

Research Proposal Summary at GlobalTrust Research Project

My research is intended to build on my PhD research which proposed to reinterpret existing legal rules and principles on the exercise of state sovereignty through an evolutionary and dialectical process. The goal of this reinterpretation was to ensure better protection of “decisional sovereignty” in situations of increasing interdependence. “Decisional sovereignty”, first advocated by Australia in the *Nuclear Test* case, emphasizes states’ decisional inviolability in relation to their domestic affairs. This differs from the traditional, Westphalian, conception of state sovereignty as a title to territory that focuses on territorial inviolability. Although territorial boundaries remain important to determine whether states are permitted to exercise sovereignty over a specific matter, the simple fact that a state’s decision relates to an act or actor within its territory may, under a decisional approach to sovereignty, not be a sufficient basis for sovereignty when other states could be negatively affected.

The reinterpretation is guided substantively by the “interstitial norms”¹ of locality, reasonableness and good neighborliness. Applying these norms, we can develop alternative interpretations of several principles of general international law, such as the Lotus principle and the no harm principle, and of specialized international law rules, such as various GATT and GATS articles that currently restrict states’ authority to regulate. These alternative interpretations result in a better protection of states’ decisional sovereignty and create incentives for states to co-operate in response to global and transboundary problems.

At the GlobalTrust Research Project, I will explore further how the interstitial norms can be operationalized in practice. This would first require a deeper analysis of each of the interstitial norms to explore their meaning and their relationship to sovereignty in situations of increasing interdependence. What makes a state’s regulatory actions compatible with the norms of reasonableness, good neighbourliness and locality? Which criteria can help to assess in specific scenarios whether the negative effects of a state’s regulatory decisions are contrary to international law? A second step is to examine to what extent the interstitial norms of locality, good neighbourliness and reasonableness may already have shaped our understanding of limitations on the exercise of state sovereignty in specific areas of international law, such as international environmental law. If so, I want to identify the mechanisms through which these norms have influenced our understanding of state sovereignty, and examine any lessons we can draw about the meaning and the limitations of the interstitial norms of locality, good neighbourliness and reasonableness.

A final extension of my PhD research relates to the type of negative effects that a state’s decisions cause on other states. So far, my research has focused on the environmental and economic negative external effects of states’ regulatory decisions. These can be described as physical and pecuniary externalities. I would like to examine whether the problems with the protection of decisional sovereignty in increasing interdependence also present themselves in the context of psychological externalities, i.e. when actions in one state are considered objectionable or unacceptable by the citizens of another state but do not cause economic or physical harm, for example human rights violations or the destruction of cultural heritage. By extension, the question also needs to be addressed whether the solutions that I have proposed in relation to physical and pecuniary externalities can work in relation to psychological externalities.

¹ These are the norms operating “in the interstices between [...] primary rules” when these rules compete for application to a specific set of facts, see Lowe, “The Politics of Law-Making: Are the Method and Character of Norm Creation Changing?”, in Byers (Ed.) *The Role of Law in International Politics* (2000), 213-214.