



Pacta Sunt Servanda and International Treaty Obligations: The Balance Between Sovereignty and Good Faith

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ABSTRACT

The principle of pacta sunt servanda—“agreements must be kept”—represents one of the oldest and most fundamental rules in international law. Without it, treaties and international cooperation would be rendered meaningless, since states would have no assurance that obligations undertaken would be respected. Codified in Article 26 of the Vienna Convention on the Law of Treaties (1969), this doctrine emphasizes that treaties in force are binding on parties and must be performed in good faith. Yet, the application of pacta sunt servanda has always raised complex questions about the balance between legal obligation and state sovereignty. This paper explores the historical origins of the principle, its codification, its relationship with sovereignty, its recognized limitations such as jus cogens and rebus sic stantibus, and its application in contemporary international law. Drawing on case studies, judicial decisions, and state practice, the paper demonstrates how pacta sunt servanda secures the stability of international law while also facing challenges in an era of shifting political realities, rising nationalism, and emerging global crises. The paper concludes that the principle remains indispensable but requires reinforcement through stronger institutions and genuine commitment to good faith compliance.

Introduction

International law functions in the absence of a centralized authority comparable to a domestic legislature or judiciary. What holds this decentralized system together is the mutual trust of states that agreements entered into voluntarily will be respected. At the heart of this trust lies the principle of *pacta sunt servanda*—agreements must be kept. It is a deceptively simple maxim, yet it underpins the entire framework of treaty law and international cooperation.

Article 26 of the Vienna Convention on the Law of Treaties (VCLT) affirms the principle in unequivocal terms: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” The requirement of good faith ensures that states not only comply with the letter of their obligations but also refrain from actions that would defeat the object and purpose of treaties.

Despite its clarity, *pacta sunt servanda* has often collided with the realities of state sovereignty. States remain the primary subjects of international law, and they frequently invoke sovereignty to justify non-compliance with or withdrawal from treaties. The principle therefore exists in a dynamic tension with sovereignty: treaties limit sovereignty, but sovereignty also empowers states to accept or reject obligations.

This paper aims to examine this tension. It begins with the historical development of the principle, followed by its codification in the VCLT. It then analyzes the ways in which sovereignty interacts with treaty obligations, explores limitations to *pacta sunt servanda*, and examines key judicial decisions and case studies. The paper further discusses the contemporary relevance of the principle in the context of human rights treaties, trade agreements, climate change commitments, and emerging challenges such as cyber law. Ultimately, it argues that while *pacta sunt servanda* is indispensable to the functioning of international law, its effective application depends on balancing sovereignty with good faith adherence.

Historical Development of *Pacta Sunt Servanda*

The roots of the principle extend deep into the legal traditions of ancient civilizations.

Roman Law Origins

Roman law recognized the sanctity of contracts under the maxim *pacta conventa quae neque contra leges neque dolo malo inita sunt servabuntur* (agreements not contrary to the law or obtained by fraud must be observed). Contracts were binding, and breach of agreement was considered a violation of both law and morality.



Canon Law and Natural Law

In the medieval period, canon law reinforced the binding force of promises, associating it with the moral duty of fidelity. St. Thomas Aquinas, among others, emphasized that keeping promises was integral to justice.

Early International Legal Thought

The rise of the modern state system after the Peace of Westphalia (1648) provided fertile ground for the development of international law. Thinkers like Hugo Grotius (1583–1645) in *De Jure Belli ac Pacis* argued that the stability of relations between sovereigns required that treaties be honored. For Grotius, the principle was grounded in natural law, making it universally binding.

Emerich de Vattel (1714–1767), another key figure, further elaborated on the necessity of keeping treaties, linking it directly to sovereignty. A sovereign that violated treaties undermined both its honor and the international order.

Nineteenth and Twentieth Centuries

By the nineteenth century, *pacta sunt servanda* had become an established principle of customary international law. The League of Nations and later the United Nations relied heavily on treaty-making as a method of promoting peace and cooperation. The devastation of two world wars demonstrated the catastrophic consequences of disregarding international obligations, leading to renewed emphasis on the sanctity of treaties.

Codification in the Vienna Convention on the Law of Treaties

The Vienna Convention on the Law of Treaties (VCLT), adopted in 1969 and entering into force in 1980, provides the most authoritative codification of treaty law. Article 26 embodies the principle of *pacta sunt servanda*. The inclusion of “good faith” adds depth, ensuring that states cannot exploit technicalities to evade their commitments.

Other provisions of the VCLT reinforce this principle:

- **Article 18** obligates states to refrain from acts that defeat the object and purpose of a treaty before it enters into force.



- **Article 27** prevents states from invoking domestic law as justification for non-performance.
- **Article 60** outlines consequences of material breach, allowing other parties to suspend or terminate treaties.
- **Articles 53 and 64** recognize that treaties conflicting with *jus cogens* norms are void.
- **Article 62** provides for termination in cases of *rebus sic stantibus*, or fundamental change of circumstances.

These provisions demonstrate that while treaties are binding, international law recognizes certain exceptions that protect fundamental values and account for radical changes.

Sovereignty and Treaty Obligations

The interplay between sovereignty and treaty obligations is central to understanding the strength and fragility of *pacta sunt servanda*.

Sovereignty as Freedom

Sovereignty implies the supreme authority of a state within its territory and independence in external relations. The decision to enter into a treaty is an exercise of sovereignty, reflecting voluntary consent.

Sovereignty as Constraint

Once consent is given, sovereignty is constrained by obligations undertaken. This creates a paradox: sovereignty empowers states to bind themselves, but once bound, sovereignty requires restraint.

Sovereignty and Non-Compliance

Despite this, states often invoke sovereignty to resist compliance. Examples include:

- The United States' withdrawal from the Paris Agreement in 2017.
- India's refusal to ratify certain human rights treaties citing constitutional principles.
- The United Kingdom's exit from the European Union (Brexit).

Each case highlights the tension between domestic political will and international obligations.

Limitations on *Pacta Sunt Servanda*

Great point ☺ — you've identified the key limitations to the principle of *pacta sunt servanda* (treaties must be observed). Let me now expand each limitation in detail with explanations, legal basis, and examples.

Limits to the Principle of *Pacta Sunt Servanda*

Although *pacta sunt servanda* is a cornerstone of international law, it is not absolute. The Vienna Convention on the Law of Treaties (1969) codifies its application but also sets boundaries to prevent blind adherence in situations where justice, sovereignty, or peremptory norms are at stake. These limitations ensure that international law remains flexible and respects higher-order values.

A. Jus Cogens (Peremptory Norms)

1. **Definition:** *Jus cogens* norms are fundamental principles of international law from which no derogation is permitted. They bind all states irrespective of consent.
2. **Examples of jus cogens norms:** Prohibition of genocide, slavery, torture, racial discrimination, and wars of aggression.
3. **Legal Basis:** Article 53 of the Vienna Convention provides that treaties conflicting with *jus cogens* norms are void ab initio. Similarly, Article 64 states that the emergence of a new *jus cogens* norm renders conflicting treaties void.
4. **Case Reference:** In the *Jurisdictional Immunities of the State (Germany v. Italy)* (ICJ, 2012), the Court acknowledged the overriding nature of *jus cogens* norms but balanced them with other rules.
5. **Significance:** This limitation ensures that treaties cannot be used to justify gross violations of human rights or fundamental moral principles. For example, a treaty permitting slavery or legitimizing genocide would be invalid regardless of consent.

B. *Rebus Sic Stantibus* (Fundamental Change of Circumstances)

1. **Definition:** This doctrine allows a state to withdraw from or terminate a treaty when there is a fundamental, unforeseen change of circumstances that alters the basis of consent.
2. **Legal Basis:** Article 62 of the Vienna Convention codifies this principle.
3. **Conditions:**
 1. The change must be fundamental and unforeseen.
 2. It must alter the essential basis of consent.
 3. It must radically transform obligations.
 4. It cannot be invoked for treaties establishing boundaries.



4. **Case Reference:** *Gabcíkovo-Nagymaros Project (Hungary v. Slovakia)*, ICJ (1997). Hungary argued that environmental and political changes justified termination of its treaty obligations. The ICJ accepted that environmental concerns were serious but applied *rebus sic stantibus* narrowly, emphasizing treaty stability.
5. **Significance:** This limitation balances stability of treaties with adaptability to unforeseen circumstances. It prevents treaties from being unjustly frozen in time while discouraging opportunistic withdrawal.

C. State Succession

- **Definition:** When new states emerge (through decolonization, dissolution, or unification), they are not automatically bound by all treaties signed by their predecessor states.
- **Legal Basis:** The Vienna Convention on Succession of States in respect of Treaties (1978), though not universally ratified, codifies relevant practices. Customary international law also applies.
- **Examples:**
 - After the dissolution of the USSR, newly independent states like Ukraine and Kazakhstan decided selectively which treaties to adopt.
 - India, after independence in 1947, did not consider itself automatically bound by all treaties signed by the British Empire, though it acceded to many.
- **Significance:** This limitation acknowledges the sovereign will of newly independent states and prevents them from being unfairly tied to obligations created without their consent.

D. Withdrawal Clauses

- **Definition:** Many treaties contain express provisions allowing states to withdraw, often with notice periods and procedural requirements.
- **Legal Basis:** Article 54 of the Vienna Convention allows withdrawal if:
 - The treaty permits it explicitly, or
 - Parties consent to termination.
- **Examples:**
 - Paris Climate Agreement (2015): Allows withdrawal with a three-year membership requirement and one-year notice period (the U.S. withdrew in 2020 but rejoined in 2021).

- Rome Statute of the International Criminal Court (1998): Article 127 permits withdrawal after giving one-year notice (Burundi withdrew in 2017).
- **Significance:** Withdrawal clauses recognize sovereignty and flexibility, allowing states to reconsider obligations in light of political, economic, or security interests without undermining the integrity of international law.

While *pacta sunt servanda* ensures the stability and reliability of treaties, its limitations are essential for fairness and adaptability. *Jus cogens* norms safeguard the moral foundation of international law; *rebus sic stantibus* allows adjustment to unforeseen realities; state succession respects sovereignty of new states; and withdrawal clauses institutionalize exit options within the treaty framework. Collectively, these checks prevent the principle from becoming rigid and ensure it evolves with the needs of the international community.

Judicial Interpretation and Case Law

Nicaragua v. United States (1986, ICJ)

The ICJ reaffirmed the binding force of treaty and customary obligations. It held that U.S. support for contras in Nicaragua violated international law, stressing that commitments cannot be discarded at will.

Gabcikovo-Nagymaros Project (Hungary v. Slovakia, 1997, ICJ)

The Court limited Hungary's invocation of *rebus sic stantibus*, reaffirming that fundamental change must be radical and unforeseeable. This reinforced the stability of treaties.

Qatar v. Bahrain (2001, ICJ)

The ICJ recognized binding obligations even in informal agreements, stressing good faith as the core of *pacta sunt servanda*.

East Timor (Portugal v. Australia, 1995, ICJ)

The Court reaffirmed that treaties concluded in violation of the right to self-determination were invalid, linking *pacta sunt servanda* with *jus cogens*.

WTO Dispute Settlement Cases

The WTO exemplifies practical application of the principle by holding states accountable for trade commitments. However, the paralysis of the Appellate Body in recent years undermines treaty enforcement.



Contemporary Relevance of *Pacta Sunt Servanda*

Human Rights Treaties

Many states ratify human rights treaties but fail to comply fully. For example, despite ratification of the International Covenant on Civil and Political Rights (ICCPR), some states maintain repressive practices. The principle is tested when enforcement mechanisms are weak.

Environmental Agreements

The Paris Agreement illustrates both adherence and fragility. While almost universal participation reflects the principle's strength, weak enforcement and frequent withdrawals reveal its vulnerability.

Arms Control and Disarmament

The Nuclear Non-Proliferation Treaty (NPT) relies heavily on *pacta sunt servanda*. Non-compliance by states such as North Korea undermines global security.

Regional Integration

In the European Union, *pacta sunt servanda* is reinforced through supranational institutions. Brexit, however, demonstrated the fragility of commitments when domestic sovereignty prevails.

Cybersecurity and Emerging Challenges

New areas like cyberspace, artificial intelligence, and outer space require fresh treaties. Their success will depend on the willingness of states to honor obligations in good faith.

The Balance Between Sovereignty and Good Faith

The effectiveness of *pacta sunt servanda* depends on striking a balance between state sovereignty and good faith compliance. Sovereignty empowers states to negotiate and consent, but good faith ensures obligations are respected. Mechanisms like reservations, interpretative declarations, and withdrawal clauses provide flexibility, while international adjudication and monitoring bodies strengthen accountability.

Good faith acts as the bridge, ensuring that states cannot undermine commitments through technicalities. It emphasizes the moral as well as legal obligation of states to honor their word.

Conclusion

Pacta sunt servanda remains the bedrock of international law. Without it, treaties would lose their value, and international cooperation would collapse. The principle secures predictability and trust, allowing states to engage in trade, environmental protection, human rights, and security arrangements.

Yet, its authority is continuously tested by the realities of sovereignty, domestic politics, and shifting global dynamics. Rising nationalism, populist movements, and challenges like climate change and cyber warfare highlight the fragility of treaty compliance.

The future of *pacta sunt servanda* lies in reinforcing good faith adherence while respecting sovereignty. International law must evolve mechanisms to ensure accountability, including stronger institutions, more transparent dispute settlement, and a greater role for civil society. In an interconnected world, sovereignty and international responsibility are not opposites but complements. By reaffirming commitment to *pacta sunt servanda*, states can build a more stable, cooperative, and just international order.

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