

COERCION AND THE PROHIBITION OF INTERVENTION

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Principle of Non-Intervention

- States must not intervene in the internal or external affairs of other states
 - Two elements of the rule: reserved domain and coercion
 - Widespread agreement on what the elements are, but not on what they mean (especially coercion)
 - Derives from sovereignty & principle of sovereign equality
 - Customary and treaty law; series of UNGA resolutions, culminating in the Friendly Relations Declaration
- My interest in the topic
 - The prohibition of intervention in cyberspace; UN processes and state positions
 - *Tallinn Manual 3.0*
 - Impossible to arrive at a coherent but cyber-specific notion of coercion; we need a general theory; lack of clarity outside cyber necessarily means lack of clarity in cyber
 - Milanovic, 'Revisiting Coercion as an Element of Prohibited Intervention in International Law' (2023) 117 *American Journal of International Law* 601



ICJ *Nicaragua*, para 205

[the rule] forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force

- Referred to approvingly in many state position papers on non-intervention and cyber



Coercion

- “[P]recise definition ... **not yet fully crystallised** In essence it means compelling a state to take a course of action (whether an act or an omission) that it would **not otherwise voluntarily pursue**. The goal ... must be to **effect change in the behaviour** of the target state.”
(**Netherlands**, 2019 MFA letter to Parliament)
- **2023 US DoD GC speech**: “the scope of coercion for purposes of prohibited intervention remains particularly undertheorized and underdeveloped”

My argument: there are two distinct ways of thinking about coercion

□ Coercion-as-extortion

- Demand-threat-harm
- Works by influencing the decision-making calculus – the will – of the victim State
- Are threats alone sufficient? What kinds of harms suffice, esp. below the force threshold? Is a threat of an otherwise *lawful* harm sufficient?

□ Coercion-as-control

- An action that deprives the coerced State of its ability to control its policy choices within its reserved domain
- Does not necessarily involve demands and threats
- Examples: assisting rebels, fomenting coups



Coercion-as-Extortion

- “Do what we say, or else.”

- 2023 EU Anti-Coercion Instrument:

“Coercion is prohibited and therefore a wrongful act under international law when a country deploys measures such as trade or investment restrictions **in order to obtain** from another country an action or inaction which that country **is not obliged to perform under international law** and which falls within its sovereignty, and when the coercion reaches a certain **qualitative or quantitative threshold**, depending both on the objectives pursued and the means used.”

- Common AU Position 2024: “Coercion may also occur through threats of intervention.”



Extortion: Threshold of Harm

- Force and other acts states specifically agree on, such as supporting rebels (minimalism)
- Acts that are already illegal under other rules of international law?
 - ▣ Economic sanctions in breach of WTO law or other trade or economic agreements?
 - ▣ Hostage diplomacy – acts in breach of human rights law
- Acts that are otherwise lawful, but cause serious/severe harms?
 - ▣ Approach taken by the EU
 - ▣ Some otherwise lawful measures of retorsion would therefore become unlawful *qua* coercive intervention



Extortion: Scenarios

- Russia and Ukraine
- The Cuban embargo
- Sanctions against Russia because of Ukraine
 - ▣ The reserved domain element and justified demands!
- Trump
 - ▣ Venezuela
 - ▣ Greenland and Denmark
 - ▣ Panama Canal
 - ▣ Mexico, Canada, Colombia...
 - ▣ Compare to the economic impact of Cuban or Russian sanctions



Coercion-as-Control

- Australia, 2020: “**Coercive means are those that effectively deprive the State of the ability to control, decide upon or govern matters of an inherently sovereign nature.** Accordingly, the use by a hostile State of cyber activities to manipulate the electoral system to alter the results of an election in another State, intervention in the fundamental operation of Parliament, or in the stability of States' financial systems would constitute a violation of the principle of non-intervention.”
- New Zealand, 2020: act is “coercive [if] there is an intention **to deprive the target state of control** over matters falling within the scope of its inherently sovereign functions. Coercion can be direct or indirect and may range from dictatorial threats to more subtle means of control.”
- Canada, 2022: coercion includes “activities [that] would cause **coercive effects that deprive, compel, or impose an outcome** on the affected State on matters in which it has free choice”
- Czech Republic, 2024: “Coercion is an activity intended to deprive, either directly or indirectly, the State of its ability to exercise control or govern matters within its internal and external affairs.”
- Thailand, 2025: “Coercion may arise where a cyber operation undermines a State’s sovereign functions or impairs its ability to exercise its reserved domain (domaine réservé) freely, even without an explicit demand, demonstrable motive, or intention to compel. The assessment should focus primarily on the practical effects and severity of the interference. “



Control, cont.

- Costa Rica, 2023: “Coercion is clear-cut when a State uses or threatens to use force against another one. Nonetheless, it can also occur in a multitude of ways where one State, directly or indirectly through support for non-State actors, **deprives another State of the capacity to make free and informed choices** pertaining to its internal or external affairs. ... A prominent example of a breach of non-intervention are ransomware attacks **crippling or simply interfering with a State’s ability** to run public services, such as finance, education, and social security.”
- United Kingdom, 2022: “In essence, an intervention in the affairs of another State will be unlawful if it is forcible, dictatorial, or otherwise coercive, **depriving a State of its freedom of control** over matters which it is permitted to decide freely by the principle of State sovereignty. While the precise boundaries of coercion are yet to crystallise in international law, we should be ready to consider whether disruptive cyber behaviours are coercive even where it might not be possible to point to a specific course of conduct which a State has been forced into or prevented from taking. ... Covert cyber operations by a foreign State which coercively restrict or prevent the provision of essential medical services or essential energy supplies would breach the rule on non-intervention.”



Control: Scenarios

- Assisting or fomenting coups; assisting rebels
 - ▣ Funding or otherwise assisting opposition political parties or civil society contrary to the legislation of their home state?
 - ▣ Venezuela, again
 - Altering election returns; hacking election machines
 - Information operations during an election?
 - ▣ Romania TikTok
 - Disrupting execution of State's pandemic crisis management?
 - Disrupting a state's financial system? Or its energy system?
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- Could be a violation of int law even if not intervention! Can simultaneously violate other rules, e.g. sovereignty.
 - Should the same threshold considerations be relevant here as with extortion, especially severity?