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An Empirical Exploration

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Dr. Christopher W. Mullins is an Assistant Professor of Criminology and Criminal Justice at Southern Illinois University Carbondale. His research focuses on structural and cultural aspects of violence, especially the intersections of gender, streetlife subculture and violence. He is the author of *Holding Your Square: Masculinities, Streetlife and Violence* (2006, Willan), the co-author of *Symbolic Gestures and the Generation of Global Social Control: The International Criminal Court* (2006, Lexington) and the co-author of *Blood, Power and Bedlam: Violations of International Criminal Law in Post-Colonial Africa* (2008, Peter Lang), both with Dawn L Rothe. He has also published over 20 articles and books chapters on gender and street crime; genocide, war crimes and crimes against humanity and international criminal law and jurisprudence.

Abstract

As academics have become increasingly interested in globalization, scholars in many fields have turned their attention to theorizations of the state and state power. Admittedly, most criminologists have paid relatively attention to theories of the state, its function, role, or issues of sovereignty (save for Barak, 1991; Chambliss and Zatz, 1993; Friedrichs, 1992; Michalowski and Kramer, 1987; Mullins and Rothe, 2008; Rothe and Mullins, 2006, 2007, 2008). With the growing criminological interest in and focus on transnational crimes (Friedrichs, 2007), crimes of globalization (Friedrichs and Friedrichs, 2002; Rothe, Mullins, and Muzzatti, 2006; Rothe, Mullins and Sandstrom, 2008), and crime of the state (Kramer et. al., 2005; Michalowski and Kramer, 2006; Rothe and Mullins, 2008), there has been a corresponding shift in the view of the state: one in a 'globalized' framework. Many scholars have suggested that the state has been reduced to nothing more than a facilitator of global political, legal, and economic system. As criminologists of state crime, we find this position problematic for the conceptualization and study of governmental crime. We feel that proclaiming states and state sovereignty as eroding and/or dead is premature. In this paper we explore one area in which states seem to be voluntarily abdicating certain elements of sovereignty—the entering into of international treaties. Specifically, we examine how states protect their sovereignty through entering reservations to treaties being signed and ratified. Our findings suggest that despite greater attention in global consciousness amongst countries and economies, states intensely protect their right to self-determination while signing and ratifying treaties, compacts and other international agreements. After providing a detailed discussion of these findings, we conclude that state sovereignty is not eroding and is far from dead.

Introduction

Since the mid-twentieth century, a remarkable expansion of non-state actors within international society has been steadily unfolding. Multinational corporations have grown in size and scope, many operating in a truly global context. Quasi-governmental organizations intended to address political concerns at the international level have been established and expanded their realms of influence (i.e., The United Nations, the European Union). The Breton Woods institutions (i.e., the International Monetary Fund and the World Bank), established to aid in European reconstruction after the second World War, have expanded their mandates and influences beyond their original charters, seemingly taking on a life of their own. New institutions of criminal justice and international law adjudication continue to be developed and implemented (i.e., the International Court of Justice, the European Court of Human Rights and the International Criminal Court). Such an expansion of non-state-based power has led some to suggest that this has resulted in power shifts in international affairs and has stimulated scholarship in many disciplines, including criminology.

Criminology has seen a growing interest in transnational crimes (Friedrichs, 2007), crimes of globalization (Friedrichs and Friedrichs, 2002; Rothe, Mullins, and Muzzatti, 2006; Rothe, Mullins and Sandstrom, 2008), and crimes of the state (Kramer et al., 2005; Michalowski and Kramer 2006; Rothe 2009). As states are central to the conceptualization and study of these crimes, there has been increasing attention paid to states as social actors (i.e., Barak, 1991; Chambliss and Zatz, 1993; Friedrichs, 1992; Michalowski and Kramer, 1987; Mullins and Rothe, 2008; Rothe and Mullins, 2006; Rothe 2009). Within this vein, some scholars have begun to insist that state power and

the ability for states to regulate themselves has begun to drastically change. For example, McCulloch (2006:5) suggests that the state has been reduced to nothing more than a facilitator of global political, legal, and economic systems. Ubi states that (2008:7),

[t]he present changes inherent in the international system have adversely impacted states by gradually eroding their sovereignty and their effectiveness...losing their autonomy and authority. [F]actors of globalization such as information technology (IT), markets, international and multilateral organizations...have to a considerable extent undermined the sovereignty of states.

The power of states is seen as declining while other transnational actors, like multinational corporations, are becoming more powerful and less controllable.

According to Friedrichs and Friedrichs (2002), the trend toward state disempowerment became noticeable starting in the aftermath of World War II with the founding of the Breton Woods Institutions. Others suggest that multinational corporations act as quasi states. As noted by the Global Policy Forum (2008:1), “global and transnational forces increasingly usurp the power of states to determine their own fiscal and economic policies”. In much of this literature, the view holds that markets have not only eroded the state, but “state control over public policy has been eroded” (Whyte, 2003: 577). Another force seen as threatening state sovereignty is the growing promotion of universally recognized basic human rights, with the implementation of the United Nations Universal Declaration on Human Rights as well as the founding of the European Court on Human Rights. Such views have produced the notion of conditional sovereignty—a condition in which a state forfeits its claims of sovereignty if it fails to treat its citizens according to international standards of decency (Winterbourne, 2007:3).

Human rights have been said to be eroding (Ayoob, 2002: 93; Henkin, 1999: 3-4), assaulting (Mills, 1998: 10; Clapham, 1999: 533; Cardenas, 2002: 57), or chipping away at (Kearns, 2001: 522) state sovereignty. Thus, global markets, transnational and multinational corporations, and the emergence of human rights are claimed to have found ways to circumvent the state through "back channels" which has led to the deterioration of state sovereignty in the modern world. Consequentially, it is viewed by some that state sovereignty and a state's control over its own public policies is withering. Whyte notes (2003: 578),

Beyond the globalization debate, a process of sovereignty erosion has become a popular in social and socio-legal theory....where the colonization of new private-public space is subordinating state-ordered power to private interests....they point to an undermining of state sovereignty to the localization and globalization of markets....the ability of states to rule is under attack.

Similarly, Friedrichs (2007: 13) suggests that "in a world of increasing globalization and transnational crimes....sovereign claims become problematic or irrelevant....sovereignty claims are now an illusion in terms of traditional meaning"

Two key issues emerge from Friedrichs' discussion. The first is conceptual in nature. What exactly is meant by the term traditional sovereignty? The second is a question to be tested with empirical data: are states less sovereign than before? Is sovereignty truly, as Friedrichs and others suggest, "illusory"?

The first step in our effort to answer these questions is to clarify what the "traditional" view of sovereignty is. Within International law, the foundations of states include specific territories with borders, a government, and domestic judicial systems.

For example, The Foreign Relations Law of the U.S. (S 201) and the 1933 Montevideo Convention on Rights and Duties of States defined the state as having: 1) a defined territory and population; 2) said territory and population are under the control of its own governmental apparatus; and 3) the entity engages in or has the capacity to engage in formal relations with other states.

A state's sovereignty was viewed as essential for its existence, its safety, political interests, and political or national ideologies (Rothe and Mullins, 2006a, b). Sovereignty is core to the belief and praxis of a country's right to regulate itself. Here we are specifically referring to sovereignty, in the legal, traditional sense that has and continues to ground international relations since Westphalia. After all, international law, arising from interstate relations, was founded on this idea of statehood and state sovereignty since the 16th Century (Friedman, 1967). In 1648, the Peace of Westphalia further established the concept of state sovereignty when the parties agreed not to impose a particular confession on one another—a clear acknowledgement of sovereign rights (Donnelly, 2003). Consider also the Bodin, Schmitt and Austinian philosophies of states having 'absolute' authority and where the sovereign state, by its very nature, is viewed as being able to impose positive law on itself vis-à-vis treaties, but is not under obligation to be fully bound by such self-imposed limitations (Rothe and Mullins, 2006a). Simply "to be sovereign is to be subject to no higher authority" (Donnelly, 2004:1). Thus this concept entails the ability of a state to exercise its own agency, bound by no others, in reference to its own internal affairs.

In this sense, sovereignty recognizes the territorial boundaries (a condition of statehood) and political authority. In the case at hand, we draw from and use this notion

of traditional sovereignty- sovereignty is a legal and political construct that represents and provides for states' exercising their political authority-where others may not interfere with the a state's political governance¹. This coincides with the recognized and practiced concept of sovereignty of international law² and international relations.

That brings us to the second issue and a core focus of this paper: is state sovereignty becoming weakened, irrelevant or eroded as some scholars claim? The answer to this should not be based on ad hoc observations, conceptualizations of globalization or accepted as a given fact because it has been repeated so many times. It is an empirical question. Since sovereignty means that a state has sole political authority and power and control over its own population and is free from external control and/or intervention in its domestic affairs, a reasonable set of data to examine would be an extant body of information on state decision-making relevant to issues of their authority to govern. Existing international treaties, charters, and reservations fulfills this need.

The international legal system is, after all, a complementary system. States must subject themselves to these legal instruments. A state cannot be forced to sign a treaty or charter against its sovereign right to self-determination³. Further, little international law universally prohibits acts without states assent. As noted by Donnelly (2004: 3), the argument that treaties restrict a state's autonomy and violates sovereignty has been authoritatively rejected repeatedly. Further, restrictions on the exercise of sovereign rights accepted by treaty by the state concerned cannot be considered as an infringement

¹ We recognize there are various ideological and theoretical constructs of sovereignty; however, we adopt the traditional and legal construct as this represents not just a theoretical frame but also the praxis of the concept of state sovereignty which is empirically testable.

² Consider also that sovereignty is enshrined within international law including charters, treaties, and resolutions- i.e., Charter of the United Nations article 2(4) and Article 2(7).

³ However, they can be pressured by other states. For example, east European countries seeking to join the Council of Europe (with the ultimate aim of joining the EU) they found they had to abolish capital punishment to do so.

of sovereignty. Even the idea of customary laws which are based on common and constant practices of states out of a sense of *opinio juris*—are founded on willing state participation based on a historical recognition of consistent state practices. Unlike treaties, charters, and resolutions (compelling for the signatory states), customary or *jus cogens*-compelling laws, may or may not be *erga omnes*—or law which flows to all. Customary law’s legal "obligations may, and frequently do, restrict a States' freedom of action and thereby the exercise of its sovereignty, but they do not diminish or deprive it of its sovereignty as a legal status” (Steinberger, 2000: 512).

When states do willingly sign a treaty, they can (and do) add reservations to specific parts of the treaty, noting not only disagreement but restricting applicability and enforcement of those specific articles and/or stated language. This noting of disagreement or its unwillingness to accept or abide that exact article or definition represents an act of sovereignty. As we have seen with the International Criminal Court⁴, states may opt in and opt out from the Court’s jurisdiction beyond just refusing to be a state party (Rothe and Mullins, 2006a). The International Court of Justice, which is a Court for states, is structured to that countries must accept not only the Court’s jurisdiction over them but also its ruling. The ICJ has no authority or enforcement mechanisms beyond the will of the disputing parties to abide by the court’s decision⁵.

⁴ The opt-in opt-out clause was the result of a compromise included during negotiations of the Rome Statute of the International Criminal Court to reinforce the rights of state sovereignty. Specifically, Article 124 of the Rome Statute allows a country to refuse the jurisdiction of the Court for a period of seven years for war crimes. See also footnote no. 10 for additional discussion of the ICC.

⁵ Indeed, both courts lack a centralized enforcement mechanisms, however, the ICC, as a court of individuals, can and will enforce its rulings through incarceration as there will not be trials in absentia as has been the case with the ICJ (e.g., Nicaragua v United States), whereas the ICJ has no additional recourse save take the complaint to the UNSC for potential additional compliance tools.

Drawing from international treaties, charters, declarations, and resolutions, then seems to be the best measure to determine if indeed state sovereignty is eroding or becoming irrelevant. This paper empirically tests such assertions through the close examination of the nature of reservations made within the process of ratifying international treaties.

Methods

To examine the degree to which states sovereign rights may or may not be eroding we analyzed reservations made by states to major 20th century multi-lateral treaties. Reservations are an excellent site to examine issues of self-determination as, by their nature, they represent a state saying, on one hand that they agree with the basic principles and tenants of an international agreement but, on the other, they reserve the right to limit its application in some fashion or to interpret certain provisions in specific ways. In the simplest terms, treaties are a state limiting its own future actions to a more narrow range of possibilities (at least ideally). They are a voluntary loss of a component of their sovereignty.

We selected the following treaties for analysis:

- The Convention on the Prevention and Punishment of the Crime of Genocide (1948), hereafter the Genocide Convention
- The Four Geneva Conventions (1949)
- The International Convention on the Elimination of All Forms of Racial Discrimination (1963)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)

- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), hereafter the Torture Convention
- The Convention of the Elimination of all forms of Discrimination Against Women (including Amendment to Article 20 and the Optional Protocol)
- Convention of the Rights of the Child (1989) (including Amendment to Article 43(2) and Optional Protocols 11b, 11c)

These conventions were chosen due to their centrality in current international law and their widespread ratification. This is a purposive sample and has all of the limitations thereof. However, a random sampling of conventions would be problematic as some treaties do not allow reservations to be made (i.e., the Treaty on the Elimination of Landmines). We examined treaties whose general principles are grounded in broad agreement. For example, there is little support within international social space for the elimination of an entire category of persons (genocide). Few, if any, national leaders would stand up to their own people and the international political community and demand the sovereign right to execute a whole mass of their own people. Generally, states will find themselves pressured internally and externally to adopt this agreement. However, abiding by this agreement clearly compromises a state's power of self-determination—it constitutes an agreement to not engage in a specific behavior which may be within the interests of a given set of ruling interests within a government. It also makes the state subject to external, rather than internal, definitions of their behavior⁶. Theoretically then, such agreements would constitute by their very nature a diminution of sovereignty.

⁶ For instance, consider the discourse provided by the government of Sudan concerning the violence in Darfur versus that used in international circles (see Mullins and Rothe, 2007, and Rothe and Mullins, 2007).

Reservations are publicly available aspects of the treaties. The United Nations treaties data base provides a public record of all international agreements which have come out of the United Nations. For each treaty, it also provides: a list of signers (and dates of signing), ratifiers (and date of ratification), all reservations made by countries, and all comments made by countries. We downloaded all available information about the treaties we included in our sample. Then, we proceeded to code the reservations; working inductively through the data.

We used a hybrid approach to coding our data; qualitative and quantitative. However, our approach owes more to qualitative coding procedures. This allowed us to pay particular attention to subtle nuances that would be missed in a strict quantitative approach. We did not reduce reservations to simple numbers for quantitative analysis, as we felt that would overlook variation and nuance within the data. Additionally, we could not use more elaborate qualitative coding strategies, as the specific reservations made were brief, without the necessary richness to use more narrative coding strategies.

Primary coding consisted of categorizing reservations based on very narrow categories, being coded as specifically as possible. This is often the opposite of traditional inductive coding, which often works from broader to more specific categories. Due to the wide variety of reservations and in the various levels of specificity we thought it best to begin with highly specific codes. Secondary coding involved the creation of broader codes and groupings of the specific assignments into more general categories. Throughout secondary coding, sub-themes were looked for that included which countries were making what types of reservations.

Our unit of analysis is the reservation not the country as each state is able to make multiple reservations per treaty (or even per article). They are often of a wide variety and based in various political, cultural and legal principles, thus each needs to be examined individually. The total number of reservations made to the eight treaties in our sample was 611. As Table 1 shows, the number of reservations made was not equally distributed among treaties, with the Convention on the Rights of the Child producing a quarter of all reservations in the sample (n=155). The Convention on the Elimination of all Forms of Discrimination Against Women produced 86 reservations (14%); the Convention of Economic, Social and Cultural rights with 85 stated reservations (14%). In total, the four Geneva Conventions produced 77 reservations (13%), while the Convention on the Elimination of All Forms of Racial Discrimination with 76 reservations (12%). The Genocide Convention with 47 reservations (7%); the Torture Convention with 44 (7%) and the Convent on Civil and Political Rights produced 16 reservations (3%).

[insert table one about here]

In some cases, a reservation was entered at a treaty's signing and then again the exact same reservation was entered upon ratification. In those cases, we only counted the reservation once. If reservations were entered and then later retracted, we did not count them. Rarely, complex reservations were made where numerous, conceptually separate, exceptions were stated. In such a case we counted each sub-division separately, as while it may have been a single event; the state is proclaiming several different refusals or clarifications.

Findings

As shown in table 2, there are 12 basic categories of reservations within our sample. Some of the objections were what we refer to as allowable opt-outs. In such cases there are articles within the treaty itself that provide provisions for states to reject an article of the treaty. Specifically, four treaties contain a provision for the adjudication of disputes about implementation of the treaty to be resolved within the International Court of Justice (ICJ) or the creation of a committee for the investigation of violations (i.e., The Elimination of Discrimination Against Women, The Elimination of all forms of Racial Discrimination, Convention Against Torture, and the Genocide Convention). In all cases, the treaty included a specific article allowing states to reject this provision when the treaty was ratified. Thus, a state could agree to the provisions of a given treaty while simultaneously removing itself from an international body of investigation and control. These are assertions of sovereignty, in so far as they constitute an express rejection of the legitimacy of an international body to mediate or adjudicate disputes. Yet, the fact that they are written into the treaty makes them different in nature than other reservations where there is not specific language in the treaty for such rejections. Such international mechanisms of control were controversial enough to warrant intense discussion during the creation of the treaty itself, with these opt-out clauses no doubt necessary to ensure signing.

[insert table two about here]

As expected, the modal form of all reservations asserted the primacy of a state's domestic laws, which may or may not be in conflict with specific aspects of the treaty in question (n=248, 40.5%). This is reflective of the complementary nature of international laws. It is also a sign of continued strength of state sovereignty in the face of

globalization. Such a large category of reservations contains quite a bit of diversity, thus we further analyzed and subcategorized this type of reservation. Table Three provides the sub-categorizations of these reservations. The majority of such objections were simple statements of the primacy of domestic law (n=141, 23%), with no elaboration or explication. 35 reservations (5.2%) made explicit reference to extradition laws, which has been an often guarded aspect of state sovereignty. For example, as Europe embraced an abolitionist stance on capital punishment, it has routinely refused to extradite suspects to lands where they may face execution. 25 (4%) singled out immigration laws, another closely guarded element of national supremacy. The ability to control one's borders is central to self-determination. 15 (2.4%) mention domestic courts as supreme to international venues and 8 (1.3%) provide a specific statement saying that domestic laws will not be changed in accordance with treaty conventions. A further 24 (3.9%) made reference to specific treaty provisions or specific domestic laws, but were varied enough to not warrant their own classification. By their very nature, these reservations are examples of states asserting their sovereignty in direct competition with principles being established within international law.

[insert table three about here]

A total of 39 reservations acknowledged the validity of the treaty only where it was in agreement with the basic principles of religious law. Primarily, these reservations are made by countries subscribing to principles of Islamic Law (though the Vatican does make a few reservations based upon Canon law, especially in regards to abortion law). The majority of these reservations were made in reference to the Convention on the Rights of the Child (20) and the Convention on the Elimination of Discrimination versus

Women (14). This is not surprising considering the widely divergent views on gender and gender equity between western and Islamic societies. Along the same line, 14 (2.3%) of the reservations upheld the primacy of “local culture” or customs. Again, these typically involved issues related to women or children. These treaties drew the most attention due to the greater variety of norms and laws globally. Even states that rarely entered objections to treaty provisions (i.e., France, Germany, Denmark, the Netherlands, etc.) made reservations on these compacts. Issues regarding immigration law and statuses (i.e., those determining citizenship of the children of illegal aliens born on a nation’s soil) or the legal position of children (i.e., the age at which they can enlist in armed forces or how names are legally determined) were most likely to be the root cause of reservations. This cuts to the heart of issues of sovereignty—i.e., the right to determine a citizen’s or a non-citizen’s legal status in the eyes of a given state. While these states were willing to acquiesce to general principles of human rights regarding at-risk populations (i.e., women and children), they strongly defended their right to establish core precepts of laws concerning citizenship status, family connections and age of majority issues.

Seemingly counterintuitive to our thesis that these reservations constitute an exercise of sovereignty, 32 of the reservations (5.2%) asserted that a portion of the treaty in question was in conflict with extant international law. Through this type of reservation, a state claimed it would abide by the other international law, not the treaty in question. While on the surface such reservations do not especially seem to be an act specifically of state sovereignty in so far as the government in question is emphasizing its desire to follow another international agreement. Yet, in the cases where these reservations emerge, the pre-existing international agreement cited has more lax standards than the

article being reserved and/or included previous reservations by that specific country. Simply, states are pursuing their own self-interest in binding themselves to a less-extensive agreement that is more in-line with their domestic status quo or in accordance to previous objections. Additionally, the very notion of sovereignty is the right to use their political authority to decide what external regulations they may or may not accept.

A handful of lesser themes emerged in the analysis as well. 16 reservations (2.6%) indicated that the treaty provisions would not be applied in certain territories controlled by the sovereign; these are all cases of colonial powers refusing to include their colonies within implementation (and to a degree are not as relevant in 2008 as they were when the conventions were originally entered into). 55 (9%) of the reservations consisted of a state complaining that the treaty was discriminatory because it held narrow signing criteria which did not allow all states to be a party to the convention. 3.7% (n=23) of the reservations were states making explicit that signing this particular treaty was not to be seen as their diplomatically recognizing a specific country which might also be a party to the treaty. The vast bulk of these reservations were made by Arab states refusing to recognize Israel; 3 were China refusing to recognize Taiwan. In a few cases, (12; 1.9%) the ratifying country claimed they would eventually implement the treaty (either in whole or a specific part), but at some date in the future.

A sizable amount of reservations (74; 12%) were highly varied in nature and included quibbling over semantics or the definition of a specific term, the clarification or interpretation of an international legal principle, objections to the wording of a preamble, or disagreements about how certain terms or principles are translated into various languages. Superficially, they seem to be minor elements of treaty debate and negotiation

spilling back over into the signing process. However, those with substance are self-protective in nature, strongly exhibiting the nature of legal discourse to parse phrases or rely upon specific interpretive approaches. The United States especially was prone to make these sorts of reservations, clearly enforcing its own sovereignty by forthrightly entering into international agreements on its own terms. For example, in its reservations to the Genocide treaty, the USA inserted the following ‘Understandings’:

That the term ‘intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such’ appearing in article II means that the specific intent to destroy , in whole or in substantial part, a national, ethnical, racial or religious group as such by the acts specified in article II.

Here, the US is adding a term ‘specific’ to intent. While general readership would not a significant difference, this narrows the applicability of the convention only to acts where the primary goal is genocide, removing acts which have other primary intents or secondary effects from being labeled as genocide under the convention. This opens up a legal space for the USA to deny a primary intent of genocide even if its actions resulted in one. It further narrows the applicability of the a legal label of genocide under the treaty to consisting of those acts outlined within Article II as well, again, closing the possibility for certain actions taken in the past or the future to be legally labeled as a genocide.⁷

In reservations classified as “No Comment” the state in question makes an objection to a single clause or article of the treaty, but does not provide a reason why. Typically, the country simply states that they will not honor or will not recognize a specific article and or sub-paragraph of an article. While it might be possible to more

⁷ The similarity between these ‘understandings’ and George W. Bush’s use of (and wording of) signing statements is undeniable.

precisely categorize⁸ such reservations through close examination of the nature of the article being rejected, we felt this involved too much of our own interpretation into an area where there are many potential reasons for said reservation.

There remains the question of variation over time. This is not a random sample, nor an exhaustive one, but we did find temporal variation in the number of reservations made per treaty in the sample analyzed. Later treaties produced quantitatively more reservations and qualitatively more specific ones. This could be an artifact of the treaties examined here. As noted, those two treaties producing the most reservations were those directed at the rights of children and women. These are more recent treaties and, as discussed above, produced a wealth of highly specific reservations intended to reinforce a nation's own laws vis a vis citizenship, military service, parental determinations and naming conventions. We feel that this is a sign of nation-states maintain the primacy of their laws and cultural positions in spite of (and in reaction to) their acceding of certain aspects of their sovereignty to transnational bodies. For example, numerous EU nations placed multiple reservations on these two treaties. While on one hand, these nations have previously surrendered certain aspects of sovereignty (i.e., border control, tariffs, and currency), they reassert such powers in the reservations examined here. This could be a broader trend: strongly defending some aspects of power because they have given up others. However, it could just be a function of the nature of the two treaties selected for examination.

Concluding Discussion

A growing trend in the globalization literature in general, and in the criminological literature specifically, has begun to assert that states have been steadily

⁸ In fact, several schemes were tried along these lines. None produced satisfactory results.

losing their sovereignty, eroding, and/or becoming less relevant. This position suggests that as non-state actors-in this case, international bodies- have increased their power, state power to determine its own course of action has diminished. In this paper we have attempted to test these conceptual assumptions through the exploration of reservations made to core international treaties of the mid and late 20th century. From the perspective of our data, our conclusions are clear: even as governments are agreeing to adhere to specific international agreements, they are simultaneously asserting their rights to self-rule and self-determination by highlighting aspects of a compact they disagree with and do not intend to follow (or only intend to follow in a limited or modified fashion). The vast majority of reservations involved states saying despite their agreeing to a given treaty, their own laws, courts or established practices would continue to prevail. In essence, these reservations turn treaty discourse symbolic. While agreeing in principle to these international agreements, taking reservations into consideration, many states insisted on legally ignoring provisions which they did not like. While this is an innate weakness of international legal systems, it does speak strongly to sovereignty.

Further, states often alter their domestic law in response to the development of an international treaty that they have reservations or objections to, hence, solidifying their right to sovereignty and self-determination and reducing potential of external control if they agree to be a signatory and ratifier⁹. Take for example the US legal response to the early developments of the Rome Statute for the International Criminal Court. To further ensure U.S. military, foreign ambassadors, and other U.S. officials remained out of the reach of international jurisdiction in the case of criminal allegations, two key pieces of domestic legislation were passed. As negotiations over the court were taking shape in

⁹ Both are necessary conditions for a treaty to go into effect or bind in any way said party member.

1996, the U.S. created legislation aimed at ensuring US nationals would remain outside of any potential ICC jurisdiction with the 1996 War Crimes Act (18 U.S.C § 2441). This legislation enforced the State's position that, as a sovereign state, it could, and would, domestically prosecute its own citizens for breaches of international war crimes to be included in the Rome Statute. A year later, additional measures were taken to ensure ICC jurisdiction would not be imposed on its nationals with the 1997, Expanded War Crimes Act, 18 U.S.C & 2401 (SEC. 583). The primary goal was to amend and re-define the circumstances that were necessary for state prosecution. In essence, this legislation provided the necessary domestic law guaranteeing precedence for prosecution of any U.S. party, thus ensuring the Court would not have jurisdiction over individuals accused of war crime¹⁰s. As noted by Senator John Ashcroft (1998: 8): "If there is one critical component of sovereignty, it is the authority to define crimes and punishment. This court strikes at the heart of sovereignty by taking this fundamental power away from individual countries and giving it to international bureaucrats." As most everyone knows, the US is not a state party to the ICC and has used state sovereignty as its objection (Rothe and Mullins 2006b).

While there are nuances within our data, the overwhelming conclusion to us was that sovereignty, in the traditional and legal sense, is by no means eroding or reconstructed in the legal, political, or conceptual sense. We concur with others, such as

¹⁰ This is rhetoric at best as the conditions under which the ICC could have jurisdiction are far more complex and would not apply in such situation unless: war crimes, genocide, crimes against humanity occurred in a state party territory, by a state party member, or in cases of the UNSC recommending the case forward to the court for investigation. Then additional measures must come into play for any case to move forward of which they ONLY address those instances that are widespread, systematic and for those most responsible—those who are in charge of or most responsible (i.e., heads of state, high ranking government officials and/or paramilitary officers). As such, even low ranking officers that commit an act of torture during war would not ever see the light of the court. Additionally, there must be enough evidence present, a priority in scale in comparison to other cases presented to the court, and fulfill other criteria. As such, even crimes such as those considered compelling, torture, genocide, crimes against humanity, and war crimes, do not automatically trigger response by the ICC.

Stanley (2007), who suggests that the state is not in decline and state sovereignty is not dead. Additionally, we believe the analysis provided here shows that when the sovereignty erosion discourse is put under scrutiny and empirically tested, it can only be interpreted “at best as naïve and at worst a thinly fabricated modern fable” (Whyte 2003: 579). Despite the current rhetoric, states are not only dominant players, but essential to this ‘globalized framework’. We fear that the insistence on the end of sovereignty made in much of the work by globalization many scholars we discussed at the beginning of the paper is attained a level of validity simply through cross-citation and not in reference to on-the-ground reality.

If we leave the idea of state sovereignty as a legal concept and right of statehood and conceptualize it more broadly, evidence again shows that state sovereignty is not eroding within an international globalized system. This concurs with the growing body of state crime research where states actively use their sovereignty to shield their criminal actions from external bodies that could potentially intervene. For example, consider Sudan’s use of its sovereignty in the case of the genocide in Darfur. Contrary to international political pressures, Sudan has closed its borders on several occasions to UN peacekeeping forces, the African Union, and NGOs, to ensure non-interference during the ongoing genocide in Darfur¹¹. Consider countries rights, as a sovereign territory, to deny admittance of the UN International Atomic Energy Agency to monitor the making of or stockpile of nuclear weapons as has been the case with the US, Korea, Iran, and a host of other countries. Another example of states reinforcing their right to make their own

¹¹ Indeed, the UNSC passed on the case to the ICC without Sudan being a signatory-noting such could never be the case for UNSC members given their veto power-however, even if the prosecutor of the ICC is able to get an arrest warrant issued for Bashir, if he remains within the confines of the state, he will remain free from any external actors holding him under arrest or transporting him to the ICC. This again, reaffirms the power of sovereignty as it remains in the 21st Century, even for crimes as grave as genocide.

domestic policies includes the unexpected payback of loans to the International Monetary Fund (IMF) in protest to the mandated interventionist policies by countries such as Argentina, Serbia, and Indonesia. Indeed, many economically weakened states have been subjected to interventionist policies of the IMF and World Bank, but it is not their sovereignty per se that has been eroded, it was a matter of realpolitik and the lack of other financial alternatives. States are also tightening their borders in certain cases, including the European Union, when it comes to issues of immigration.

Where the dominance of transnational corporations comes into play in the more egregious cases of state crimes of the past decades they are often more in line with opportunistic profit taking than any central role in motivating or facilitating mass criminal atrocities. For example, recent examinations of illegal mineral expropriation in the Democratic Republic of Congo (DRC) during and after the Second Congolese War, highlight the role that transnational corporations and international market places (i.e., the Swiss FreePort system) played in facilitating Rwanda and Uganda's theft of Congolese gold from the Ituri region of Orientale Province (see Mullins and Rothe, 2008; Rothe and Mullins, 2006a). Yet, these companies did not directly encourage the conflict or even the massive human rights violations and crimes against humanity committed in the region. These crimes were driven by broader political and economic factors within the DRC itself. The corporations were simply taking advantage of existing disorder and violence. When we talk about state sovereignty erosion, whether that is using the shared understanding of legal and socio-legal scholars or the more broadly conceived notion which examine human rights impositions, global economy, transnational corporations, or a multitude of other arguments that have been put forth, we contend that state sovereignty

is not eroding, weakening, changing, or dead: it continues to frame the international legal and economic systems and international relations. Nevertheless, as Bassiouni (2008) stated,

it is evident from the evolution of interstate and international relations since WWII, until now defined by the Westphalian concept of sovereignty and the Hegelian concept of state interest, both bridled only by prudence and good judgment, that a significant change has occurred...characterized by considerations of commonly-shared values This is reflected in the many changes which have occurred in the international legal system as of the twentieth century, particularly with respect to multilateral decision-making and limitations on state sovereignty deriving from commonly-shared values and commonly-shared interests.

This too reflects supports the agentic side of state sovereignty wherein, by exercising its political authority, a state is able to accept or reject these growing international norms.

While the international society and interstate relations have indeed changed, international law, which undergirds international relations, has been and continues to be based on a concept “of equal sovereignty of states and voluntary acceptance of international obligations” (Bassiouni, 2008). Consequentially, state sovereignty is indeed as important to international and inter-state relations as it has been over the past three centuries.

As scholars of state crime, we are aware of the life and realpolitik use of state sovereignty. Heads of states, foreign diplomats, and high ranking officials continue to enjoy impunity due to their position and the realism of international law, politics, and international relations. The idea of state sovereignty erosion is far from the reality of relations or the international political or legal system. Admittedly, we would not be

opposed to a system based on universalism, where impunity no longer existed for the worst of crimes that are committed by governments; yet, this is far from reality.

References

- Ayoob, M. 2002. Humanitarian Intervention and State Sovereignty. *International Journal of Human Rights*, 6 (1): 81-102
- Barak, G. 1991. *Crimes by the Capitalist State*. Albany: State University of New York Press.
- Bassiouni, M. C. 2008. The Perennial Conflict between Realpolitik and the Pursuit of International Criminal Justice. Public Lecture April 2008, University of Northern Iowa.
- Bodin, J. 1992. *On Sovereignty: Four Chapters From Six Books of the Commonwealth*. Cambridge, UK: Cambridge University Press.
- Chambliss, W. and Zatz, M. 1993. *Making Law: The State, the Law, and Structural Contradictions*. Bloomington: Indiana University Press.
- Cardenas, S. 2002. National Human Rights Commissions in Asia. In *Sovereignty under Challenge*, eds. J. D. Montgomery and N. Glazer. New Brunswick: Transaction Publishers.
- Clapham, C. 1999. Sovereignty and the Third World State. *Political Studies*, 47 (3): 522-538.
- Donnelly, J. 2003. *Universal Human Rights in Theory and Practice*. 2nd ed. Ithaca: Cornell University Press.
- _____. 2004. Human Rights and State Sovereignty. [Online]. Available. <http://mysite.du.edu/~jdonnell/papers/hrsov%20v4a.htm>
- Friedrichs, D. 1992. State Crime or Governmental Crime: Making Sense of the Conceptual Confusion. Pp. 53–80. In Ross, J. *Controlling State Crime*, New York: Garland.
- _____. 2007. Transnational crime and global criminology: definitional, typological, and contextual conundrums. *Social Justice*, 34 (2): 15-19.
- Friedrichs, D. O. and J. Friedrichs. 2002. The World Bank and Crimes of Globalization: A Case Study. *Social Justice*, 29 (2):1–12.
- Friedmann, W. 1967. *Legal Theory*. New York: Columbia University Press.
- Global Policy Forum 2008. State Sovereignty and the Global Economy. [Online] Available. <http://www.globalpolicy.org/nations/sovereign/econindex.htm>

- Henkin, L. 1999. That 'S' Word: Sovereignty, and Globalization, and Human Rights, et cetera. *Fordham Law Review*, 68: 1-14.
- Kearns, T. F. 2001. Breaking the Shackles of the Past: The Role and Future of State Sovereignty in Today's International Human Rights Arena. *Nova Law Review*, 25: 502-524.
- Kramer, R. and Michalowski, R. 2005. War, Aggression, and State Crime: A Criminological Analysis of the Invasion and Occupation of Iraq. *British Journal of Criminology*, 45 (4): 446-69.
- Kramer, R., Michalowski, R. and Rothe, D. 2006. The Invasion of Iraq as State-Corporate Crime. In Michalowski, R. and Kramer, R. (eds). *State-Corporate Crime: Wrongdoing at the Intersection of Business and Government*, Piscataway, NJ: Rutgers University Press.
- McCulloch, J. 2006. (In)security in the Age of Globalisation: Human Precariousness in the Move from Welfare to Warfare State. *Just Policy*, 37:19-24.
- Michalowski R. and R. Kramer. 1987. "The Space Between the Laws: The Problem of Corporate Crime in a Transnational Context." *Social Problems* 34, pp. 34-53.
- _____. 2006. *State-Corporate Crime: Wrongdoing at the Intersection of Business and Government*, edited by Raymond J. Michalowski and Ronald C. Kramer. Piscataway, NJ: Rutgers University Press.
- Mills, K. 1998. *Human Rights in an Emerging Global Order: A New Sovereignty?* New York: St. Martin's Press.
- Mullins, C. W. and Rothe, D. L. 2007. The Forgotten Ones: The Darfuri Genocide. *Critical Criminology*, 15 (2): 135-158.
- _____. 2008. *Blood, Power, and Bedlam: Violations of International Criminal Law in Post-Colonial Africa*. New York: Peter Lang.
- Rothe, D. L. 2009. *The Crime of All Crimes: An Introduction to State Criminality*. Lexington/Roman and Littlefield.
- Rothe, D. L. and Mullins, C. W. 2006a. *The International Criminal Court: Symbolic Gestures and the Generation of Global Social Control*. Lanham, MD: Lexington Books.
- _____. 2006b. The International Criminal Court and United States Opposition. *Crime, Law and Social Change*, 45: 201-26.

- _____. 2007. Darfur and the Politicalization of International Law: Genocide or Crimes Against Humanity. *Humanity and Society*, 31 (1): 83–107.
- _____. 2008. Genocide, War Crimes and Crimes Against Humanity in Central Africa: A Criminological Exploration. In (eds) Haveman, R. and Smeulers, A. *Towards a Criminology of International Crimes*, Antwerp, Belgium: Intersentia.
- Rothe, D., Mullins, C. W. and Sandstrom, K. 2008. The Rwandan Genocide: International Financial Policies and Human Rights. *Social Justice*, 35:3 (in press).
- Rothe, D. L., Muzzatti, S. and Mullins, C.W. 2006. Crime on the High Seas: Crimes of Globalization and the Sinking of the Senegalese Ferry Le Joola. *Critical Criminology* 14 (2):159–80.
- Schmitt, C. 1922. *Political Theology*. Chicago: The University of Chicago Press, 1985.
- Stanley, E. 2007. Transnational crime and state-building: the case of Timor-Leste.(Case study). *Social Justice*, 34 (2):124-138.
- Steinberger, H. 2000. Sovereignty. In (ed) Bernhardt, R. *Encyclopedia of Public International Law*, Amsterdam: North-Holland Elsevier.
- Ubi, E. 2008. Globalization and the Erosion of the Sovereignty of State in the 21st Century. *The Icfai Journal of International Relations*, II (1): 7-22.
- Whyte, D. 2003. Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries. *Journal of Law and Society*, 30 (4): 575–600.
- Winterbourne, A. 2007. The Erosion of State Sovereignty: The New International System. Associated Content, [Online] Available.
http://www.associatedcontent.com/article/235968/the_erosion_of_state_sovereignty_.html?cat=37

Table 1: Sample Characteristics

Treaty	Number of Parties	Number of Reservations	Percent of Total Sample*
Geneva Conventions	193	77	13
Genocide Convention	140	47	7
Torture	145	44	7
Racial Discrimination	173	76	12
Women Discrimination	185	86	14
Rights of the Child	193	155	25
Economic, Social and Cultural Rights	157	85	14
Civil and Political Rights	51	16	3

*Total may not equal 100 due to rounding

Table Two: Reservations by Type

Type of Reservation	Number	Percent of Total
“Allowable” Opt-out	94	15.3%
Assert Primacy of Own Law	248	40.5%
Assert Primacy of other International Law	32	5.2%
Assert Primacy of a local culture	14	2.3%
Assert Primacy of Religious Law	39	6.3%
Protesting eligibility criteria	55	9%
Not recognizing an other nation	23	3.7%
Refuse to apply in governed territories	16	2.6%
Plans to postpone implementation	12	1.9%
No Comment	42	6.8%

Other	74	12%
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*Total may not equal 100 due to rounding

Table Three: Varies of Domestic Law Assertion

Type	Number	Percentage of all reservations
General/non-specific	141	23%
Courts	15	2.4%
Immigration	25	4%
Extradition	35	5.2%
Refuse to change laws	8	1.3%
Other specific law	24	3.9%
Total	248	40.5%

*Total may not equal 100 due to rounding