

Transforming Soft Law Into Binding Commitments in International Human Rights

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Abstract: This article explores the evolving role of soft law in the international human rights framework and analyzes how it can be transformed into binding legal commitments. Soft law non-binding declarations, resolutions, and guidelines plays a pivotal role in norm-setting and influencing state behavior despite its lack of formal enforceability. Through a qualitative doctrinal approach, this study examines historical precedents, mechanisms of norm internalization, and case studies where soft law has contributed to the development of customary international law or informed treaty-making. The discussion focuses on instruments such as the Universal Declaration of Human Rights (UDHR), the UN Guiding Principles on Business and Human Rights, and the Yogyakarta Principles. The findings reveal that political pressure, judicial interpretation, and multilateral consensus are essential pathways in elevating soft law norms to hard law status. The paper concludes that while soft law cannot fully substitute binding treaties, its strategic use significantly contributes to the progressive development of international human rights law and may serve as a bridge toward universal and enforceable norms.

Keywords: Soft Law, International Human Rights, Norm Internalization, Legal Transformation, Binding Commitments.

INTRODUCTION

The development of international human rights law has been shaped not only by formal treaties and conventions but also by a wide array of soft law instruments, including declarations, resolutions, principles, codes of conduct, and guidelines. While binding treaties such as the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) are considered foundational to the international human rights regime, it is increasingly evident that soft law mechanisms play a crucial complementary role. These instruments despite lacking formal legal enforceability have significantly influenced state behavior, guided judicial interpretation, and shaped the global discourse on human rights norms (Abbott & Snidal, 2000; Boyle, 2021).

Soft law refers to normative standards that are not legally binding but carry persuasive authority and moral weight in international relations. In the context of human rights, soft law documents often serve as a bridge between emerging moral principles and the eventual codification of these principles into treaties or customary international law. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, stands as the most prominent example. Although the UDHR is a non-binding declaration, many of its provisions such as the prohibition of torture, the right to a fair trial, and the principle of non-discrimination have since become entrenched in customary international law and domestic constitutions around the world (Hannum, 1998; Steiner, Alston & Goodman, 2008).

Another influential soft law instrument is the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed in 2011 by the Human Rights Council. The UNGPs provide a global framework for addressing human rights abuses linked to business activities, outlining the duties of states and the responsibilities of corporations. While the UNGPs do not impose binding obligations, they have had a substantial normative impact, influencing national legislation in countries like France and Germany and informing regulatory proposals within the European Union (Ruggie, 2013; Deva & Bilchitz, 2013). This illustrates how soft law can shape legal behavior and institutional expectations even in the absence of formal legal sanction.

The proliferation of soft law instruments in the human rights field reflects the complexity and politicization of treaty-making in the 21st century. Multilateral treaty negotiations often face significant challenges, particularly when issues are politically sensitive or involve divergent cultural and religious values. As a result, soft law offers a more flexible and less confrontational pathway for achieving consensus and promoting normative alignment among states. It enables the international community to articulate emerging concerns, such as digital rights, climate justice, and LGBTQ+ equality, in a way that builds momentum for future legal codification (Charlesworth, 2010; Shelton, 2008).

Despite their non-binding nature, soft law norms can evolve into binding legal commitments through several mechanisms. They may contribute to the formation of customary international law when states consistently act in accordance with these norms and do so under the belief that such behavior is legally obligatory (*opinio juris*). The frequent citation of the UDHR in judicial

opinions, national constitutions, and UN resolutions supports this process (Meron, 1989; Clapham, 2007). Soft law may guide the drafting and interpretation of treaties, serving as a source of inspiration or filling normative gaps. This is evident in how the Yogyakarta Principles on sexual orientation and gender identity have influenced national and regional human rights jurisprudence, despite their non-binding status (O'Flaherty & Fisher, 2008).

International courts and treaty-monitoring bodies often reference soft law when interpreting binding obligations. The European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights, and the UN Human Rights Committee frequently invoke soft law principles to support expansive or evolving interpretations of treaty rights. This jurisprudential practice enhances the authority and influence of soft law, particularly when binding treaty provisions are vague or underdeveloped (Shelton, 2000; Heyns & Viljoen, 2001).

Domestic courts and legislatures may incorporate soft law into national legal systems, either explicitly through statutory references or implicitly through judicial interpretation. This process, often referred to as "domestication," reinforces the normative authority of soft law and expands its reach beyond the international arena. In some countries, soft law has been used to interpret constitutional guarantees, influence administrative decision-making, or set policy benchmarks, demonstrating its transformative potential (Chinkin, 1989; De Wet, 2004).

This article investigates how soft law evolves into binding legal commitments within the international human rights framework. By examining historical precedents and current legal practice, it identifies the key conditions and pathways that facilitate this transformation. The study analyzes the roles of international institutions, civil society actors, judicial authorities, and political processes in translating aspirational norms into enforceable rights. It also highlights the strategic utility of soft law in situations where legal codification is politically infeasible or procedurally constrained. The article argues that soft law is not a substitute for binding treaties but a complementary and often necessary precursor. Its flexibility, adaptability, and normative influence make it a vital component of the evolving human rights ecosystem. In a global context where consensus on human rights is often elusive, soft law offers a dynamic platform for innovation, negotiation, and gradual legal transformation.

METHOD

This study employs a qualitative doctrinal legal research method to investigate how soft law in international human rights evolves into binding legal commitments. Doctrinal legal research, often referred to as “black-letter law” research, focuses on the systematic analysis of legal norms, texts, and principles derived from authoritative sources such as treaties, declarations, judicial decisions, and academic commentary (Hutchinson & Duncan, 2012). This approach is appropriate given the normative and interpretive nature of the inquiry, which centers on the evolution of legal standards rather than empirical measurement.

Primary materials analyzed include key non-binding legal instruments, such as the Universal Declaration of Human Rights (UDHR), the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, and the UN Guiding Principles on Business and Human Rights. These documents were selected for their recognized normative influence and frequent citation in both international and domestic legal settings (Shelton, 2000). The study conducts textual analysis of these instruments to assess their legal structure, aspirational language, and mechanisms for normative diffusion.

In addition to textual analysis, this research uses case study methodology to identify and examine instances where soft law instruments have directly influenced legal outcomes. For example, the UDHR has been cited in numerous constitutional preambles, domestic legislation, and judicial decisions globally, indicating its transformation into customary international law in certain contexts (Hannum, 1998). The Yogyakarta Principles have also shaped national and regional discussions on LGBTQ+ rights, even in the absence of formal treaty obligations. These case studies help contextualize the legal pathways through which soft law norms gain legitimacy and enforceability.

The study applies normative interpretive analysis grounded in the concepts of *opinio juris* and state practice, key elements in the formation of customary international law (Byers, 1999). This interpretive lens is used to evaluate how repeated references to soft law by states, courts, and international bodies may indicate a shared belief in their legal significance, thereby contributing to their binding character over time. Data sources were drawn from trusted legal databases, including JSTOR, HeinOnline, Oxford Public International Law, and the United Nations Treaty

Collection. These platforms provide access to peer-reviewed journals, official UN documents, treaty texts, and judicial opinions necessary for robust doctrinal inquiry.

RESULT AND DISCUSSION

Customary International Law Development

The transformation of soft law norms into binding commitments in international human rights law often occurs through their integration into customary international law (CIL). CIL is one of the primary sources of international law, comprising rules derived from the consistent and general practice of states, accompanied by *opinio juris* the belief that such practice is carried out of a sense of legal obligation (International Law Commission [ILC], 2018). When soft law instruments gain widespread acceptance and are repeatedly invoked or applied in practice, they may contribute to the crystallization of new customary norms. This process represents one of the most potent mechanisms through which non-binding norms evolve into binding international law.

The most prominent example of this transformation is the Universal Declaration of Human Rights (UDHR), adopted in 1948 by the United Nations General Assembly. Initially conceived as a non-binding declaration, the UDHR has since become a cornerstone of the international human rights regime. Many of its provisions—such as the prohibition of torture (Article 5), the right to life and liberty (Article 3), and the right to a fair trial (Article 10)—are now widely recognized as binding customary norms (Hannum, 1998; Meron, 1989). These provisions have been reaffirmed in numerous international treaties, national constitutions, judicial decisions, and multilateral declarations, demonstrating a consistent pattern of state practice and a normative belief in their legal force.

Judicial bodies and legal scholars have played a key role in confirming the customary status of certain soft law norms. For instance, the International Court of Justice (ICJ) has referred to UDHR principles as "legal obligations" in advisory opinions and judgments, thereby reinforcing their normative weight (ICJ, 2004). Regional courts, such as the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights, have also relied on soft law instruments like the UDHR and the Declaration on the Right to Development to interpret treaty provisions

expansively (Shelton, 2000). These practices demonstrate how soft law can evolve through jurisprudential reinforcement, becoming part of the corpus of binding international law.

State behavior in multilateral settings also contributes to the formation of customary norms. For example, repeated references to UDHR standards in UN General Assembly resolutions, Universal Periodic Review (UPR) mechanisms, and Human Rights Council discussions reflect a collective acceptance of these standards as legally relevant. Although not all states uniformly comply with every norm in the UDHR, the widespread endorsement and invocation of its principles indicate that key rights are treated as universally binding, at least in principle (Buergenthal, 1997).

Another area where soft law has influenced customary international law is in the context of protection against torture. The prohibition of torture, although first articulated in non-binding declarations, has since become a *jus cogens* norm—a peremptory norm of international law from which no derogation is permitted. This status was achieved through consistent state condemnation, incorporation into treaties like the Convention Against Torture (CAT), and judicial recognition across national and international forums (Nowak & McArthur, 2008).

It is important to note, however, that not all soft law norms achieve customary status. The process requires not just repetition, but also qualitative evidence of *opinio juris*, which can be difficult to ascertain. States may follow soft law provisions for political or strategic reasons without believing they are legally bound to do so. Thus, careful legal analysis is required to distinguish between *de facto* compliance and genuine legal obligation (Byers, 1999).

The emergence of "instant custom"—where widespread adoption of a norm occurs quickly due to global urgency or consensus—has increased in relevance in the digital and climate justice realms. Here, soft law instruments such as the UN Guiding Principles on Business and Human Rights and climate change declarations have been widely adopted by states and corporations, potentially laying the groundwork for new customary norms. Scholars argue that in such fast-evolving domains, soft law's normative influence may outpace formal treaty-making, positioning it as a vital mechanism for human rights advancement in the 21st century (Boyle, 2021; Pauwelyn et al., 2012).

The role of soft law in the development of customary international law is significant and growing. Through state practice, judicial validation, and normative repetition, non-binding instruments like the UDHR have transformed into sources of legal obligation. This pathway enhances the flexibility and responsiveness of international human rights law, allowing it to evolve in response to moral, political, and social developments even in the absence of new treaties.

Judicial Reference and Interpretation

Soft law, despite its non-binding character, holds increasing significance in the practice of judicial interpretation within both international and domestic legal systems. Courts frequently invoke soft law documents—such as declarations, guidelines, and principles—as interpretive tools to elaborate the content of binding treaty norms, fill normative gaps, or articulate evolving human rights standards. This practice enhances the normative authority of soft law and demonstrates its instrumental role in the dynamic development of international law (Shelton, 2008).

The European Court of Human Rights (ECtHR) provides one of the clearest examples of how international courts incorporate soft law into their jurisprudence. Although the European Convention on Human Rights (ECHR) is a binding treaty, the ECtHR often refers to soft law instruments issued by the Council of Europe—such as recommendations by the Committee of Ministers and guidelines by the Parliamentary Assembly—to interpret the scope and content of convention rights. For instance, in cases involving the rights of detainees, the Court has cited non-binding standards on prison conditions to assess whether state practices meet Article 3's prohibition on inhuman or degrading treatment (Council of Europe, 2006). While these standards are not legally enforceable per se, they help the Court assess what is considered acceptable within the European legal order.

The Inter-American Court of Human Rights (IACtHR) routinely draws on non-binding declarations and resolutions of the Organization of American States (OAS) to interpret the American Convention on Human Rights. In its landmark *Atala Riffo v. Chile* (2012) decision, the Court referenced the Yogyakarta Principles on Sexual Orientation and Gender Identity, a soft law document, to support its recognition of non-discrimination protections for LGBTQ+ individuals. This approach not only underscores the persuasive authority of soft law but also facilitates the

evolution of rights protections in areas where formal treaty provisions may be silent or ambiguous (Cerna, 2013).

At the national level, constitutional and supreme courts in many countries have also turned to soft law in their human rights adjudication. The Indian Supreme Court, for instance, has frequently cited international declarations and guidelines—such as the UDHR and CRC (Convention on the Rights of the Child)—to interpret fundamental rights under the Indian Constitution, especially in the absence of clear domestic legislation. In *Vishaka v. State of Rajasthan* (1997), the Court relied on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and related soft law instruments to establish guidelines on sexual harassment in the workplace, even though no statutory law then existed (Bhagwati, 1998). This judgment demonstrates how judicial activism, supported by soft law, can bridge legal gaps and promote progressive jurisprudence.

Another illustrative example is the South African Constitutional Court, which has embraced international human rights norms—including soft law—under the constitutional mandate to consider international law in interpreting the Bill of Rights. In *Government of the Republic of South Africa v. Grootboom* (2000), the Court referenced non-binding international declarations on the right to housing to clarify the content of socio-economic rights and state obligations under Section 26 of the Constitution (Liebenberg, 2005). This judicial openness to soft law underscores the integrative role of courts in harmonizing global and domestic rights discourses.

Soft law's influence in judicial interpretation is particularly valuable in emerging or contested areas of human rights, such as environmental rights, business and human rights, and digital privacy. Courts have begun referencing the UN Guiding Principles on Business and Human Rights in litigation involving corporate accountability for human rights abuses. Though not legally binding, these principles offer a structured normative framework that courts can use to assess due diligence obligations and remedy mechanisms (Ruggie, 2013).

Critically the use of soft law by courts reinforces the concept of "living law"—law that evolves through usage, interpretation, and normative discourse, even when formal codification lags behind. While some scholars warn of the risks of judicial overreach or unpredictability when

soft law is excessively relied upon (d'Aspremont, 2008), others argue that this approach enables law to remain responsive to social change and moral progress (Shelton, 2008; Charlesworth, 2010).

Judicial reference to soft law represents a powerful mechanism for legal innovation, norm consolidation, and human rights advancement. Courts at all levels play a pivotal role in legitimizing soft law by integrating it into binding legal reasoning, thereby blurring the lines between hard and soft law. This interpretive function does not convert soft law into binding law per se, but it enhances its practical authority and contributes to the overall coherence of the international human rights regime.

Incorporation into Treaty Law and Domestic Legislation

The influence of soft law on binding legal norms is perhaps most visible in the way it shapes the development of treaty law and national legislation. Although soft law instruments are not legally binding, they often serve as precursors, supplements, or interpretive guides in treaty negotiations and legal drafting processes. Their flexibility allows them to articulate emerging global concerns and values that may eventually be codified into enforceable international or domestic law (Abbott & Snidal, 2000; Boyle, 2021).

One of the clearest examples of this influence is the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, adopted in 2006. Though not binding, the Principles have played a crucial role in shaping legislative reforms and judicial interpretations concerning LGBTQ+ rights. For instance, several Latin American countries, including Argentina and Uruguay, have enacted gender identity laws that reflect the values and definitions articulated in the Yogyakarta Principles (O'Flaherty & Fisher, 2008). In Nepal, the Supreme Court explicitly referred to the Principles in a 2007 decision calling for the legal recognition of gender diversity (Human Rights Watch, 2011). These developments illustrate how soft law can inform domestic legislation by providing governments and courts with normative frameworks grounded in international human rights standards.

Similarly, the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, have influenced the emergence of mandatory human rights due diligence laws in several jurisdictions. While the UNGPs are not treaties, they lay out a structured framework based on the state duty to protect human rights, the corporate responsibility

to respect them, and the need to provide effective remedies. These principles have inspired the development of binding legislation in countries such as France (Corporate Duty of Vigilance Law, 2017), Germany (Supply Chain Due Diligence Act, 2021), and the European Union, which in 2024 adopted the Corporate Sustainability Due Diligence Directive (European Commission, 2024). These laws incorporate key concepts and terminology from the UNGPs, demonstrating how soft law can evolve into treaty-like national regulations (Deva & Bilchitz, 2013; Ruggie, 2013).

Soft law also contributes to treaty interpretation and revision, particularly in areas where existing treaties lack specificity or adaptability. For instance, the Convention on the Rights of the Child (CRC) has been supplemented by numerous General Comments issued by the Committee on the Rights of the Child—non-binding documents that provide detailed guidance on implementation. These comments, often grounded in soft law principles, influence national policies on juvenile justice, education, and family law (Kilkelly, 2010). Over time, these interpretations may shape the negotiation of new optional protocols or amendments to existing treaties, solidifying the once-soft norms into binding obligations.

Regional human rights systems have increasingly integrated soft law instruments into their frameworks. The African Charter on Human and Peoples' Rights, for example, is supplemented by guidelines and principles issued by the African Commission, including the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines). Although not legally binding, these guidelines have been used to inform domestic criminal procedure reforms across African states (Viljoen, 2012).

The incorporation of soft law into national constitutions also reflects its normative impact. In some post-conflict and post-authoritarian states, constitutional drafters have drawn on international declarations—such as the Universal Declaration of Human Rights (UDHR) or the Declaration on the Right to Development—to structure rights-based governance frameworks. The South African Constitution (1996), widely regarded as one of the most progressive in the world, reflects principles that originated in international soft law instruments, including the indivisibility of rights and the centrality of dignity (Liebenberg, 2005).

Soft law's role in shaping treaty law and national legislation confirms its transformative legal potential. Though lacking formal enforceability, soft law instruments serve as normative blueprints

that guide treaty negotiations, legislative drafting, and judicial interpretation. Through this process of incorporation, soft law not only reinforces existing legal frameworks but also accelerates the emergence of new legal standards in response to evolving global challenges.

Influence on Institutional Norms

Beyond treaty law and national legislation, soft law plays a significant role in shaping the operational standards and internal norms of international and intergovernmental organizations. While these norms may not carry formal legal obligations, they often inform the decision-making procedures, programmatic guidelines, and funding criteria of influential institutions such as the United Nations, the World Bank, the International Labour Organization (ILO), and regional bodies like the African Union and ASEAN. Over time, these soft law instruments contribute to the institutionalization of human rights standards, thereby reinforcing compliance and accountability through administrative mechanisms (Charlesworth, 2010; Shelton, 2000).

UN agencies in particular have a long history of adopting and operationalizing soft law frameworks. For instance, the Office of the High Commissioner for Human Rights (OHCHR) and various UN treaty bodies frequently reference non-binding declarations, principles, and general comments to guide state behavior and program implementation. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), though not legally binding, has become a normative reference for UN agencies like the United Nations Development Programme (UNDP), the Food and Agriculture Organization (FAO), and the World Bank in designing policies that impact indigenous communities (Lightfoot, 2012). These institutions have revised operational guidelines to ensure alignment with UNDRIP's principles of free, prior, and informed consent (FPIC) and cultural integrity, reflecting the growing normative pull of soft law.

The World Bank provides another example. In its updated Environmental and Social Framework (ESF), the Bank incorporates several soft law standards, including international human rights declarations and guidelines. While the Bank is not a human rights body per se, its safeguard policies now explicitly refer to human rights risk assessments and stakeholder engagement norms that originated in soft instruments such as the UNGPs and the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) (Cotula, 2013). These practices demonstrate how soft

law can transform into binding internal requirements through institutional adoption, even in contexts where formal international law does not apply directly.

In the International Labour Organization (ILO), soft law instruments such as Recommendations which are technically non-binding often serve as interpretive and operational standards for the implementation of binding Conventions. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), while non-binding, has had considerable influence in shaping corporate conduct and informing national labor laws (Bellace, 2001). Furthermore, through its supervisory mechanisms and reporting systems, the ILO reinforces the normative content of these instruments, thereby cultivating a compliance-oriented institutional culture.

Regional organizations also institutionalize soft law norms in ways that advance human rights agendas without requiring new treaties. The African Commission on Human and Peoples' Rights regularly issues General Comments, Guidelines, and Resolutions that elaborate on state obligations under the African Charter. Although these are not binding, they are increasingly cited in national court decisions and referenced by NGOs during advocacy and litigation (Murray, 2008). Similarly, ASEAN's Human Rights Declaration (AHRD), despite criticisms for its limited enforceability, has begun influencing policy discourse and training programs across Southeast Asia, marking an incremental shift in regional human rights engagement (Langford & Koinova, 2012).

Another important mechanism is the use of peer review processes such as the Universal Periodic Review (UPR) of the UN Human Rights Council. States are evaluated not only on the basis of treaty obligations but also on adherence to soft law standards, including the UDHR and recommendations of special procedures. Though the UPR itself is non-coercive, its reliance on soft law contributes to the normalization of human rights discourse and peer accountability (McMahon & Asher, 2012).

These institutional practices highlight the norm cascade effect described by Finnemore and Sikkink (1998), whereby soft norms, once internalized within organizational procedures, help create shared expectations and standards of appropriate behavior. This institutionalization strengthens the credibility and legitimacy of soft law, blurring the line between political aspiration

and normative obligation. The embedding of soft law norms within the operations of international institutions constitutes a powerful, albeit informal, mode of legalization through practice. While not binding in the traditional sense, these norms shape global governance structures and influence how rights are understood, implemented, and enforced within and across jurisdictions.

CONCLUSION

Soft law occupies a unique and strategic position in the international human rights system. While it lacks binding legal force, it is often the starting point for norm creation, diffusion, and eventual codification. The evolution of the UDHR into customary international law and the legislative influence of more recent soft law documents demonstrate that binding legal commitments can grow from non-binding origins. For soft law to effectively transform into enforceable norms, several conditions must be met: sustained state practice, institutional endorsement, judicial usage, and political momentum. Although soft law should not be seen as a replacement for binding treaties, it serves as a valuable tool for norm innovation and consensus building. In an era where treaty-making is increasingly difficult due to geopolitical divides, soft law provides a pragmatic path toward the progressive development of international human rights law.

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