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Governing the Algorithmic State: International Law and the Challenge of AI-Driven Decision-Making

K. M. V. Ravihari¹

Author to whom any correspondence is to be addressed.

e-mail: vigesharaviharik@gmail.com

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Abstract

The integration of artificial intelligence into state decision-making represents one of the most profound transformations in contemporary governance, giving rise to what this Article terms the "Algorithmic State", a polity where sovereign authority is mediated through computational processes operating at scales and speeds beyond human comprehension. This transformation poses fundamental challenges to the architecture of public international law, which remains rooted in assumptions of human discretion, deliberative statecraft, and political accountability. This Article examines the evolution of international AI governance, analyzing the interplay between soft law instruments and emerging hard law frameworks, including the EU AI Act, the Council of Europe Framework Convention on Artificial Intelligence, and various UN initiatives. It identifies three principal challenges AI poses to international law: the reconceptualization of sovereignty in an era of transnational algorithmic governance, the tension between algorithmic decision-making and human rights protections, and the accountability deficit created when decisions emerge from complex AI systems. The Article proposes a multi-layered governance framework that combines binding international commitments on foundational principles with flexibility for national implementation, sector-specific regulation, and technical standard-setting. It argues that effective governance of the Algorithmic State requires rethinking traditional concepts of sovereignty through a framework that recognizes different dimensions of AI governance, technical capabilities, data sovereignty, regulatory autonomy, and strategic positioning, while balancing international cooperation with respect for national legal systems and developmental priorities. The Article concludes by identifying priorities for future

¹Department of Political Science, University of Sri Jayewardenepura - Sri Lanka

development in international AI law, including strengthening institutional capacity, addressing the accountability deficit, and bridging the gap between human rights aspirations and governance capabilities in developing countries.

Introduction

The integration of artificial intelligence into state decision-making represents one of the most profound transformations in contemporary governance. From predictive policing algorithms and automated visa processing to AI-enhanced military targeting and environmental monitoring, states are increasingly delegating decisions once reserved for human judgment to algorithmic systems. This shift gives rise to what may be termed the "Algorithmic State", a polity where sovereign authority is mediated through computational processes that operate at scales and speeds beyond human comprehension.

This transformation poses fundamental challenges to the architecture of public international law. The international legal order, rooted in assumptions of human discretion, deliberative statecraft, and political accountability, finds itself ill-equipped to regulate a world where executive agreements encode algorithmic logic and where autonomous systems generate decisions with transboundary effects. The central tension of our era lies in this gap: how can international legal frameworks adapt to govern the use of AI by states while preserving the core principles of sovereignty, human rights, and accountability that underpin the international order?

This Article examines the evolution of international AI governance, analyzes the challenges AI poses to traditional international law principles, and proposes a framework for governing the Algorithmic State. Part I explores the emergence of the Algorithmic State and the nature of AI-driven decision-making in international affairs. Part II examines the current international legal landscape governing AI, including the interplay between soft law instruments and emerging hard law frameworks. Part III analyzes the challenges AI poses to sovereignty, human rights, and accountability under international law. Part IV proposes a multi-layered governance framework that balances international cooperation with respect for state sovereignty. The Article concludes by identifying priorities for future development in international AI law.

The Emergence of the Algorithmic State

❖ Defining the Algorithmic State

The concept of the "Algorithmic State" describes a condition in which state decision-making across multiple domains is substantially mediated by artificial intelligence systems. This phenomenon extends beyond mere administrative automation to encompass decisions with significant legal and political consequences: the allocation of public resources, the exercise of police powers, the conduct of foreign relations, and even the initiation of armed conflict.

AI sovereignty, as a specific dimension of digital sovereignty, encompasses a state's ability to exercise meaningful control over AI technologies that affect its territory and citizens. This control extends across multiple dimensions: AI infrastructure such as data centers, data resources, regulatory frameworks, and the development of human capital. As one commentator observes, AI sovereignty "encompasses a state's ability to exercise meaningful control over AI infrastructure, data resources, regulatory frameworks, and technological capabilities."²

The Algorithmic State is not a uniform phenomenon. States vary considerably in their capacity to develop, deploy, and regulate AI systems. Middle powers like Türkiye and Thailand have sought to carve out "regulatory autonomy" by developing distinct AI strategies that reflect their geopolitical positions and developmental priorities. As Brown and Ozluk observe, Türkiye's AI strategy "illustrates how 'middle powers' navigate this balance, especially as it stands at the crossroads of Europe and Asia, requiring Türkiye to develop distinct approaches that reflect its unique geopolitical position."³

❖ AI in International Affairs

The deployment of AI in international affairs has accelerated rapidly. In foreign relations, executive agreements now "encode algorithmic logic into national security and foreign policy," including autonomous weapons systems, AI-enhanced surveillance pacts, and predictive diplomacy tools. As Hung notes, these

² Pasqua, Marco, Bridging Soft and Hard Law in AI Governance, British Institute of International and Comparative Law (Dec. 16, 2025), <https://www.biiicl.org/blog/121/history-of-biiicl>.

³ Brown, Rafael Dean & Duygu Ozluk, Regulatory Autonomy and AI Sovereignty: Türkiye at a Crossroad, *Asian J.L. & Soc'y* (2026).

developments "raise significant accountability questions that existing legal frameworks rooted in assumptions of human discretion are ill-equipped to answer."⁴ In the military domain, AI systems are increasingly integrated into targeting decisions, cyber operations, and intelligence analysis. The use of facial recognition technology and drones in armed conflicts exemplifies the challenges AI poses to traditional frameworks of international humanitarian law. Autonomous weapons systems, in particular, raise profound questions about compliance with principles of distinction, proportionality, and command responsibility under the laws of war.

The economic dimensions of AI governance are equally significant. The concentration of AI capabilities in a few countries—particularly the United States and China—has raised concerns about technological monopolies and digital imperialism. As a commentator notes, "the concentration of AI innovation in a few nations heightens fears of technological monopolies and digital imperialism," creating "imbalances in global power dynamics" that traditional international law is ill-equipped to address.⁵

The International Legal Landscape for AI

❖ The Rise of Soft Law

The governance of artificial intelligence has emerged as one of the most pressing challenges in contemporary international law, demanding careful balance between innovation, human rights, and societal impact. The rapid development and deployment of AI technologies across sectors has outpaced the creation of binding legal frameworks, leading to a prominent role for soft law instruments—non-binding norms, principles, and guidelines intended to influence behavior without direct legal enforcement.

Soft law's utility in AI governance lies in its flexibility and responsiveness to technological innovation. As Pasqua observes, "soft law instruments have proven particularly useful due to their flexibility and responsiveness to innovation,"

⁴ Brown & Ozluk, *supra* reference list, at 46

⁵ Pasqua, *supra* reference list, at 46

allowing governance frameworks to evolve more rapidly than formal treaty processes permit.⁶ Key soft law instruments include:

- The OECD AI Principles, adopted in 2019 and updated in 2024, which have been endorsed by more than 40 countries and cited in national AI strategies.⁷
- UNESCO's Recommendation on the Ethics of Artificial Intelligence, adopted in November 2021, representing the "broadest consensus on AI ethics at the governmental level" and providing a framework for responsible AI development that respects human rights and fundamental freedoms.⁸
- The G7 Hiroshima Process International Code of Conduct for organizations developing advanced AI systems, establishing ethical guidelines and best practices for responsible conduct outside binding legal provisions.⁹
- ISO/IEC 42001:2023, the first international standard for AI management systems, setting out technical and organizational measures for AI governance.¹⁰

These instruments are complemented by industry-led frameworks such as the Partnership on AI and voluntary reporting mechanisms. As Pasqua notes, soft law functions as a "living laboratory" for AI rules, "testing ideas like transparency requirements, risk assessments or algorithmic auditing before codifying them."¹¹

❖ Emerging Hard Law Frameworks

Despite the prominence of soft law, recent years have witnessed significant movement toward binding legal frameworks. The European Union's AI Act (Regulation 2024/1689) represents the first comprehensive legal framework on AI, establishing a risk-based regulatory system for AI systems. This instrument "builds

⁶ Hung, Alex H.-C., Algorithmic Foreign Policy and Executive Agreements: Reassessing Legal Accountability in the Age of Artificial Intelligence, 58 Cornell Int'l L.J. 37 (2025).

⁷ Organisation for Economic Co-operation and Development, OECD Principles on Artificial Intelligence (2019, updated 2024).

⁸ UNESCO, Recommendation on the Ethics of Artificial Intelligence, U.N. Doc. 41 C/Resolution 27 (Nov. 23, 2021).

⁹ G7 Hiroshima Process International Code of Conduct, *supra* reference list

¹⁰ International Organization for Standardization, ISO/IEC 42001:2023 Information Technology — Artificial Intelligence — Management System (2023).

¹¹ *Id.* at 9

upon and reflects many principles initially articulated in soft law," demonstrating the trajectory from non-binding guidance to enforceable rules.¹²

The Council of Europe Framework Convention on Artificial Intelligence (CETS No. 225), opened for signature in September 2024, represents the first binding international treaty on AI. Grounded in human rights, democracy, and the rule of law, the Convention "was shaped through an extensive preparatory soft law process," including work by the Ad hoc Committee on Artificial Intelligence (CAHAI).¹³ The Convention establishes common principles for AI development and deployment while allowing for national implementation flexibilities.

At the United Nations, Resolution A/78/L.49 on artificial intelligence systems reflects growing international consensus on the need for AI governance within the framework of international human rights protection.¹⁴ These instruments, while varying in legal force and scope, share a common reference point in the framework of international human rights protection, supplemented by additional requirements unique to each instrument.

❖ The Soft-Hard Law Interface

A significant development in international AI governance is the emerging relationship between soft and hard law. As Pasqua observes, "soft law in AI is bridging toward hard law," with many principles first articulated in guidelines now being codified into binding rules.¹⁵ This "hybrid governance model" combines the adaptability of soft law with the enforceability of hard law.

The interaction between soft and hard law is mutually reinforcing: "soft law allows experimentation and regulatory piloting, enabling policymakers to test approaches before codifying them, while also promoting diffusion of best practices that may later be formalized into binding rules."¹⁶ National hard law instruments increasingly

¹² Council of Europe Framework Convention, *supra* reference list

¹³ *Id*

¹⁴ U.N. General Assembly Resolution A/78/L.49, *supra* reference list

¹⁵ Pasqua, *supra* reference list, at 5

¹⁶ *Id*

complement supranational frameworks, as exemplified by Italy's recent adoption of Law No. 132 of 2025, which complements the EU AI Act.¹⁷

However, the distribution of hard law remains uneven. Many states currently rely mainly on soft law without moving to binding legislation. India, Australia, and Japan lack comprehensive AI statutes, relying instead on voluntary frameworks and non-binding guidelines. In these contexts, "compliance depends largely on voluntary commitment, which may be insufficient for high-risk AI applications" and "where only soft law commitments exist, compliance can lag—and in high stakes areas, the lack of enforceable rules poses significant risks."¹⁸

The Challenge to International Law Principles

❖ Sovereignty and the Algorithmic State

The emergence of the Algorithmic State challenges traditional conceptions of sovereignty under public international law. Sovereignty—traditionally understood as supreme authority within territorial boundaries—becomes complicated when AI systems transcend borders, when data flows are globally distributed, and when algorithmic decision-making occurs through infrastructures controlled by transnational corporations.

As Al-Rubaie observes, "artificial intelligence has introduced new challenges to sovereignty, particularly in the areas of cybersecurity and digital sovereignty."¹⁹ Although AI systems "operate within parameters defined by programmers, their emerging ability to make independent decisions within certain limits has raised critical questions about the extent of state control over such technologies."²⁰ This challenge is not merely technical but deeply legal, implicating "the extent of state control over such technologies."²¹

¹⁷ Italian Law No. 132 of 2025, *supra* reference list

¹⁸ Pasqua, *supra* reference list, at 11

¹⁹ Al-Rubaie, *supra* reference list, at 544

²⁰ *Id.* at 546

²¹ *Id.* at 548

The concept of "AI sovereignty" has emerged to describe states' efforts to assert control over AI technologies. This encompasses multiple dimensions:

Technical capabilities: The ability to develop and maintain domestic AI infrastructure, including hardware, software, and talent.

Data sovereignty: Control over data generated within a state's territory, including data localization requirements.

Regulatory autonomy: The capacity to develop and enforce governance frameworks that reflect national priorities and values.

Strategic positioning: The ability to influence international norms and standards for AI governance.

The tension between sovereignty and the global nature of AI is evident in ongoing international debates. The United States has explicitly resisted "overly broad or undefined commitments to international regulatory frameworks" that "could undermine state sovereignty and impose global governance models that are inconsistent with U.S. policy priorities."²² This reflects a broader contestation over whether AI governance should be centralized at the international level or decentralized to national authorities.

❖ Human Rights Under Algorithmic Governance

The deployment of AI in state decision-making poses significant challenges to international human rights law. AI systems can perpetuate or exacerbate existing biases and inequalities, creating new forms of discrimination that traditional human rights frameworks struggle to address. The "black box" nature of many AI systems complicates the allocation of responsibility for rights violations, as accountability for algorithmic decisions is often distributed across multiple actors.

The Council of Europe Framework Convention and UN resolutions have emphasized the importance of grounding AI governance in human rights. However, as Freiberg, Harris, and Ratnapinda observe, "rights remain symbolic without

²² U.S. Mission to the United Nations, *supra* reference list.

developmental sovereignty—the material control over digital infrastructure."²³ This insight highlights the gap between aspirational human rights commitments and the practical capacity of states to enforce them.

The challenge is particularly acute in middle-income and developing countries. Thailand, for example, faces a "structural dilemma" in which "EU-style AI regulation exceeds administrative capacity, while voluntary models fail to protect fundamental rights."²⁴ This suggests that effective human rights protection requires building governance capacity, not merely adopting international norms.

❖ **Accountability and the Accountability Deficit**

Perhaps the most fundamental challenge the Algorithmic State poses to international law concerns accountability. As Hung observes, existing constitutional and legal frameworks "remain rooted in assumptions of human discretion, deliberative process, and political accountability" that are ill-equipped to regulate AI-infused decision-making.²⁵ Traditional doctrines of legal accountability—which assume that an identifiable human actor can be held responsible for decisions—break down when decisions emerge from complex algorithmic systems.

This accountability deficit manifests in several dimensions:

Attribution: Who is responsible when an AI system causes harm? The programmer, the deploying authority, the government that authorized deployment, or the system itself?

Transparency: The "black box" nature of many AI systems makes it difficult to understand why decisions were made, impeding judicial review and democratic oversight.

Complexity: AI systems often involve multiple actors—developers, deployers, users, and subjects—distributing responsibility across public and private actors in ways that evade traditional accountability mechanisms.

²³ Freiberg, Harris & Ratnapinda, *supra* reference list, at 15

²⁴ *Id.* at 18

²⁵ Hung, *supra* reference list, at 40.

Speed: Automated decision-making occurs at speeds that preclude meaningful human review, making it difficult to exercise the "human in the loop" oversight that accountability frameworks presume.

Recent scholarship has proposed "algorithmic legal accountability" frameworks that seek to "reconcile emerging AI capabilities with the principles of separation of powers, treaty processes, and transparency norms."²⁶ As Pasqua notes, the gap between soft and hard law is particularly problematic in contexts where "compliance depends largely on voluntary commitment, which may be insufficient for high-risk AI applications."²⁷

Toward a Multi-Layered Governance Framework

❖ Rethinking AI Sovereignty

Addressing the challenges of the Algorithmic State requires rethinking the concept of sovereignty in the digital age. A multi-layered approach to AI sovereignty may be necessary, recognizing that different aspects of AI governance may require different levels of international coordination.

Building on the work of scholars analyzing digital sovereignty, AI sovereignty can be understood through three analytical dimensions proposed by Mügge and applied to the AI context by Brown and Ozluk:

The subject dimension: Contrasts state-centric conceptions that "pit countries or jurisdictions one against each other" with citizen-centric conceptions that "emphasize empowering citizens vis-à-vis powerful Big Tech."²⁸

The objective dimension: Distinguishes "competitive approaches that seek to boost a state's position in a global 'AI race'" from "non-competitive approaches that aim to emancipate policymaking from such competitive rationales."²⁹

²⁶ *Id.* at 42

²⁷ Pasqua, *supra* reference list, at 12

²⁸ Brown & Ozluk, *supra* reference list, at 8 (citing Mügge).

²⁹ *Id.* at 9

The beneficiaries dimension: Contrasts "narrowly national and regional approaches" with those that "consider global impacts and responsibilities."³⁰

Each dimension represents a spectrum of possible approaches rather than a binary choice, allowing for nuanced analysis of how states conceptualize and pursue AI sovereignty.

❖ A Layered Governance Approach

The complexities of AI governance suggest the need for a multi-layered framework that combines international coordination with respect for national sovereignty and local adaptation. Such a framework would recognize that not all aspects of AI require the same level of international regulation; different applications may vary significantly based on national legal cultures, societal values, and developmental priorities. A layered approach might include:

Layer 1: Foundational Principles: Establishing core principles through binding international agreements. These might include commitments to human rights, non-discrimination, transparency, and accountability in AI deployment. The Council of Europe Framework Convention provides one model for such foundational principles.

Layer 2: Sector-Specific Regulation: Developing sector-specific regulations that reflect the particular risks and governance needs of different domains—such as autonomous weapons, law enforcement AI, healthcare AI, and environmental governance. This layer would provide for differentiated governance adapted to local contexts.

Layer 3: Technical Standards: Encouraging the development of international technical standards through multi-stakeholder processes, such as ISO/IEC standards and IEEE initiatives.

Layer 4: National Implementation: Recognizing that domestic legislative efforts must address context-specific concerns and reflect each country's unique legal system and values, while maintaining consistency with international principles.

³⁰ Id. at 10

This layered approach would allow for international cooperation on foundational issues while permitting flexibility in implementation. As commentators note, "broad international cooperation can be achieved on issues like algorithmic transparency, anti-discrimination, and AI safety," while "domestic legislative efforts must address context-specific concerns" and "the actual implementation of AI governance should reflect each country's unique legal system and values."³¹

❖ The Role of International Institutions

Effective governance of the Algorithmic State requires strengthening international institutions and mechanisms for cooperation. Several avenues present themselves:

Existing frameworks: Leveraging existing international bodies—the UN, OECD, UNESCO, and WTO—to develop AI governance capacity.

New mechanisms: Creating new international bodies specifically focused on AI governance, including monitoring and reporting mechanisms for human rights implications of AI.

Multi-stakeholder forums: Developing inclusive multi-stakeholder forums that include governments, civil society, technical experts, and affected communities.

Capacity building: Establishing international AI technology transfer programs to support developing countries in building governance capacity and infrastructure.

The challenge of institutional development is considerable, given the pace of technological change and the diversity of national interests. However, as the UN, Council of Europe, and EU initiatives demonstrate, significant progress is possible.

Conclusion

The Algorithmic State represents a fundamental challenge to the architecture of public international law. As AI systems become increasingly integrated into state decision-making across domestic and international domains, traditional legal frameworks rooted in assumptions of human discretion, territorial sovereignty, and political accountability prove inadequate.

³¹ Sedeeq & Arman, *supra* reference list, at 22

This Article has argued for a multi-layered governance framework that combines binding international commitments on foundational principles with flexibility for national implementation, sector-specific regulation, and technical standard-setting. Such a framework recognizes that effective AI governance requires both international coordination and respect for the diversity of national legal systems, values, and developmental priorities.

The challenges are considerable. The accountability deficit created by algorithmic decision-making remains unresolved. The tension between data sovereignty and the global nature of AI technologies persists. The gap between aspirational human rights commitments and governance capacity in developing countries continues to widen.

Yet the signs of progress are visible. The emergence of the EU AI Act, the Council of Europe Framework Convention, and various UN initiatives demonstrates movement toward a more coherent international legal framework. The growing body of scholarly work on AI governance and algorithmic accountability provides the intellectual foundation for legal development. And the active engagement of states, international organizations, and civil society in AI governance debates suggests that the international community recognizes the urgency of the challenge.

The task ahead is to translate recognition into action, to move from soft law aspirations to enforceable commitments, and to build the institutional capacity necessary to govern the Algorithmic State. The stakes could hardly be higher: the future of sovereignty, human rights, and accountability in the digital age hangs in the balance.

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