and a measure of permanence.[[172]](#footnote-172) Further, a presumption of continuity is not automatically granted to every fallen regime. When Viktor Yanukovych, the *de jure* President of Ukraine, was exiled in the *Maidan* revolution, he received no international support.[[173]](#footnote-173) Russia’s 2014 intervention in Ukraine on the pretext of Yanukovych’s invitation, was considered illegal, because Yanukovych was not recognized as competent to give authorizations.[[174]](#footnote-174) Similarly, France refused to help Bozize fend off a coup in 2013, terming the issue an ‘internal matter’ beyond the purview of intervention.[[175]](#footnote-175)

State practice demonstrates a general unwillingness to support governments that are confronted by popular opposition.[[176]](#footnote-176) Even though the rule of strict negative equality in civil wars has fallen into desuetude, where a civil war genuinely casts doubt on the question of legitimate government, states must refrain from intervention in deference to the self-determination of peoples.[[177]](#footnote-177)

In practice as well, inviting and intervening states have avoided defending interventions on grounds of quelling popular uprisings. Instead, they frame their justifications as countering terrorism or threats to national or regional security, assisting the inviting state in its exercise of self-defense rights, rescuing nationals, preventing humanitarian crises or grave crimes, or protecting democratic elections or democratic governments.[[178]](#footnote-178) Illustratively, Kazakhstan requested military assistance from the Collective Security Treaty Organization in 2022, to counter popular protests against price rises, on the pretext that terrorists were taking advantage of the unrest.[[179]](#footnote-179)

Additionally, governments committing mass human rights abuses have been denied recognition. France denied requests for intervention from governments it once considered legitimate in the Central African Republic (Bokassa in 1979, Dacko in 1981, Patasse in 2003) and Cote d’Ivoire (Hissene Habre in 1992, Henri Konan Bedie in 2000 and Laurent Gbagbo in 2002), once they committed international crimes.[[180]](#footnote-180) The UN has also denied recognition to regimes that are clearly opposed to upholding basic human rights. The rejection of Taliban’s claim to represent Afghanistan and ISIS’ claim that it forms an independent state are two such examples.[[181]](#footnote-181)

This practice embodies the belief that governments cannot be said to be in sovereign community with their people, when they threaten the very existence of those people. Further, claims to sovereignty will be denied, where states or governments refuse to adhere to basic norms of international law. Such denials are consistent with self-determination and popular sovereignty, because those values attract moral justification in virtue of governments displaying the capacity and willingness to protect the basic rights of their communities.

1. *No requirement as to democracy*

A requirement of legitimacy should not however be conflated with democratic credentials. Our three framework principles are underwritten by a value for political pluralism. They recognize that social structures can greatly influence *how* communities pursue the good, and so these decisions should be left to political communities under the principle of subsidiarity.

International law is sensitive to these considerations. Concordant with the view that an independent moral case cannot be made out for democracy as the *only* legitimate form of government,[[182]](#footnote-182) international law does not make governmental recognition contingent on democratic origin.

Indeed, there are several reasons to abjure democratic origin as a precondition to recognition. Fraudulent democratic elections may be instrumentalized to validate results of coups, democratically elected leaders may become vilely abusive and wildly unpopular, free and fair elections can have undemocratic outcomes – like ‘predatory majoritarianism’, where the majority uses elections to oppress an ethnic minority.[[183]](#footnote-183)

As a criterion of legitimacy, the ‘democratic origin’ of a government does not weed out arbitrariness in legitimacy assessments.[[184]](#footnote-184) Significant differences of opinion can exist about the requirements of democracy - whether it entails substantive or procedural principles, and the content of human rights standards associated with it. But even if states could agree on a universal definition of democracy, its affixment as a precondition to legitimacy would violate the political self-determination and popular sovereignty of communities, by depriving them of the freedom to structure communal life in accordance with political pluralism.[[185]](#footnote-185) Within the moral limits of legitimate exercises of self-determination and popular sovereignty, people should be free to subscribe to different values, to decide that they want a non-democratic form of government, or even to institute a contested form of democracy.[[186]](#footnote-186)

In this regard, democratizing projects have been termed ‘civilizational’ and ‘imperial’.[[187]](#footnote-187) They allow powerful states to foist singular visions of government on smaller, less powerful nations – visions that have often been crafted to service the interests of third states and external investors, as opposed to shoring up the good of the state’s political community. These impositions sustain hegemonies, and directly contradict national self-determination.

Moreover, pace Ryngaert, majority governments are not legitimate by that fact alone, and coups détat can occur in response to popular uprisings.[[188]](#footnote-188) In exceptional cases, military coups have acted on popular will to facilitate desirable democratic changes within a state – a widely supported military coup in Mauritania in 2005, removed an unpopular and unjust, albeit democratically elected head of state, and successfully introduced democratic reforms.[[189]](#footnote-189) Similarly, a 2010 military coup in Niger was instrumental in ending the reign of a government responsible for democratic backsliding, and a coup détat in Egypt replaced the autocracy of Hosni Mubarak with democracy in 2011.[[190]](#footnote-190)

Absent adequate democratic alternatives, it may also become expedient to recognize undemocratic regimes.[[191]](#footnote-191) In this vein, the UN recognized the National Transitional Council as the representative of Libya, despite its ascent to power through violent means, and Maduro as the representative of Venezuela, notwithstanding allegations of fraudulent elections, and prior limited recognition of his ineffective opposition.[[192]](#footnote-192) Governments in Africa, which did not come to power democratically, have received recognition from the AU.[[193]](#footnote-193) “Putschist” regimes in Pakistan, Togo, Ivory Coast and Nigeria have been accorded recognition pursuant to professed commitments to democracy.[[194]](#footnote-194)

Additionally, a post-conflict negotiated settlement may lead to the installation of a government that has neither effective control nor democratic origin, but is still recognized as the *de jure* authority.[[195]](#footnote-195) In Yemen (2015), the organ leading the transitional process accrued recognition and support because of its representative character, despite lacking effective control.[[196]](#footnote-196)

These situations track more finessed distinctions in legitimacy. The democratic origin of a government or its demonstrated commitment to democratic processes, may be determinative in *qualifying* a new government for recognition (legitimacy in origin), but an abysmal record of human rights adherence might *disqualify* a democratically elected government from continued recognition (legitimacy in exercise).[[197]](#footnote-197)

On the whole, it would seem that abandoning the effective control criterion in favor of the legitimacy test would exacerbate instability and indeterminacy. This would undermine international peace and security, while preventing governments with “radical differences in their cultural, political, historical, and moral commitments” from entering into agreements with each other.[[198]](#footnote-198) Some kind of mixture would be ideal, but how can one decide the ideal outcome? The question of who should make the decision can be helpful here.

### Who makes recognition decisions

When regimes change, states must be cautious with how quickly they recognize new governments. Hasty recognitions of opposition forces could violate the rule of non-intervention notwithstanding the opposition’s establishment of effective control.[[199]](#footnote-199) Recognition of governments is a sovereign prerogative[[200]](#footnote-200) but cannot be legally extended where the UNSC determines that the situation should not be recognized due to its illegality;[[201]](#footnote-201) and where the government’s recognition would amount to affirming a breach of a jus cogens norm.[[202]](#footnote-202)

Further, a distinction should be made between international recognition and recognition by states. Only international recognition has constitutive effects and legal consequences, affecting legal rights and obligations, including the legal permissibility of extending support to governments seeking intervention. Recognition accorded by an individual state “cannot of itself be determinative of legal status”.[[203]](#footnote-203)

But there is no singular mechanism to make collective international recognition decisions. While regional organizations like the OAU and ECOWAS, and the UNGA Credentials Committee have played a role in recognition,[[204]](#footnote-204) scholars still assess penumbral cases of interventions grounded in such recognitions separately, and on traditional legal grounds.

For example, in 2017, ECOWAS led an operation in The Gambia on the invitation of election-winner Adama Barrow, when his predecessor Yahya Jammel, refused to concede the loss of national elections. Although the AU and ECOWAS both threatened intervention on grounds of enforcing the will of the people as expressed in the election results, the legal status of such threats remained questionable because Barrow had not yet entered office when he extended the invitation, and the UNSC had not authorized action under chapter VII.[[205]](#footnote-205) Nevertheless, the UNSC welcomed the *recognition* decisions of the AU and ECOWAS.[[206]](#footnote-206) Therefore, it would seem that recognition decisions do have more legitimacy when accorded multilaterally.

From the preceding discussions, it is clear that the doctrine of intervention by invitation presumes that self-determination, popular sovereignty, and subsidiarity are best protected by the state’s sovereignty. In this context, it may seem counterintuitive that while invitations can only be issued by legitimate state representatives, yet the question of who counts as legitimate is a decision left to the international community. But external sovereignty can only be exercised on behalf of the state, by governments that other states are willing to engage with. Recognition by other international actors is thus indispensable to the exercise of sovereign functions. Nevertheless, the institution of recognition protects the sovereignty of states through two primary moves.

First, as demonstrated above, the considerations incorporated in recognition decisions are oriented to upholding the values underpinning sovereignty. Recognition decisions are more legitimate when they are based on effective control and multilateral endorsements of the government’s legitimacy which have factored in evidence of popular support, adherence to constitutional processes in obtaining power, and a prior compliance with human rights and other sovereign responsibilities.[[207]](#footnote-207) The UNSC has assumed an increasingly important role in this regard, by appraising the circumstances in which states can aid each other.[[208]](#footnote-208)

Second, we must concede the possibility of abuse in recognition decisions. Not all risks can be legally preempted. Illegitimate or puppet governments could possibly receive recognition and invite interventions. However, to the extent that the mischief is discovered, international law unequivocally recognizes a violation of the state’s sovereignty. The normative arc of the system is thus clear – as far as pro-democratic interventions go, there are strong reasons for them to occur pursuant to and within the confines of the state’s exercise of sovereignty.

### The requirements of consent

For an invitation to be valid, the consent expressed in it should be freely given and clearly established.[[209]](#footnote-209) Consent can be vitiated where there is coercion, fraud, error, or corruption.[[210]](#footnote-210) The requirement of clear expression simply means that consent cannot be presumed, but it does not preclude an implicit, tacit, or informal delivery.[[211]](#footnote-211)

The invitation also needs to be specific, clearly setting out the scope and/or temporal boundaries of intervention. An intervention can only occur within those limits. Military activities exceeding consent may be construed as acts of aggression, further evincing that interventions by invitation are to be consistent with sovereignty.[[212]](#footnote-212) Invitations for intervention also remain fully revocable, especially when extended on an ad hoc basis; although when expressed within a treaty, they may be subject to the treaty-withdrawal mechanisms.[[213]](#footnote-213)

These requirements as to form of consent ensure respect for sovereignty. The ad hoc nature of consent – its delivery immediately before an intervention when the material circumstances requiring intervention are known to the sovereign representative, and its specificity – incorporating conditions that adequately map the state’s sovereign will, ensure that the intervention occurs pursuant to an exercise of sovereignty.

## Assessing the two routes

Theoretically, standing authorizations are supposed to have pragmatic value because of their abstract potential to promote peace and security in regions that frequently face military coups and unconstitutional seizures of power, often to the complete indifference of the UNSC.[[214]](#footnote-214) Treaty-based arrangements carry presumptions of legitimacy, help forge military alliances, provide a framework for making military capacities available to other states, and ultimately work like treaties of guarantee.[[215]](#footnote-215) They offer arrangements for intervention that can be invoked immediately and without extensive political maneuvering across multiple ideological factions during crises.

Of the two routes introduced at the beginning, the Ad Hoc Authorization Route replicates the doctrine of intervention by invitation, by requiring supplementary ad hoc authorizations for intervention.[[216]](#footnote-216) Proponents of this view argue that state practice in the context of standing authorizations does not evince a customary rule of their sufficiency as legal bases for intervention,[[217]](#footnote-217) because most interventions have either been preceded by ad hoc invites from the internationally recognized leaders,[[218]](#footnote-218) or garnered some form of UNSC support.[[219]](#footnote-219) This represents recourse to more traditional legal grounds for intervention.

In contrast, the Prior Consent Route considers standing authorizations as adequate legal bases for intervention. On this view, standing consent falls under the state’s sovereign ‘freedom-to-contract’, and therefore does not violate article 2(4). [[220]](#footnote-220) Under general international law, successor governments are bound by the treaty-signing actions of their predecessor, and standing authorizations are no exception.[[221]](#footnote-221) Neither the abstract nature of the invitation nor the lack of temporal proximity to the actual intervention are fatal to its validity, and no particular danger is posed to sovereign will, because legitimate governments are entitled to subsequently revoke their authorizations under the treaty mechanisms.[[222]](#footnote-222)

I abstain from taking a conclusive legal position on this. I will only focus on ascertaining the normative desirability of the Prior Consent Route. In this regard, Buchanan provides an account of criteria that impose “significant constraints on what counts as an acceptable proposal” for a new international legal right.[[223]](#footnote-223) This includes a proposal that:

1. Is morally progressive and minimally realistic i.e., it would improve on the status quo by better serving basic values, and has a significant prospect of being accepted by states.
2. Is consistent with well-entrenched, morally progressive principles of international law.
3. Does not create perverse incentives or obstruct the attainment of morally progressive goals like conflict resolution.
4. Is morally accessible in the sense that its acceptance is not dependent on the state subscribing to a specific ethical theory.

If the Prior Consent Route performs poorly along these criteria, then there is strong reason to resist legal change in that direction. Indeed, certain possibilities connected with features of this route, are immediately troubling:

### Risks of abuse because standing authorizations lack specificity and meaningful revocability, and fail to capture the contemporaneous will of the state

Standing authorizations provide abstract rights of intervention that stretch across decades, and which can legally be exercised by the intervening state against the contemporaneous will of the beleaguered state. In effect, they function like ‘blanket consent’[[224]](#footnote-224) – a risky proposition in the absence of appendant obligations on intervening states.

It could be argued that all treaties compel states to behave in ways contrary to contemporaneous will. But these standing authorizations are quite unlike other treaty obligations. Pro-democratic interventions are directed at a sphere of decision-making that is central to sovereignty.[[225]](#footnote-225) It is an intervention that will determine the ‘constituted sovereign’ of a state – the institution that should emerge through the exercise of popular sovereignty and self-determination. A standing authorization is not merely a relinquishment of a part of the state’s sovereignty, but it effectively gives third states the rights to decide, *with the use of force*, who will form the government, and therefore who has the power to direct all future exercises of the state’s political independence on the international plane. Therefore, it would seem correct to prioritize the will of the state at the point of intervention.[[226]](#footnote-226)

Further, while states possess a right of revocation, this must proceed according to treaty-stipulated conditions. Practically, a provision for revocation can easily be rendered redundant by third states, by installing sympathetic regimes that are unlikely to repudiate the intervention or effectuate their withdrawal from the treaty.

There is a startling ease then, with which states can abuse these mechanisms. Commentators have flagged risks of neo-colonization at the hands of more powerful regional actors, or global hegemons.

### The intervening states or organizations lack features respecting subsidiarity and justification for standing to make mistakes

If third states or regional organizations are mistaken about the costs and benefits of intervention, it begs the question whether they have a justified standing to make those decisions for the state.

There is one treaty-based standing authorization that seems fairly uncontroversial – the UN Charter. Chapter VII of the Charter enables the UNSC to authorize military intervention in any member state in the interests of international peace and security. I will not sketch out a detailed defense of the UNSC’s legitimacy in holding such a right. That is a complex topic deserving separate study. However, I will apply the principle of subsidiarity to venture some reasons for why, in theory, the UN Charter and the UNSC may be considered more legitimate than regional treaties and organizations in possessing a standing right of intervention.

The UN Charter constructs the legal architecture of collective security for the modern international legal system.[[227]](#footnote-227) The scheme of the UN Charter makes clear that the UNSC has jurisdictional pre-emption in matters concerning peace and security because the UNSC has primary responsibility for the maintenance of international peace and security.[[228]](#footnote-228) Additionally, the Charter lays out all the basic norms governing uses of force. This has prompted some to refer to the Charter as the ‘constitution of the international community’.[[229]](#footnote-229)

Within this system, both states and regional organizations can use force only with the prior authorization of the UNSC. Although states possess a right of self-defense, this is exercisable to the extent that the UNSC has not taken action.[[230]](#footnote-230) Invitations, as we have already seen, must be issued by legitimate state representatives – a matter in which the UNSC has significant powers of pronouncement. Obligations under the UN Charter also take precedence over all other treaty obligations under international law.[[231]](#footnote-231) The Charter therefore represents a scheme of subsidiarity, allocating powers and governing relations between the UN organs, regional organizations, and states, in respect of uses of force Accordingly, a state or a regional organization would have to provide extremely compelling reasons to depart from the Charter’s framework of collective security. Any unjustified circumvention would merely undermine the authority of the Charter and the UNSC.

Regional organizations would also have to show that they are constrained to respect sovereignty and justify their interventions, in the same way as the UNSC. Article 2(7) read in conjunction with Chapter VII of the Charter, encapsulates the essence of subsidiarity in the relations between states and the UN. The UNSC cannot intervene in matters falling under the domestic jurisdiction of states.[[232]](#footnote-232) It can only authorize military intervention when it observes a threat to international peace and security. Although what falls within the domestic jurisdiction of states is a function of international relations,[[233]](#footnote-233) not all internal unrest invokes the interests of the international community. In most cases, the UNSC simply supports electoral processes or dispatches peace-keeping forces. Many pro-democratic interventions have been authorized where other graver interests have been implicated such as the commission of crimes contrary to jus cogens norms, threats of internal secession, and transnational terrorist activities.[[234]](#footnote-234)

Further, when the UNSC authorizes anti-terrorism forces or humanitarian interventions, this is seen as “sovereignty-enhancing,[[235]](#footnote-235) by intervening to help a state discharge its primary obligations towards its people.[[236]](#footnote-236) The legal authority exercised during humanitarian interventions is also ‘other-regarding, purposive, and institutional’.[[237]](#footnote-237) The same, however, cannot be presumed for pro-democratic interventions.

The character of institutions (states or organizations) carrying out the interference, also affects its justifiability. Partisan institutions that are likely to create conditions of domination have weaker moral claims to intervention.[[238]](#footnote-238) In this vein, ECOMOG’s intervention in Sierra Leone (1997) faced legitimacy challenges because the forces comprising ECOMOG came from an undemocratic state themselves.[[239]](#footnote-239)

Finally, subsidiarity demands an inquiry into proportionality, with sovereign states accorded primacy by default.[[240]](#footnote-240) Miller’s example of a stable tyranny constitutes a useful illustration on the perils of dismissing proportionality. Miller argues that stable tyrannies are likely to have secured their positions by entrenching power in elite groups, and creating fissures along religious, ethnic or other lines. Their usurpation from outside the country is then likely to result in chaos and violence, similar to what resulted following the overthrow of Saddam Hussein in 2003. Miller therefore proposes that the costs and timing of regime change are a matter best discerned by the population.[[241]](#footnote-241) It is conceivable that the people prefer oppressive, domestic, opposition groups with effective control, over self-serving foreign intervenors.[[242]](#footnote-242)

Thus, using the principle of subsidiarity we see that if states or regional organizations are militarily intervening contrary to the contemporaneous will of the beleaguered state, they must demonstrate substantial moral justifications for their interventions. However, very often, they lack the kinds of structural features that contribute to the legitimacy of UNSC decisions on intervention.

### Standing authorizations do not require legitimacy assessments and do not better serve basic values of the system

Standing authorizations confer a *right* of intervention on other treaty parties without requiring the performance of legitimacy assessments prior to intervention. But from our preceding discussion we see that legitimacy assessments have a valuable role to play in protecting both popular sovereignty and self-determination, by ensuring that the intervention occurs in support of the legitimate representative of the state.

If legitimacy inquiries are not mandated, standing authorizations can be used to entrench both governments and institutional structures. A democratically elected government which has lost popular support can be reinstated by regional allies. And if standing authorizations are legal, they can, in principle, be extended to legitimate bilateral arrangements between autocratic governments to support each other.

The problem does not lie in the treaty commitment to democracy. In fact, commitments to democracy may represent the fulfillment of sovereign duties. However, giving third states a *right* to use force, without instituting safeguards to ensure the bona fide exercise of that force, merely impedes the beleaguered state’s ability to transition into more democratic regimes with the aid of transitional governments that may lack formal democratic origins themselves, but which are nevertheless more popular or more willing to discharge sovereign responsibilities than their democratic-in-origin counterparts. Furthermore, an indeterminacy in treaty references to ‘democracy’ can be dangerous. For example, restricting democracy to electoral democracy could lead to the reinstatement of a leader that over time has actually become unpopular and illegitimate.[[243]](#footnote-243)

Legitimacy assessments also ward off abuse of interventions by both the ruling regime and third states. Without having to demonstrate to the international community why a right of intervention invokes international interests or is being exercised in support of a legitimate leader, abusive governments can issue standing authorizations to their allies, and third states can use a government’s undemocratic qualifications as a pretext for self-serving military intervention, overriding the values of popular sovereignty and self-determination. Standing authorizations thus enable new forms of neo-colonization.[[244]](#footnote-244)

# Conclusion: A way forward?

The concept of sovereignty has been called ‘morally flaccid’ for purportedly being indifferent to the question of legitimacy and moral grounds for intervention.[[245]](#footnote-245) This is not true. As I have attempted to demonstrate, the concept of sovereignty is fundamentally normative. Three principal values that are implicated in pro-democratic interventions are self-determination, popular sovereignty, and subsidiarity. Self-determination promotes autonomy in organizing common forms of life, popular sovereignty requires the people’s representation by a rights-respecting government, and subsidiarity locates value in states largely being left alone to choreograph the good of their communities by virtue of their proximity to the people. All three goods are rooted in the value of human autonomy and political pluralism, are oriented towards the common good of political communities, and are consistent with external intervention where the state is unable to uphold their value.

An investigation of the norms of international law indicates that state sovereignty is considered the best way of protecting these values, and that specific multilateral inquiries about effective control, governmental legitimacy, and form of consent, can ensure that sovereign will is prioritized. However, standing authorizations deviate from these conditions, thus leaving beleaguered states susceptible to grave risks of abuse by illegitimate governments and third states. Further still, if we adopt the Prior Consent Route, authorizations remain legally binding and confer a right of intervention on third states or organizations through the operation of consent to the treaty, even when the third state flouts the will and the self-determined good of the people.

This sets the stage for an erosion of sovereignty. Interventions which do not respect popular sovereignty and self-determination, can claim a legal imprimatur by virtue of treaty provisions. But in the process, they will strip the state of the competences and countervailing rights that give sovereignty meaning. That is not to say that standing authorizations have no value, but simply that in their present form, they lack essential safeguards for sovereignty. Therefore, if they are to fall within an extension of the doctrine of intervention by invitation, they should incorporate the safeguards internalized by the doctrine – international recognition, and where possible the ad hoc consent of the concerned state.

1. \* Working draft. Please do not cite or circulate. [↑](#footnote-ref-1)
2. See Laura Visser, *May the Force Be With You: The Legal Classification of Intervention by Invitation,* 66(1) Netherlands International Law Review 21, 32, 39-42 (2019). [↑](#footnote-ref-2)
3. Art. 25, ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security (1999). [↑](#footnote-ref-3)
4. See, Russell Buchan and Nicholas Tsagourias, *The Niger Coup and the Prospect of ECOWAS Military Intervention: An International Law Appraisal*, Articles of War, (August 21 2023) https://lieber.westpoint.edu/niger-coup-ecowas-military-intervention-international-law-appraisal/. [↑](#footnote-ref-4)
5. See for instance, Art. 4(h), Constitutive Act of the African Union (2000); art. 7, Pacte d’Assistance Mutuelle of the Economic Community of Central Africa States; Article 4(8) of the Protocol on Non-Aggression and Mutual Defence of the International Conference on the Greak Lakes Region; art. 20, Inter-American Democratic Charter (2001) For an interpretation of the OAS’ powers to use force, see Cedric Ryngaert, *Pro-democratic Intervention in International Law*, Institute for International Law, Working Paper No. 53, section 6 (Apr. 2004). [↑](#footnote-ref-5)
6. Buchan and Tsagourias, *supra* note 3. [↑](#footnote-ref-6)
7. Erika de Wet, Military Assistance on Request and the Use of Force (Oxford University Press 2020) <10.1093/law/9780198784401.001.0001>. [↑](#footnote-ref-7)
8. Other treaties provide standing authorizations for force, for different reasons: Article IV, Treaty of Guarantee, United Kingdom of Great Britain and Northern Ireland, Greece and Turkey and Cyprus, (1960) giving each of the guaranteeing Powes the ‘right to take action with the sole aim of re-establishing the state of affairs’’; Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (1977); Treaties of guarantee have also been concluded for Bosnia-Herzegovina, Comoros, Cambodia, Tajikistan, Djibouti, Togo, Laos, Sri Lanka, Mozambique, Afghanistan, Liberia, Sierra Leone, Somalia, the Chad, and Gabon: for more details refer to David Wippman, *Treaty-Based Intervention: Who Can Say No?* 62 The University of Chicago Law Review, 607 (1995); and 10th Commission, Institut de Droit International, *Present Problems of the Use of Force in International Law, Sub-group: Intervention by Invitation* 73 Annuaire de l’Institut de droit International 299, 326 (2009). [↑](#footnote-ref-8)
9. See *Ecowas: Niger, Mali, and Burkina Faso quit West African bloc,* BBC, Jan 29, 2024, https://www.bbc.com/news/world-africa-68122947. [↑](#footnote-ref-9)
10. Refer to discussion in part 1.1. below. [↑](#footnote-ref-10)
11. Although standing authorizations are revocable under treaty law, any revocations must abide by the conditions and time limits specified within the relevant treaties. Practically, this could mean that a revocation may not occur at all, or may not take effect in time to prevent some of the political issues that standing authorizations pose. I will address this in more detail in part 2. [↑](#footnote-ref-11)
12. Russell Buchan and Nicholas Tsagourias, *Intervention by invitation and the scope of state consent*, 10(2) Journal on the Use of Force and International Law, 252 (2023). [↑](#footnote-ref-12)
13. Following Besson, I treat the concept of sovereignty as synonymous in the legal and political fields. However, this is distinguishable from the conception of legal sovereignty which is distinct from the conception of political sovereignty. See, Samantha Besson, *Sovereignty in Conflict*, *in* The Sovereignty of States and the Sovereignty of International Law (S. Tierney and C. Warbrick, eds.) 137. [↑](#footnote-ref-13)
14. Sovereignty in the domestic and international legal orders are to be distinguished from internal and external dimensions of sovereignty. [↑](#footnote-ref-14)
15. Although the paradox may be relevant to other discussions, such as state-building through international institutions - see, Dominik Zaum, The Sovereignty Paradox, (OUP, 2007)); and the degree to which states are obligated extra-territorially to citizens of other states - see, Eyal Benvenisti, *The Paradoxes of Sovereigns as Trustees of Humanity: Concluding Remarks*, 16 Theoretical Inquiries in Law, 535 (2015). [↑](#footnote-ref-15)
16. A brief clarification here: the word ‘erosion’, when employed in this paper, is normatively loaded, signifying an illegitimate incursion on sovereignty. Further discussion on this will follow in Part 1.3. [↑](#footnote-ref-16)
17. This has prompted some authors to contend that sovereignty is an “essentially contested concept” – see Samantha Besson, *Sovereignty in Conflict*, *supra* note 12, at 146-164; and Dan Sarooshi, *Sovereignty, Economic Autonomy, the United States, and the International Trading System: Representations of a Relationship,* 15(4) EJIL 651 (2004). [↑](#footnote-ref-17)
18. Danil Philpott, *Sovereignty,* Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/sovereignty/>. [↑](#footnote-ref-18)
19. Samantha Besson, *Sovereignty,* Max Planck Encyclopedia of Public International Law, (updated Apr. 2011). [↑](#footnote-ref-19)
20. Following Waltermann, I take the meaning of a legal concept to be determined by the legal system in which it plays a role and to be identifiable through an inferential analysis of legal materials. For more, see: Antonia Waltermann, *State Sovereignty as a Legal Status,* *in* Czech Yearbook of International Law: State Sovereignty (A. Belohvlávek, & N. Rozehnalová, eds, Vol. X 2019) 311. [↑](#footnote-ref-20)
21. The SS ‘Wimbledon’, United Kingdom and Ors v Germany, Judgment, (1923) PCIJ Series A, No 1, at 25. [↑](#footnote-ref-21)
22. Nationality Decrees Issued in Tunis and Morocco (French Zone) (Great Britain v France) Advisory Opinion, (1923) PCIJ Series B, No. 4, at 24. The PCIJ held: “*For the purpose of the present opinion, it is enough to observe that it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law*.” [↑](#footnote-ref-22)
23. S.S. Lotus (Fr. v. Turk.), 1927 PCIJ Series A, No. 10 (Sept. 7) at 18. [↑](#footnote-ref-23)
24. Bardo Fassbender, *Sovereignty and Constitutionalism in International Law,* *in* Sovereignty in Transition ((Neil Walker, ed., 2003) 115, 117. [↑](#footnote-ref-24)
25. An Hertogen, *Letting Lotus Bloom*, 26(4) EJIL 901, 908 (2015). [↑](#footnote-ref-25)
26. Hertogen, *Letting Lotus Bloom, supra* note 24 at 908. [↑](#footnote-ref-26)
27. Dissenting Opinion Judge Shahabuddeen, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, [1996] ICJ Rep 226, at 393–394. [↑](#footnote-ref-27)
28. Island of Palmas Case (or Miangas), United States v Netherlands, Award, (1928) II RIAA 829, (PCA) at p. 838. [↑](#footnote-ref-28)
29. *Id* at p. 838. [↑](#footnote-ref-29)
30. Austro-German Customs Union Case P.C.I.J., Series A/B, No. 41 (1931). Individual Opinion of Judge Anzilotti, 57. [↑](#footnote-ref-30)
31. *Id* at 58. [↑](#footnote-ref-31)
32. *Id* at 57. [↑](#footnote-ref-32)
33. Military and Paramilitary Activities in and against Nicaragua, Nicaragua v United States, Judgment on Jurisdiction and Admissibility [1984] ICJ Rep 392, at para 259. [↑](#footnote-ref-33)
34. Wall and Mathews distinguish potestas or the power of rightful authority from potentia i.e., unlimited competence. See, Illan Wall and Daniel Matthews, *Sovereignty and the Persistence of the Aesthetic*, The Modern Law Review, (March 20, 2024) https://onlinelibrary.wiley.com/doi/full/10.1111/1468-2230.12880. [↑](#footnote-ref-34)
35. Martin Loughlin, *The Erosion of Sovereignty*, 45(2) Netherlands Journal of Legal Philosophy, 60 (2016). [↑](#footnote-ref-35)
36. *Id* at 60. [↑](#footnote-ref-36)
37. *Id* at 60. [↑](#footnote-ref-37)
38. *Id* at 63. [↑](#footnote-ref-38)
39. Razvan Ioan, *Potentia: Hobbes and Spinoza on Power and Popular Politics,* 6(2) Global Intellectual History 1815 (2021). [↑](#footnote-ref-39)
40. Loughlin, *The Erosion of Sovereignty, supra* note 34 at 63. [↑](#footnote-ref-40)
41. Besson, *Sovereignty,* *supra* note 18. [↑](#footnote-ref-41)
42. Anne Peters, *Humanity as the Alpha and Omega of Sovereignty*, 20 EJIL 513, 515 (2009). [↑](#footnote-ref-42)
43. Dan Sarooshi, *The Essentially Contested Nature of the Concept of Sovereignty: Implications for the Exercise by International Organizations of Delegated Powers of Government*, 25 Mich. J. Int'l L. 1107 (2004) at 1117-1118. [↑](#footnote-ref-43)
44. Peters, *Humanity as the Alpha and Omega of Sovereignty*, *supra* note 41 at 515; Besson, *Sovereignty,* *supra* note 18; Loughlin, *The Erosion of Sovereignty, supra* note 34; Sarooshi, *The Essentially Contested Nature of the Concept of Sovereignty,* *supra* note 42; Hermann Heller, Sovereignty: A Contribution to the Theory of Public and International Law, 140 (David Dyzenhaus ed. 2019 translation). [↑](#footnote-ref-44)
45. Waltermann, *State Sovereignty as a Legal Status, supra* note 19 at para x.51.For more authors who equate sovereignty with a legal status, see Peters, *Humanity as the Alpha and Omega of Sovereignty*, *supra* note 41 at 515. [↑](#footnote-ref-45)
46. Waltermann, *State Sovereignty as a Legal Status* *supra* note 19 at Para x.47; James Crawford, The Creation of States in International Law, 1-47 (OUP, 2007). [↑](#footnote-ref-46)
47. Waltermann, *State Sovereignty as a Legal Status, supra* note 19 at X.49. [↑](#footnote-ref-47)
48. Raf Geenens, *E pluribus unum? The Manifold Meanings of Sovereignty*, 45 Netherlands Journal of Legal Philosophy, 15, 32 (2016); Brad Roth, *Sovereign Equality and "Bounded Pluralism" in the International Legal Order*, Vol. 99 Proceedings of the Annual Meeting (American Society of International Law) , March 30-April 2, 2005, pp. 392, 393 (2005); art. 2, UN Charter; Since I am only focusing on the concept of external sovereignty, and this is a legal status only available to states, I draw on the importance of recognition. That is not to deny that the declaratory theory of statehood has prevailed in international law, but only to concede that a constituent element of statehood is the capacity to enter into international relations, and recognition is indispensable for this to be effective. The life and death of the Republic of Artsakh serves to illustrate the importance of recognition: see, Victor Santos Mariottini de Oliveira, *Where De Facto States Come to Rest: The Approaching Demise of the So-called Republic of Artsakh,* Opinio Juris, (Oct. 18, 2023) https://opiniojuris.org/2023/10/18/where-de-facto-states-come-to-rest-the-approaching-demise-of-the-so-called-republic-of-artsakh/. [↑](#footnote-ref-48)
49. Besson, *Sovereignty,* *supra* note 18. [↑](#footnote-ref-49)
50. Jeremy Waldron, *Are Sovereigns Entitled to the Benefit of the International Rule of Law*, 22(2) EJIL 316, 341, 325. [↑](#footnote-ref-50)
51. Peters, *Humanity as the Alpha and Omega of Sovereignty*, *supra* note 41 at 513; George Duke, *Sovereignty and the Common Good,* 17(1) ICON 66, 68 (2019); Zaum, supra note 14 at 36; Waldron, *Are Sovereigns Entitled to the Benefit of the International Rule of Law,* *supra* note 49 at 328. [↑](#footnote-ref-51)
52. Waldron, *Are Sovereigns Entitled to the Benefit of the International Rule of Law, supra* note 49 at 326; Fox-Decent and Dahlman argue that IL now recognizes the sovereignty of indigenous communities (see Evan Fox-Decent and Ian Dalhman, *Sovereignty as Trusteeship and Indigenous Peoples*, 16(2) Theoretical Inquiries in Law (2015)). For the purposes of this paper, I look at state sovereignty alone, without taking a position on whether sovereignty can be divorced from state structures. [↑](#footnote-ref-52)
53. David Dyzenhaus, *Kelsen, Heller and Schmitt: Paradigms of Sovereignty Thought*, 16(2) Theoretical Inquiries in Law 361 (2015). [↑](#footnote-ref-53)
54. Besson, *Sovereignty in Conflict*, *supra* note 12 at 147; and Sarooshi, *The Essentially Contested Nature of the Concept of Sovereignty, supra* note 42. [↑](#footnote-ref-54)
55. For a discussion of value of concepts versus theories of justification for norms within international law, see David Lefkowitz, *International Law, Institutional Moral Reasoning and Secession,* 37(4) Law and Philosophy 385 (Aug. 2018); see also Dyzenhaus, *supra* note 52 at 362. [↑](#footnote-ref-55)
56. Timothy Endicott, *The Logic of Freedom and Power,* *in* The Philosophy of International Law, (Besson and Tasioulas, eds, OUP 2010) 255. [↑](#footnote-ref-56)
57. Besson, *Sovereignty in Conflict*, *supra* note 12 at 147; Sarooshi, *The Essentially Contested Nature of the Concept of Sovereignty, supra* note 42 at 1115 [↑](#footnote-ref-57)
58. Duke, *Sovereignty and the Common Good,* *supra* note 50 at 79. [↑](#footnote-ref-58)
59. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84(4) The American Journal of International Law, 866 (1990). [↑](#footnote-ref-59)
60. Endicott, *The Logic of Freedom and Power,* *supra* note 55 at 255. [↑](#footnote-ref-60)
61. Zaum, *supra* note 14; Peters, *Humanity as the Alpha and Omega of Sovereignty, supra* note 41 at 515. [↑](#footnote-ref-61)
62. International Commission on Intervention and State Sovereignty (ICISS) ‘The Responsibility to Protect’ (2001). [↑](#footnote-ref-62)
63. What is R2P, Global Centre for the Responsibility to Protect, available at: https://www.globalr2p.org/what-is-r2p/#:~:text=R2P%20has%20been%20invoked%20in,of%20genocide%2C%20prevention%20of%20armed. [↑](#footnote-ref-63)
64. Jan Klabbers, *Clinching the Concept of Sovereignty, Wimbledon Redux,* 3 Austrian Review of International and European Law, 345, 362 (1998). [↑](#footnote-ref-64)
65. Claus D. Zimmermann, *The Concept of Monetary Sovereignty Revisited*, 24(3) EJIL 797 (2013); Klabbers, *Clinching the Concept of Sovereignty, Wimbledon Redux, supra* note 63 at 363. [↑](#footnote-ref-65)
66. The SS ‘Wimbledon’, United Kingdom and Ors v Germany, Judgment, (1923) PCIJ Series A, No 1, at p. 25; Martti Koskenniemi, *what use for sovereignty today?,* 1 Asian Journal of International Law, 61, 62 (2011). [↑](#footnote-ref-66)
67. Klabbers, *Clinching the Concept of Sovereignty, Wimbledon Redux,* *supra* note 63 at 362. [↑](#footnote-ref-67)
68. Besson, *Sovereignty,* *supra* note 18; Klabbers, *Clinching the Concept of Sovereignty, Wimbledon Redux, supra* note 63 at 362; S.S. Lotus (Fr. v. Turk.), 1927 PCIJ Series A, No. 10 (Sept. 7) at 18. [↑](#footnote-ref-68)
69. Alain Pellet, *The Normative Dilemma: Will and Consent in International Law-Making,* 12(1) Australian Yearbook of International Law 22, 26 (1992). [↑](#footnote-ref-69)
70. Jan Klabbers, *Law-making and Constitutionalism, in* The Constitutionalization of International Law (Jan Klabbers, Anne Peters and Geir Ulfstein, OUP 2009) 114. [↑](#footnote-ref-70)
71. Georg Nolte, *Sovereignty as Responsibility?,* Proceedings of the Annual Meeting (ASIL) March 30-April 2, 2005, Vol 99, 389-392. Although Nolte does not sketch out how this last part might look, I would suppose that it involves subscribing to a system of rules – one that even permits the creation or recognition of jus cogens norms, and therefore being bound by jus cogens when they emerge through that system, by its conditions. [↑](#footnote-ref-71)
72. Klabbers, *Law-making and Constitutionalism, supra* note 69 at 114. [↑](#footnote-ref-72)
73. Dyzenhaus, *Introduction, in* Sovereignty, *supra* note 43 at 39. [↑](#footnote-ref-73)
74. Dyzenhaus, *Introduction, in* Sovereignty, *supra* note 43 at 17. [↑](#footnote-ref-74)
75. Besson, *supra* note 12 at 137. Besson further distinguishes the nature of this concept from legal sovereignty and political sovereignty – which relate to the object of sovereignty; Dyzenhaus, *Introduction, in* Sovereignty, *supra* note 43 at 17. [↑](#footnote-ref-75)
76. Dyzenhaus, *Introduction, in* Sovereignty, *supra* note 43 at 17. [↑](#footnote-ref-76)
77. Although the Weimar debates between kelsen, heller and Schmitt had a different context, they nevertheless responded to social pressures that still exist - the capture of institutions and ‘foreign control over important aspects of domestic policy, and so the way they grappled with sovereignty’s normative and empirical dimensions (the authority and power aspects) are relevant for current IL debates as well at least from the perspective of identifying the most effective method of resolving a paradox. See Dyzenhaus, *Kelsen, Heller and Schmitt supra* note 52 at 340; and Dyzenhaus, *Introduction, in* Sovereignty, *supra* note 43 at 17. [↑](#footnote-ref-77)
78. Besson, *supra* note 12 at 143. [↑](#footnote-ref-78)
79. Lars Vinx, ‘*Carl Schmitt*’, Stanford Encyclopedia of Philosophy, (last updated Aug 29, 2019), available at: https://plato.stanford.edu/index.html. [↑](#footnote-ref-79)
80. Dyzenhaus, *Kelsen, Heller and Schmitt, supra* note 52 at 341. [↑](#footnote-ref-80)
81. Pellet, *The Normative Dilemma: Will and Consent in International Law-Making,* *supra* note 68 at 26. [↑](#footnote-ref-81)
82. Klabbers, *Clinching the Concept of Sovereignty, Wimbledon Redux,*, *supra* note 63 at 365-366. [↑](#footnote-ref-82)
83. Dissenting Opinion Judge Shahabuddeen, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, [1996] ICJ Rep 226, at 393. [↑](#footnote-ref-83)
84. Maris Kopcke, *Law and the Limits of Sovereign Power,* 66(1) The American Journal of Jurisprudence, (2021) at 115, 127. [↑](#footnote-ref-84)
85. I use these words interchangeably. The independence or freedom from interference given to states in the internal sphere is synonymous with the autonomy of the state. [↑](#footnote-ref-85)
86. Endicott, *The Logic of Freedom and Power,* *supra* note 55 at 247. [↑](#footnote-ref-86)
87. Endicott, *The Logic of Freedom and Power, supra* note 55. [↑](#footnote-ref-87)
88. Samantha Besson, *Sovereignty, International Law and Democracy*, 22(2) EJIL 378 (2011). [↑](#footnote-ref-88)
89. Michael J Zimmerman, Ben Bradley, *Intrinsic v Extrinsic Value*, Stanford Encyclopedia of International Law (2019); John Christman, *Autonomy in Moral and Political Philosophy,* Stanford Encyclopedia of International Law (2020). [↑](#footnote-ref-89)
90. Over here I use the distinction in value propounded by Korsgaard. See Christine Korsgaard, *Two distinctions in goodness,* 92(2) Philosophical Review 169-195. [↑](#footnote-ref-90)
91. For a detailed account, refer to Samantha Besson, *The Authority of International Law – Lifting the State Veil,* 31 Sydney Law Review, p. 343. [↑](#footnote-ref-91)
92. Besson, *The Authority of International Law, supra* note 90 at 351. [↑](#footnote-ref-92)
93. Joseph Raz, *The Problem of Authority: Revisiting the Service Conception*, 90 MINN. L. REV. 1003, 1014 (2006); Joseph Raz, Ethics in the Public Domain, 214 (Clarendon Paperbacks, 1995). [↑](#footnote-ref-93)
94. Raz, *The Problem of Authority: Revisiting the Service Conception*, *supra* note 92. [↑](#footnote-ref-94)
95. Timothy Macklem, *Appreciating the Limits of the Service Conception of Authority*, *in* Law and Life in Common (Timothy Macklem, OUP, 2015) 109-148. [↑](#footnote-ref-95)
96. Adriana Placani, *Joesph Raz’s Service Conception and the Limits of Knowability*, 34 (3) Ratio Juris, 207, 209 (2021) https://onlinelibrary.wiley.com/doi/full/10.1111/raju.12326; Besson, *The Authority of International Law, supra* note 90 at 355; Joseph Raz, *On Respect, Authority and Neutrality: A Response,* 120(2) Ethics 279, 298 (2010). [↑](#footnote-ref-96)
97. Besson, *The Authority of International Law, supra* note 90 at 354. [↑](#footnote-ref-97)
98. Besson, *The Authority of International Law, supra* note 90 at 354-356. [↑](#footnote-ref-98)
99. Article 2(1) UN Charter. [↑](#footnote-ref-99)
100. United Nations: Consensus on principle of sovereign equality of States reached by Special Committee on Principles of International Law Concerning Friendly Relations of States, p. 151; S.S. Lotus (Fr. v. Turk.), 1927 PCIJ Series A, No. 10 (Sept. 7); Dissenting Opinion Judge Shahabuddeen, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, [1996] ICJ Rep 226 at 393-394. [↑](#footnote-ref-100)
101. Dissenting Opinion Judge Shahabuddeen, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, [1996] ICJ Rep 226 at 393, 396, 414. [↑](#footnote-ref-101)
102. Report of rapporteur of subcommittee I/1/A to committee I/1; chapter II, 1 june 1945 VI UNCIO at 717. [↑](#footnote-ref-102)
103. Drawing on the example of extinguishment of potestas used by Martin Loughlin, *The Erosion of Sovereignty, supra* note 34. [↑](#footnote-ref-103)
104. Loughlin, *The Erosion of Sovereignty, supra* note 34, at 69. [↑](#footnote-ref-104)
105. Loughlin, *The Erosion of Sovereignty, supra* note 34 at 69. [↑](#footnote-ref-105)
106. Dissenting Opinion Judge Shahabuddeen, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, [1996] ICJ Rep 226, at 393-394. [↑](#footnote-ref-106)
107. See Gary L. Scott & Craig L. Carr, *Multilateral Treaties and the Formation of Customary International Law,* 25 DENV. J. INT'L L. & POL'Y 71 (1996); and Gary L. Scott & Craig L. Carr, *Multilateral Treaties and the Environment: A Case Study in the Formation of Customary International Law*, 27 Denv. J. Int'l L. & Pol'y 313 (1999). [↑](#footnote-ref-107)
108. Waldron, *Are Sovereigns Entitled to the Benefit of the International Rule of Law, supra* note 49 at 329 and 330. [↑](#footnote-ref-108)
109. Peters, *Humanity as the Alpha and Omega of Sovereignty*, *supra* note 41. [↑](#footnote-ref-109)
110. Besson, *The Authority of International Law, supra* note 90 at 353; Raz, *The Problem of Authority: Revisiting the Service Conception*, *supra* note 92 at 1014. [↑](#footnote-ref-110)
111. Fassbender, *Sovereignty and Constitutionalism in International Law,* *supra* note 23 at 139. [↑](#footnote-ref-111)
112. Samantha Besson, *State Consent and Disagreement in International Law-Making. Dissolving the Paradox,* 29 Leiden Journal of International Law 295 (2016). [↑](#footnote-ref-112)
113. Scott A Hershovitz, *The Role of Authority*, 11(7) Philosopher's Imprint 1-19 at 5 (2011). [↑](#footnote-ref-113)
114. Raz, *The Problem of Authority: Revisiting the Service Conception*, *supra* note 92 at 1023. [↑](#footnote-ref-114)
115. Hershovitz, *The Role of Authority*, *supra* note 112 at 5. [↑](#footnote-ref-115)
116. Hershovitz, *The Role of Authority*, *supra* note 112 at 3. [↑](#footnote-ref-116)
117. Hershovitz, *The Role of Authority*, *supra* note 112 at 5. [↑](#footnote-ref-117)
118. I adopt a methodology of institutional moral reasoning propounded by Buchanan and modified by Lee. For more, see: Allen Buchanan, *Theories of Secession*, 26(1) Philosophy and Public Affairs, 31-61 (1997); Hsin-wen Lee, *Institutional Morality and the principle of national self-determination*, 172(1) Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition, Special Issue, The Gettier Problem at 50 (Jan 2015) pp. 207-226. Additionally, the three principles in this section are metalegal principles i.e., “principles generated in a philosophical or ethical discourse and introduced from there into a legal normative system”. See, Rüdiger Wolfrum, *General International Law (Principles, Rules and Standards)*, Max Planck Encyclopedia of Public International Law (2010); Since sovereignty is an institutional concept, and we are concerned with impacts on the norm (not assessing the value of the institution), we turn to institutional moral reasoning. See, Lefkowitz, *International Law, Institutional Moral Reasoning and Secession,* *supra* note 54, for an argument on why inherently institutional concepts are best evaluated for reform, through institutional moral reasoning. [↑](#footnote-ref-118)
119. Buchanan, *Theories of Secession, supra* note 117. [↑](#footnote-ref-119)
120. Anna Stilz, *The Value of Self Determination, in* Oxford Studies in Political Philosophy Vol. 2, (David Sobel, Peter Vallentyne, Steven Wall, eds, 2016, OUP). [↑](#footnote-ref-120)
121. Besson, *The Authority of International Law, supra* note 90 at 360; Liam Murphy, *International Responsibility, in* The Philosophy of International Law, (Besson and Tasioulas, eds) OUP, (2010) 301. [↑](#footnote-ref-121)
122. Peters, *Humanity as the Alpha and Omega of Sovereignty*, *supra* note 41 at 516; Military and Paramilitary Activities in and against Nicaragua, Nicaragua v United States, Judgment on Jurisdiction and Admissibility [1984] ICJ Rep 392, at para 263. [↑](#footnote-ref-122)
123. Anna Stilz, Territorial Sovereignty: A Philosophical Exploration, (OUP 2019) 94. [↑](#footnote-ref-123)
124. Jeremy Waldron, *Two Conceptions of Self-Determination*, *in* The Philosophy of International Law (Besson and Tasioulas, eds, OUP, 2010) 408. [↑](#footnote-ref-124)
125. Stilz, *The Value of Self Determination, supra* note 119 at 112. [↑](#footnote-ref-125)
126. Besson, *supra* note 87. [↑](#footnote-ref-126)
127. Avishai Margalit and Joseph Raz, *National Self-determination*, 87(9) Journal of Philosophy 439, 443- 448 (1990). [↑](#footnote-ref-127)
128. James Griffin, On Human Rights (OUP 2008) 262. [↑](#footnote-ref-128)
129. Stilz, Territorial Sovereignty*, supra* note 122 at 101. [↑](#footnote-ref-129)
130. Andrew Altman and Christopher Heath Wellman, *Self-Determination and Democracy in* A Liberal Theory of International Justice (Altman and Wellman, OUP, 2009). [↑](#footnote-ref-130)
131. Koskenniemi, *what use for sovereignty today?*, *supra* note 65 at 77-78. [↑](#footnote-ref-131)
132. Altman and Wellman, *Self-Determination and Democracy, supra* note 129. [↑](#footnote-ref-132)
133. Duke, *Sovereignty and the Common Good,*  *supra* note 50 at 79. [↑](#footnote-ref-133)
134. Stilz, *The Value of Self Determination,* *supra* note 119 at 101; Ludvig Beckman, Kristy Gover and Ulf Morkenstam, *The popular sovereignty of indigenous peoples: a challenge in multi-people states*, 26(1) Citizenship Studies, 1-20 (2022). [↑](#footnote-ref-134)
135. Reisman, *Sovereignty and Human Rights in Contemporary International Law, supra* note 58 at 866. [↑](#footnote-ref-135)
136. Luke Glanville, Sovereignty and the Responsibility to Protect: A New History, (University of Chicago Press, 2014) at p. 62; Pauline O Espejo, The Time of Popular Sovereignty, (2011) at p. 3. [↑](#footnote-ref-136)
137. Leenco Lata, The Horn of Africa as Common Homeland: The State and Self-Determination in the Era of Heightened Globalization, at 17; Roth, *Secessions, Coups and the International Rule of Law: Assessing the Decline of the Effective Control Doctrine’* 11 Melb. J. Int'l. L. 393 (2010) at p. 423; Father Robert Araujo, Sovereignty, *Human Rights and Self-determination: The Meaning of International Law,* 24 Fordham Int'l L.J. 1477 (2000). [↑](#footnote-ref-137)
138. Reisman, *Sovereignty and Human Rights in Contemporary International Law* *supra* note 58 at 866. [↑](#footnote-ref-138)
139. Elizabeth A. Wilson, *“People Power” and the Problem of Sovereignty in International Law,* 26 Duke Journal of International and Comparative Law, 551, 568-570. [↑](#footnote-ref-139)
140. Brad R Roth, *Popular Sovereignty: The Elusive Norm,* Proceedings of the Annual Meeting (American Society of International Law) , APRIL 9-12, 1997, Vol. 91, Implementation, Compliance and Effectiveness (APRIL 9-12, 1997), 363, 365. [↑](#footnote-ref-140)
141. Article 21(3) UDHR; Roth, *Popular Sovereignty, supra* note 139; Matthew Saul, *The Normative Status of Self-determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?* 11 HRLR 609, 644 (2011). [↑](#footnote-ref-141)
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143. Chiara Redaelli, Intervention in Civil Wars: Effectiveness, Legitimacy and Human Rights, (Hart Publishing, 2021) at 259. [↑](#footnote-ref-143)
144. Dyzenhaus, *Kelsen, Heller and Schmitt, supra* note 52 at 338. [↑](#footnote-ref-144)
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147. Endicott, *The Logic of Freedom and Power,* *supra* note 55 at 255-257. [↑](#footnote-ref-147)
148. Endicott, *The Logic of Freedom and Power,* *supra* note 55 at 255. [↑](#footnote-ref-148)
149. Gerald L Neuman*, Chapter 15: Subsidiarity, in* The oxford handbook of international human rights law (Dinah Shelton ed., OUP 2013). [↑](#footnote-ref-149)
150. *Id*. [↑](#footnote-ref-150)
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152. *Id* at 44. [↑](#footnote-ref-152)
153. Nicholas Tsagourias, *Security Council Legislation, Article 2(7) of the UN Charter and the Principle of Subsidiarity*, 24(3) Leiden Journal of International Law, (2011). [↑](#footnote-ref-153)
154. Michael Byers and Simon Chesterman, *“You, the People”: Pro-democratic intervention in international law, in* Democratic Governance and International Law (Gregory Fox and Brad Roth eds, CUP 2000); Claus Kress and Benjamin Nussberger, *Pro-Democratic Intervention in Current International Law: The Case of the Gambia in January 2017,* 4(2) Journal on the Use of Force and International Law 239, at 244-246 (2017). [↑](#footnote-ref-154)
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156. Oliver Dörr, and Albrecht Randelzhofer, ‘Purposes and Principles, Article 2(4)’ in Bruno Simma and others (eds), The Charter of the United Nations: A Commentary, Volume I (3rd edn, Oxford University Press 2012); Visser, *May the Force Be With You:* *supra* note 1, at 41; Erin Pobjie, *The Relationship between the Customary Prohibition of the Use of Force and Article 2(4) of the UN Charter, in* Prohibited Force: The Meaning of ‘Use of Force' in International Law (CUP 2024) 78, argues that the content of the rule under 2(4) and its analogue in custom are currently identical. Further 2(4) is the *source* of the customary rule; Armed Activities Case paras 42-53; In the Military and Paramilitary Activities case, the ICJ appeared to affirm the permissibility of intervention by invitation (para 246). [↑](#footnote-ref-156)
157. Military and Paramilitary Activities in and against Nicaragua, Nicaragua v United States, Judgment on Jurisdiction and Admissibility [1984] ICJ Rep 392, at para 246; Hathaway et al, *Consent-Based Humanitarian Intervention, supra* note 154 at 540-541. [↑](#footnote-ref-157)
158. Buchan and Tsagourias, *supra* note 3; Armed Activities Case paras 42-45 and 92-105. [↑](#footnote-ref-158)
159. Seyfullah Hasar, State Consent to Foreign Military Intervention during Civil Wars, (Brill Nijhoff 2022) at p. 61. [↑](#footnote-ref-159)
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162. (Great Britain v. Costa Rica) ( 1923 ) 1 R.I.A.A. 369, 381. [↑](#footnote-ref-162)
163. Roth, *Sovereign Equality and "Bounded Pluralism", supra* note 47 at 393. [↑](#footnote-ref-163)
164. Erika de Wet, The Modern Practice of Intervention by Invitation in Africa and Its Implications for the Prohibition of the Use of Force 26(4) EJIL 979, 983-984 (2016). [↑](#footnote-ref-164)
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174. Hasar, State Consent to Foreign Military Intervention during Civil Wars*, supra* note 158 at 79. [↑](#footnote-ref-174)
175. See, ‘Central African Republic’s Bozize in US-France appeal’ (Dec. 27, 2012) BBC, available at: <https://www.bbc.com/news/world-africa-20845887>; ‘France: Why intervene in Mali and not Central African Republic’ Amit Singh, The Guardian, available at: <https://www.theguardian.com/world/2013/feb/05/france-centralafrican-republic-mali-intervention>; Vincent Darracq, France in Central Africa: The reluctant interventionist, Al-Jazeera, <https://www.aljazeera.com/opinions/2014/2/11/france-in-central-africa-the-reluctant-interventionist>. [↑](#footnote-ref-175)
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192. After Much Wrangling, General Assembly Seats National Transitional Council of Libya as Country’s Representative for Sixty-Sixth Session, available at: https://press.un.org/en/2011/ga11137.doc.htm (Sept. 16, 2011); Venezuela: Guaidó Increasingly Isolated as UN Recognizes Maduro Gov’t in ‘Resounding’ Vote, José Luis Granados Ceja, https://venezuelanalysis.com/news/15405/ (Dec. 8, 2021). [↑](#footnote-ref-192)
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194. D'Aspremont, *Legitimacy of Governments in the Age of Democracy, supra* note 179 at 902. [↑](#footnote-ref-194)
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209. ARSIWA paras 4-6; Hasar, State Consent to Foreign Military Intervention during Civil Wars, *supra* note 158 at 53. [↑](#footnote-ref-209)
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212. UN General Assembly Resolution on the Definition of Aggression which qualifies the use of armed forces stationed in another State in agreement with the host State ‘in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement’ as an act of aggression - Definition of Aggression (n 3) Article 3(e). [↑](#footnote-ref-212)
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