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Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders

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The concept of sovereignty crystallized in an era when distances were large, and self-sufficiency the aspiration. This view of sovereignty is no longer sustainable and yields inequitable, undemocratic consequences. This article argues that in a densely populated and deeply integrated world, sovereignty should be understood as also involving a trusteeship toward humanity at large. Sovereigns should be required to take into account other-regarding considerations when forming national policies that may have effects beyond their national jurisdictions, even absent specific treaty obligations.

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This article analyzes the centrality of crimes against humanity prosecutions to the International Criminal Court's fulfillment of its mandate to prevent and punish atrocities committed in strife-torn regions. Ad hoc international criminal tribunals established in several states will complete their work soon, leaving the Court as the sole functioning international criminal authority. But the Court's jurisprudence since its 1998 founding raises serious concerns about its interpretation of, and willingness to fully utilize, the powers conferred by its jurisdictional statute.

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