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States' cyber-interferences in International Law: a reconstruction of the Principles of Sovereignty, Non-intervention and Self-Determination and their applicability in cyber context

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TABLE OF CASES

European Court of Human Rights

Al-Skeini v United Kingdom, Judgment, App No 55721/07, ECtHR, 7 July 2011.

European Court of Justice

Commission v UK Case C222/94, ECR I-4025, 1996.

Google Inc v Commision nationale de l'informatique et des libertés (CNIL), C-507/17, ECLI:EU:C:2019:772, 24 September 2019.

Google Spain SL v Agencia Española de Protección de Datos, Case C-131/12, ECLI:EU:C:2014:317.

Liberation Tigers of Tamil Eelam (LTTE) v Council of the European Union, Joined Cases T-208/11 and T-508/11, ECLI:EU:T:2014:885, 16 October 2014.

International Court of Justice

Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights, (*Islamic Republic of Iran v. United States of America*), Verbatim Record 30 August 2018.

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v United Arab Emirates), Application instituting proceedings*,* 11 June 2018.

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Oral Proceedings, Verbatim record 27 June 2018.

Asylum Case, (*Colombia v. Peru*), Judgment, 1950, I.C.J. Reports 1950.

Corfu Channel case, (*United Kingdom v. Albania*), *Judgment*, I.C.J. Reports 1949.

Delimitation of the Maritime Boundary in the Gulf of Maine Area, (Canada v. United States of America), Judgment, ICJ Reports 1984.

Dispute regarding Navigational and Related Rights, *(Costa Rica v. Nicaragua),* Judgment, I.C.J. Reports 2009.

Gabčíkovo-Nagymaros Project, (*Hungary v. Slovakia*), Judgment, I.C.J. Reports 1997.

Jurisdictional Immunities of the State, (*Germany v. Italy: Greece intervening*), Judgment, I.C.J. Reports 2012.

Legal Consequences for States of the Contitiued Presence of South Africa in Namibia, (South West *Africa*), *notwithstanding Security Council Resolution 276* (*1970*), Advisory Opinion, I.C.J. Reports 1971.

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004.

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility*,* Judgment, I.C.J. Reports 1984.

Pulp Mills on the River Uruguay, (*Argentina v. Uruguay*), Judgment, I.C.J. Reports 2010.

Questions relating to the Obligation to Prosecute or Extradite, (*Belgium v. Senegal*), Judgment, I.C.J. Reports 2012.

Separate Opinion of Judge Alvarez, *Corfu Chanel Case,* (*UK v Albania*), I.C.J. Reports 1949.

Separate Opinion of Judge Cançado Trindade*, Obligation to Negotiate Access to the Pacific Ocean,* (*Bolivia v. Chile*), I.C.J. Reports 2015.

Separate Opinion of Judge Robinson. *Certain Activities Carried Out by Nicaragua in the Border Area, (Costa Rica v Nicaragua),* I.C.J. Reports 2015.

Separate Opinion of Judge Yusuf, *in Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, I.C.J. Reports 2010.

United States Diplomatic and Consular Staff in Tehran, (*United States of America v. Iran*), Judgment, I.C.J. Reports 1980.

Permanent Court of Arbitration

Island of Palmas Case (or *Miangas*), United States v Netherlands, Reports of International Arbitral Awards 1928.

Iron Rhine arbitration, (*Belgium/Netherlands*), 2005, Reports of International Arbitral Awards 2005.

Permanent Court of International Justice

Customs Regime between Germany and Austria Advisory Opinion, Dissenting Opinion of M. Adatci, M. Rostworowski, M. Altamira, M. Anzilotti and M.Wang, PCIJ Series A/B. No 41.

SS. 'Lotus', (*France v Turkey*), Judgment, PCIJ Series A No 10.

SS.'Wimbledon', (*United Kingdom, France, Italy & Japan v. Germany*), Judgment, PCIJ Rep Series A No 1.

National Courts

(Belgium), *Belgium v. Yahoo*, P.13.2082.N, 2015

(Belgium), *Belgium v. Skype*, Belgian Court Appeal, 15 November 2017.

(Canada), *Secession of Quebec,* 1998, 2 SCR 217.

(France), *LICRA v Yahoo! Inc & Yahoo France*, Tribunal de Grande Instance de Paris, 22 May 2000.

(France), *LICRA & UEJF v Yahoo! Inc & Yahoo France*, Tribunal de Grande Instance de Paris, 20 November 2000.

(United States of America) *Microsoft Corporation v. United States of America,* Microsoft, 829 F.3d.

SELECT TABLE OF TREATIES AND OTHER INSTRUMENTS

Treaties

African Charter on Human and Peoples' Rights, Banjul, 27 June 1981.

African Union Non-Aggression and Common Defence Pact, Abuja, 31 January 2005.

Agreement between NATO and Yugoslavia to establish a NATO air verification regime in Kosovo, Belgrade, 15 October 1998.

Agreement between the Russian Federation and Ukraine on the Status and Conditions of the Russian Federation Black Sea Fleet's Stay on Ukrainian Territory, Kharkiv, 21 April 2010.

Arab Charter on Human Rights, Tunis, 22 May 2004.

Charter of the Organization of American States, Bogotá, 30 April 1948.

Charter of the Association of Southeast Asian Nations, Singapore, 20 November 2007.

Charter of the Shanghai Cooperation Organisation, St Petersburg, 7 June 2002.

Charter of the United Nations, San Francisco, 26 June 1945.

Collective Security Treaty, Tashkent, 15 May 1992.

Constitutive Act of the African Union, Lomé, 11 July 2000.

Convention on Cybercrime, Budapest, 23 November 2001.

Convention on the Duties and Rights of States in the Event of Civil Strife (*Havana Convention*), Havana, 20 February 1928.

Covenant of the League of Nations (including 1 February 1938 Amendments), Versailles, 28 April 1919.

General Treaty of Peace and Amity, Washington, 7 February 1923.

General Treaty for the Re-Establishment of Peace between Austria, France, Great Britain, Prussia, Sardinia, and Turkey, and Russia, Paris, 30 March 1856.

General Treaty for the Renunciation of War as an Instrument of National Policy (Pact of Paris/Kellogg–Briand Pact), Paris, 27 August 1928.

Holy Alliance Treaty, Paris, 18/26 September 1815.

Inter-American Treaty of Reciprocal Assistance (Rio Treaty), Rio de Janeiro, 2 September 1947.

International Covenant on Civil and Political Rights, New York, 16 December 1966.

International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966.

Interim Agreement for Peace and Self-Government in Kosovo, Rambouillet, 18 March 1999.

Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, Budapest, 5 December 1994.

Montevideo Convention on the Rights and Duties of States, Montevideo, 26 December 1933.

Pact of the League of Arab States, Cairo, 22 March 1945.

Peace Treaty of Versailles, Paris, 28 June 1919.

Protocol Additional to the Geneva Conventions of 12 August 1949, *and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, Geneva, 8 June 1977.

Protocol of Aix-la-Chapelle, Aix-la-Chapelle, 9 October 1818.

Protocol of Amendments to the Charter of the Organization of American States (*Protocol of Cartagena de Indias*), Cartagena de Indias, 12 May 1985.

Protocol Relating to the Council for Peace and Security of Central Africa, *Malabo, 24 February 2000*.

Statute of the Permanent Court of International Justice, Geneva, 13 December 1920.

Treaties of Alliance between the United Provinces of the Netherlands, Great Britain, and Prussia, Berlin and The Hague, 15 April 1788.

Treaty of Amity and Commerce, Paris, 6 February 1778.

Treaty of Constantinople, Constantinople, 21 July 1832.

Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, opened for signature at Washington, London and Moscow on 27 January 1967.

United Nations Convention against Transnational Organized Crime, Palermo, 12 December 2000.

United Nations Convention on Jurisdictional Immunities of States and Their Property. New York, 2 December 2004. (Not yet in force in accordance with article 30).

United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982.

Vienna Convention on Consular Relations, Vienna, 24 April 1963.

Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961.

Vienna Convention on the Law of Treaties, Vienna, 23 May 1969.

B. Other International Instruments

Agreement between Ukraine and the Russian Federation concerning stay of the Black Sea Fleet of the Russian Federation in the territory of Ukraine, Kharkiv, 21April 2010.

Brief for Ireland as Amicus Curiae in Support of Neither Party, in *Microsoft Corporation v. United States of America*, 2017. (Brief submitted on appeal to the U.S. Supreme Court – later abandoned -).

British and Foreign State Papers 1820 –1821.

Council of Europe, *Explanatory Report to the Convention on Cybercrime*, Budapest, 23 November 2001.

Cyber Law Toolkit.

*Declaration appended to the ICJ's Nuclear Weapons Advisory Opinion (Legality of the Threat or Use of Nuclear Weapons (*Advisory Opinion*)* 1996 I.C.J. Rep. 226*,* Declaration of Judge Ferrari Bravo.

European Commission, *Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries*, Brussels, 8 December 2021.

European Commission*, A Multi-Dimensional Approach to Disinformation, Report of the Independent High Level Group on Fake News and Online Disinformation,* March 2018.

Final Act of the Conference on Security and Co-operation in Europe (*Helsinki Final Act*), Helsinki, 1 August 1975.

Global Commission on the Stability of Cyberspace, *Presentation of the Initiative*, 2018.

Global Commission on the Stability of Cyberspace, Advancing Cyberstability, Final Report, 2019.

HPCR Manual on International Law Applicable to Air and Missile Warfare, 2009.

ICANN, *Meeting with the Global Commission on the Stability of Cyberspace (GCSC)*, 2018.

Institute for Science and International Security, *Did Stuxnet Take Out 1,000 Centrifuges at the Natanz Enrichment Plant?*, 2010.

International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 2001.

International Law Commission, *Draft conclusions on identification of customary international law*, 2018.

International Law Commission, *Draft Declaration on Rights and Duties of States*, 1949 Yearbook of the International Law Commission.

International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Paris, 1989, UNESCO, SHS-89/CONF.602/7.

Joint Communiqué of the 14th Meeting of the Foreign Ministers of the Russian Federation, the Republic of India and the PRC, Moscow, 19 April 2016, para. 6; *People's Republic of China and the Russian Federation on the Promotion of International Law*, Beijing, 25 June 2016.

League of Nations, *Report presented to the Council of the league by the Commission of Rapporteurs*, Council Doc. B7/21 /68/106, 16 April 1921.

Library of the Palais des Nations, Geneva: *the microfilmed minutes (*unpublished*) of the debates of the First Committee of the First Commission of the San Francisco Conference,* 14-15 May and 1 and 11 June 1945.

National Opinion of El Salvador*, Scope, structure and content of the Programme of action to advance responsible State behaviour in the use of information and communications technologies in the context of international security.*

Nicaragua's Memorial, Nicaragua v USA, (Merits), 30 April 1985, ICJ Pleadings, vol IV.

O.A.S. Juridical Committee, *Draft Instrument of Instances of Violation*.

Official Journal of the League of Nations, September 1921.

Organization of American States*,' Declaration of San José*, San José (Costa Rica), 28 August 1960.

Organization for Security and Cooperation in Europe, *Decision No. 1202, OSCE Confidence-Building Measures to Reduce the Risks of Conflict Stemming from the Use of Information and Communication Technologies*, Permanent Council, 10 March 2016, PC.DEC/1202.

Permanent Mission of the Russian Federation to the United Nations*, Statement by the Representative of the Russian Federation at the Fourth Session of the UN Open-Ended Working Group on Security and in the Use of ICTs 2021-2025,* New York, 7 March 2023.

Report of the Special Commission of Jurists, League of Nations Official Journal 5, 24 January 1924.

Resolution of the Institut de droit international on "Le principe de non-intervention dans les guerres civiles", Session of Wiesbaden, 13 August 1975.

Resolution on the Impact of Sanctions and Unilateral Coercive Measures on African Union Member States, Assembly/AU/Res.1 (XXXV), 5–6 February 2022.

Resolution on the Lifting of the Economic, Commercial and Financial Blockade Imposed on the Republic of Cuba by the United States, Assembly/AU/ Res.2 (XXXV), 5–6 February 2022.

San Remo Manual on International Law Applicable to Armed Conflicts at Sea, prepared for publication by International Institute of Humanitarian Law, edited by Doswald-Beck L., Cambridge, 1995.

Tallinn Manual 2.0 on the International Law Applicable to Cyber Warfare, prepared by the International Group of Experts at the Invitation of The NATO Cooperative Cyber Defence Centre of Excellence, Schmitt M.N. (general ed.), Cambridge, 2017.

UNESCO, *International Meeting of Experts on further study of the concept of the rights of peoples*, SHS-89/CONF.60Z/7, 1989.

UNIDIR, *A Compendium of Good Practices Developing a National Position on the Interpretation of International Law and State Use of ICT*, 2024.

Updated concept od the Convention of the United Nations on ensuring international information security, Proposal of the Russian Federation Cosponsors: Republic of Belarus, Democratic People's Republic of Korea, Republic of Nicaragua, Syrian Arab Republic, Bolivarian Republic of Venezuela.

Waldock H., *Second Report on the Law of Treaties, Second report on the law of treaties / by Sir Humphrey Waldock, special rapporteur, Volume 2*, 1963 Yearbook International Law Commission, vol II.

Wales Summit Declaration, NATO, 2015.

Written Statement of the Kingdom of the Netherlands ,17 April 2009.

16 Packages of *Sanctions adopted* by the European Union '*following Russia's military aggression against Ukraine'*, starting from 23 February 2022 (see Official Journal of the European Union L 42 I, Volume 65) to the 24 February 2025 (see COUNCIL REGULATION (EU) 2025/392 of 24 February 2025). < https://sanctionsmap.eu/#/main >

C. Select UN Documents

2015 Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security.

Covenant of Human Rights (Draft), *USSR Amendments to joint draft resolution A/C.3/L.96*, 1950.

Doc 1123, I/8, 6 UNCIO Docs. 65, 1945.

Doc 784, I/1/27, 6 UNCIO Docs. 336, 1945.

Doc 885, I/1/34, 6 UNCIO Docs. 387, 1945.

Doc A/49/765-S/1994/1399, 1994, (including Annex I).

Doc A/2910/Add. 1, Xth Session, 1955.

Doc A/6230, 1966, Draft Proposal/Amendments UN Covenants.

Doc A/6955, 1967, Draft Proposal/Amendments UN Covenants.

Doc. A/AC.119/SR.28, 1964, Draft Proposal/Amendments UN Covenants.

Doc A/C.1/SR.1395, 1965, Draft Proposal/Amendments UN Covenants.

Doc A/C.1/SR.1402, 1965, Draft Proposal/Amendments UN Covenants.

Doc A/C.1/SR.1405, 1965, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.309, 1950, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.310, 1950, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.311, 1950, Draft Proposal/Amendments UN Covenants.

Doc A/C3/SR.367, 1950, Draft Proposal/Amendments UN Covenants.

Doc A/C3/SR.398, 1950, Draft Proposal/Amendments UN Covenants.

Doc A/C3/SR.403, 1950, Draft Proposal/Amendments UN Covenants.

Doc A/C3/SR.563, 1950, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.366, 1950, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.400, 1950, Draft Proposal/Amendments UN Covenants.

Doc A./C.3/SR.309, 1951, Draft Proposal/Amendments UN Covenants.

Doc., A/C.3/SR.361, 1951, Draft Proposal/Amendments UN Covenants.

Doc A./C.3/SR.362, 1951, Draft Proposal/Amendments UN Covenants.

Doc A./C3/SR.399, 1951, Draft Proposal/Amendments UN Covenants.

Doc., A/C.3/SR.64, 1951, Draft Proposal/Amendments UN Covenants.

Doc., A/C.3/SR.643, 1951, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.644, 1951, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.645, 1951, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.649, 1951, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.651, 1951, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.651, 1951, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.652, 1951, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.677, 1951, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.649, 1955, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.652, 1955, Draft Proposal/Amendments UN Covenants.

Doc., A/C.3/SR.668, 1955, Draft Proposal/Amendments UN Covenants.

Doc A/C.3/SR.677, 1955, Draft Proposal/Amendments UN Covenants.

DOCUMENTS of the UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION SAN FRANCISCO, 1945, COMMISSION I, GENERAL PROVISIONS, UNCIO, vol. VI.

GA Resolution 1514 (XV), D*eclaration on the Granting of Independence to Colonial Countries and Peoples* (*Decolonization Declaration*), 14 December 1960.

GA Resolution 2131 (XX), *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty*, 21 December 1965.

GA Resolution 2625 (XXV), *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, 24 October 1970.

GA Resolution 36/103, *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*, 9 December 1981.

GA Resolution 61/295, *Declaration on the Rights of Indigenous Peoples*, 13 September 2007.

GA Resolution *55/28*, *Developments in the field of information and telecommunications in the context of international security*, 20 November 2000,

GA Resolution *56/19*, *Developments in the field of information and telecommunications in the context of international security*, 7 January 2002.

GA Resolution *59/61*, *Developments in the field of information and telecommunications in the context of international security*, 16 December 2004.

GA Resolution 60/45, *Developments in the field of information and telecommunications in the context of international security*, 8 December 2005.

GA Resolution 61/54, *Developments in the field of information and telecommunications in the context of international security*, 6 December 2006.

GA Resolution 62/17, *Developments in the field of information and telecommunications in the context of international security*, 5 December 2007.

GA Resolution 63/37, *Developments in the field of information and telecommunications in the context of international security*, 2 December 2008.

GA Resolution 64/25, *Developments in the field of information and telecommunications in the context of international security*, 2 December 2009.

GA Resolution 65/41, *Developments in the field of information and telecommunications in the context of international security*, 8 December 2010.

GA Resolution 66/24, *Developments in the field of information and telecommunications in the context of international security*, 2 December 2011.

GA Resolution 67/27, *Developments in the field of information and telecommunications in the context of international security*, 3 December 2012.

GA Resolution 68/243, *Developments in the field of information and telecommunications in the context of international security*, 27 December 2013.

GA Resolution 69/28, *Developments in the field of information and telecommunications in the context of international security*, 2 December 2014.

GA Resolution 70/237, *Developments in the field of information and telecommunications in the context of international security*, 23 December 2015.

GA Resolution 71/*28*, *Developments in the field of information and telecommunications in the context of international security*, 5 December 2016.

GA Resolution 73/*27*, *Developments in the field of information and telecommunications in the context of international security*, 5 December 2018.

GA Resolution 74/29, *Developments in the field of information and telecommunications in the context of international security*, 12 December 2019.

GA Resolution 75/*240*, *Developments in the field of information and telecommunications in the context of international security*, 31 December 2020.

GA Resolution 76*/19*, *Developments in the field of information and telecommunications in the context of international security, and advancing responsible State behaviour in the use of information and communications technologies*, 6 December 2021.

GA Resolution 48/535, *Economic Measures as a Means of Political and Economic Coercion against Developing Countries*: *Note by the Secretary-General*, 25 October 1993.

GA Resolution 45/150, *Enhancing the effectiveness of the principle of periodic and genuine elections*, 18 December 1990.

GA Resolution 68/98, *Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*, 24 June 2013.

GA Resolution 70/174, *Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*, 22 July 2015.

GA Resolution *76/136*, *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States submitted by participating governmental experts in the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security established pursuant to General Assembly resolution 73/266,* 13 July 2021.

GA Resolution 3171 (XXVII), *Permanent Sovereignty over Natural Resources*, 17 December 1973.

GA Resolution 77/37, *Programme of action to advance responsible State behaviour in the use of information and communications technologies in the context of international security*, 7 December 2022.

GA Resolution 39/40, *Question of Western Sahara*, 20 September 1984.

GA Resolution 49/3, *Report of the Economic and Social Council*, 12 September 1994.

GA Res 2225 (XXI), *Resolution on the Status of the Implementation of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, 19 December 1966.

GA Res 2160 (XXI), *Resolution on the Strict Observance of the Prohibition of the Threat or Use of Force in International Relations and of the Right of Peoples to Self-Determination*, 30 November 1966.

GA Resolution 44/228, *United Nations Conference on Environment and Development*, 22 December 1989.

Office of the United Nations High Commissioner for Human Rights, *One-pager on "incitement to hatred": The Rabat threshold test*.

Office of the United Nations High Commissioner for Human Rights, and Global Migration Group *Principles and Guidelines*, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations, 2018.

Statement by the Representative of Australia to the fourth substantive session of the open-ended working group on the security of and in the use of ICTs, March 2023.

D. **Common and National Position Papers, Military Manuals (and other Related Documents)**

African Union Peace and Security Council, *Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*, 29 January 2024.

Council of the European Union, *Council Conclusions on the Joint Communication to the European Parliament and the Council: Resilience, Deterrence and Defence: Building strong cybersecurity for the EU*, 20 November 2017.

Council of the European Union, *Declaration on a Common Understanding of International Law in Cyberspace*, Brussels, 18 November 2024.

Commonwealth of Australia, *Department of Foreign Affairs and Trade, Australia's International Cyber Engagement Strategy*, October 2017.

(Austria), *Austrian Position on Cyber Activities and International Law*, April 2024.

(Brazil), *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States*, UNODA, A/76/136, August 2021, pp. 17-23.

(Canada), Government of Canada, *International Law applicable in cyberspace*, April 2022.

(Costa Rica), Ministry of Foreign Affairs of Costa Rica, C*osta Rica's Position on the Application of International Law in Cyberspace*, 21 July 2023.

(Czech Republic), Ministry of Foreign Affairs of the Czech Republic, *Czech Republic – Position paper on the application of international law in cyberspace*, 27 February 2024.

(Denmark), Government of Denmark, *Denmark's Position Paper on the Application of International Law in Cyberspace*, 4 July 2023.

(Estonia), Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States, UNODA, A/76/136, August 2021, pp. 23-30.

(Finland), *International law and cyberspace, Finland's national positions*, 2020.

(Finland) Ministry for Foreign Affairs of the Finland: Finland published its positions on public international law in cyberspace, 15 October 2020.

(France), Ministry of Defense of France, *International Law Applied to Operations in Cyberspace*, 9 September 2019.

(Germany), Federal Government of Germany, *Position Paper On the Application of International Law in Cyberspace*, March 2021.

(Ireland), Irish Department of Foreign Affairs, *International Law and Cyberspace,* 6 July 2023

(Israel), Roy Schöndorf, *Israel's Perspective on Key Legal and Practical Issues Concerning the Application of International Law to Cyber Operations*, 8 December 2020.

(Italy), Ministero degli Affari Esteri e della Cooperazione Internazionale, *Italian position paper on "International law and cyberspace"*, 4 November 2021.

(Japan), Ministry of Foreign Affairs of Japan, *Basic Position of the Government of Japan on International Law Applicable to Cyber Operations,* 16 June 2021.

(Kazakhstan), *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States*, UNODA, A/76/136, pp. 51-52, August 2021.

(Kenya), *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States*, UNODA, A/76/136, pp. 52-54, August 2021.

(Netherlands), Government of the Kingdom of the Netherlands, *Appendix: International law in cyberspace,* 26 September 2019.

(New Zeland), Ministry of Foreign Affairs of New Zeland, *The Application of International Law to State Activity in Cyberspace*, 1 December 2020.

(Norway), *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States*, UNODA, A/76/136, pp.65-75, August 2021.

(Pakistan), UNODA, *Pakistan's Position on the Application of International Law in Cyberspace*, 3 March 2023.

(Poland), Ministry of Foreign Affairs of Poland, *The Republic of Poland's position on the application of international law in cyberspace*, 29 December 2022.

(PRC), Ministry of Foreign Affairs of the People's Republic of China. *China's Positions on International Rules-making in Cyberspace*.

(PRC) *China's Views on the Application of the Principle of Sovereignty in Cyberspace*.

(Romania), *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States*, UNODA, A/76/136, pp.75-79, August 2021.

(Russia), *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States*, UNODA, A/76/136, pp.79-82, August 2021.

(Singapore), *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States,* UNODA, A/76/136, pp.83-85, August 2021.

(Sweden), *Government Offices of Sweden, Position Paper on the Application of International Law in Cyberspace*, July 2022.

(Switzerland), Federal Department of Foreign Affairs of Switzerland, *Switzerland's position paper on the application of international law in cyberspace*, May 2021.

(United Kingdom), Attorney General Suella Braverman: *International Law in Future Frontiers*, 19 May 2022.

(United States of America), *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States*, UNODA, A/76/136, August 2021.

(United States of America), U.S. Department of Defense, *Law of War Manual*, updated July 2023.

(United States of America), U.S. Department of Defense*, The Strategy for Homeland Defense and Civil Support*, 2005.

(United States of America), U.S. Presidential Policy Directive/PPD–20, 2012.

E. **National Legislation**

France, *Constitution*.

LOI n° 2009-669 du 12 juin 2009 favorisant la diffusion et la protection de la création sur internet, N. MCCX0811238L.

Italy, *Constitution*.

Portugal, *Constitution*.

Russian Federation, *Federal Law Introducing Amendments to Certain Legislative Acts Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents*, 2012.

Singapore, *Sanctions and Restrictions Against Russia in Response to its Invasion of Ukraine*, 5 March 2022.

Swiss, Ordonnance du 4 mars 2022 instituant des mesures en lien avec la situation en Ukraine (RS 946.231.176.72).

United States of America, *The Clarifying Lawful Overseas Use of Data Act* (*CLOUD Act*), HR 4943, 2018.

United States of America, *Declaration of Independence*, 1776.

Introduction

Since the XVII century, many European States stipulated (early) international treaties regarding the protection of citizens living abroad[1]; the *rationale* behind these agreements was not really to protect human rights, being rather traceable from States' will to prevent the outbreak of conflicts motivated by the pretext of citizens persecuted abroad.[2]

Similarly, in a world arena 'bowled over' by the weaponization of information technologies (ICTs), it is understandable and sensible why, for the first two decades of XXI century, the most popular and impellent issue (among Authors who dealt with international law applicability in cyber context) was represented by preventing the outbreak of conflicts motivated by the pretext of cyber threats, focusing their Prominent Studies on cyberattacks that violate the provisions of the Articles 2(4) and 51 UN Charter.[3]

Said this, recent history reports hundreds of 'low-intensity' cyberattacks (rather than cyber-acts of war) which, albeit falling below the threshold of the use of force, still produce economic, social and political damages against the Personality of a State and of Its People.

Thus, taking the assumption that coercion is ubiquitous in an anarchic world[4], this work – which expressly refuses any distinction (implicitly offered by the works of Prominent Authors dealing with international law applicability in cyber context) between "a practical and positive law and a theoretical and non-positive law [… juxtaposing] them as two separate laws [and elevating the former as a superior] source of law"[5] – aims at analysing how international law – and in particular the principle of sovereignty, non-intervention and the right to self-determination – govern those (low-intensity) malicious cyber behaviours.

Conscious that "it may sometimes be difficult to [technically] attribute cyber operations to a particular state, non-state actor, or individual as a matter of *fact*"[6], the object of the work will exile from the issue of attribution, taking the assumption that in today's context it is technically possible to attribute the paternity of those malicious cyber conducts; and that "there is no reason to exclude [the applicability] of the law of state responsibility's attribution principles to them."[7]

Given the object of the work, the essay is structured as follows. Chapter I firstly delineates the concept of cyberspace and its general context; and, for second, it briefly deals with the prohibition on the use of force in cyber context – appearing a necessary and natural premise when analysing cyberoperations below the Art. 2(4) threshold -.

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[1] The so-called '*regime of capitulations*' essentially provided that foreign citizen, both in civil and in criminal cases, had to be judged abroad by special courts, applying their own national law.

[2] Pustorino P., *Introduction to International Human Rights Law*, Springler, The Hague, 2023, p. 3.

[3] See upon, *inter alia*, Roscini M., *Cyber Operations and the Use of Force in International Law*, Oxford, 2014.

[4] Milner H., *The assumption of anarchy in international relations theory: a critique*, in Review of International Studies 17:1, 1991, 67–85, p. 67. See also generally pp. 67-69.

[5] Bergbohm, K. *Jurisprudenz und Rechtsphilosophie. Kritische Abhandlungen*, Erster Band, Glashütten im Taunus, Detlev Auvermann, 1973, p. 439.

[6] Schmitt M. N., Foreword, in Ohlin J. D. Govern K. Finkelstein C. (eds), *Cyber War: Law and Ethics for Virtual Conflicts*, Oxford, 2015, p. vi.

[7] *Ivi*.

Chapter II reconstructs the legal (notion of the) Principles of Sovereignty, Non-Intervention and the Right to Self-Determination, and deals (mainly from a theoretical perspective) with the application of those principles in cyber context.

Chapter III deals (from a practical perspective) with those malicious cyber conducts, analysing real life case-study and their compliance with the international obligations *de quo*.

Chapter 1 Cyberspace in international law and the use of force

1.1 Cyberspace: general context and applicable law

"Digital Revolution has marked the beginning of the Information Age, an era of human civilization defined by access to and control of information."[8] The progressive re-shaping of (digital) modern societies and the consequent shift "from mechanical and analogue electronic technology to digital electronics"[9], makes "then hardly surprising that cyber threats have become a major concern of the international community".[10]

At its dawn 'cyber-optimistic' positions based on "*cyber libertarianism*"[11] envisioned cyber domain as a purely non-legal environment[12] independent by governmental authority. "Yet, the view that [the fifth domain[13]] is subject to law and indeed to international law is not in dispute anymore"[14].

The UN General Assembly adopted since 1998 a series of annual resolutions on information security emphasizing how these new technologies have the potential to affect the whole international community[15]; "the Assembly has also established Groups of Governmental Experts (GGE) to examine the impact of developments in information and communication technologies (ICT) and, in December 2018, set up an Open-Ended Working Group (OEWG) tasked with developing rules, norms, and principles of responsible behaviour of states in cyberspace, discussing ways for their implementation, and exploring avenues of institutional dialogue."[16]

The 2013 Report of the United Nations CGE states that "International law, and in particular the Charter of the United Nations, is applicable" [17]; expressly remarking that "State sovereignty and

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[8] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 374.

[9] *Ibidem*.

[10] *Ibidem*.

[11] Johnson D. R., Post D., *Law and Borders-The Rise of Law in Cyberspace,* in Stanford Law Review 48:5, 1996, 1367-1402, p. 1367.

[12] Barlow J. P., "*A Declaration of the Independence of Cyberspace"*, Switzerland, 1996. Literally: "legal concepts do not apply".

[13] "Fifth Domain" is intended as the fifth largest domain after land, sea, air and space. It was first used by the Economist in 2010; and later officially recognised by the United States Department of Defense (DoD) in 2011. The DoD indicated in the 2011 DoD Strategy for Operating in Cyberspace that "DoD to organize, train, and equip for cyberspace as we do in air, land, maritime, and space to support national security interests".

[14] Tsagourias N., The legal status of cyberspace: sovereignty redux? In Tsagourias N. and Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, University of Reading, 2021, p. 9.

[15] See eg the Preambles to GA Resolutions 55/28 of 20 November 2000; 56/19 of 29 November 2001; 59/61 of 3 December 2004; 60/45 of 8 December 2005; 61/54 of 6 December 2006; 62/17 of 5 December 2007; 63/37 of 2 December 2008; 64/25 of 2 December 2009; 65/41 of 8 December 2010; 66/24 of 2 December 2011; 67/27 of 3 December 2012; 68/243 of 27 December 2013, 69/28 of 2 December 2014, 70/237 of 23 December 2015, 71/28 of 5 December 2016, 73/27 of 5 December 2018, 74/29 of 12 December 2019, 75/240 of 31 December 2020 and 76/19 of 6 December 2021, 77/36 and 77/37 of 7 December 2022.

[16] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 374.

[17] UN GA, *Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*, UN Doc A/68/98, 24 June 2013, para. 19.

international norms and principles that flow from sovereignty apply to State conduct of ICT-related activities, and to their jurisdiction over ICT infrastructure within their territory."[18]

"The 2015 GGE Report went even further by setting out"[19] "voluntary, non-binding norms, rules or principles of responsible behaviour of States"[20] – "that apply or should apply to cyberspace"[21] - promoting an open, secure, stable, accessible and peaceful environment.[22] "The UN process has also triggered other initiatives, [… such as] the Global Commission on Stability in Cyberspace and the Paris Call for Trust and Security in Cyberspace."[23]

Another notable point regards States tendency to express "their views on a range of issues related to the application of international law in cyberspace: these statements [- generally united by the applicability of the UN Charter, albeit interpreted differently -] constitute not only verbal practice but also important evidence of *opinio juris*, which can contribute to the formation of customary international law specifically addressing cyber operations conducted by states."[24]

Given this, since this moment, no more significant progress was really made, and no treaty[25] "has been adopted so far to specifically regulate cyber operations attributable to states."[26]. As, for instance, if the Russian Federation assumed "for the present, [that] international community has reached consensus on the applicability of the universally accepted principles and norms of international law [in cyberspace]"[27], never quoting any specific exception, in 2023, during the OEGW Fourth Substantive Session, "took a U turn"[28] arguing that International Humanitarian Law rules does not apply to cyberspace[29].

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[18] *Ivi*, para. 20.

[19] Tsagourias N., *The legal status of cyberspace: sovereignty redux?* In Tsagourias N. and Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, University of Reading, 2021, p. 9.

[20] UN GA, *Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*, UN Doc A/70/174, 22 July 2015, para 13.

[21] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 9.

[22] UN GA, *Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*, UN Doc A/70/174, 22 July 2015, para 13.

[23] Lehto M., *The rise of cyber norms*, in *Research Handbook on International Law and Cyberspace*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 32.

[24] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 375.

[25] Note that the Convention on Cybercrime (Budapest, 23 November 2001) 2296 UNTS 167 (Budapest Convention), expressly provides that it does not apply to 'conduct undertaken pursuant to lawful governmental authority' (Council of Europe, Explanatory Report to the Convention on Cybercrime, 23 November 2001, para. 38).

[26] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 374.

[27] Russia contribution to UN GA Resolution, *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States submitted by participating governmental experts in the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security established pursuant to General Assembly resolution 73/266,* UN Doc A/76/136, 13 July 2021, p.79.

[28] Kajander A*., A Tale of Two Draft Resolutions, A Report on the Polarising International Law Discussions at the 2023 OEWG Substantive Sessions,* NATO Cooperative Cyber Defence Centre of Excellence,., Tallinn, 2023, p.7.

[29] Given that the analysis of the applicability of IHL would anyway exile from the study of cyber operations falling below the prohibition on the use of force.

That said, the absence of a *lex specialis* regulating malicious cyber-conducts attributable to States "does not mean that cyber operations can be conducted by states in or against other states without restrictions"[30]; and, also admitting that "there is a need to study [and scientifically determine] how international law applies in cyberspace"[31]; and that "[g]iven the unique attributes of ICTs, additional [ad hoc] norms could be developed over time."[32] "International obligations are technology neutral[33] and "international law, in particular the UN Charter, international human rights law and international humanitarian law, "[34] "can be presumed to apply in cyberspace unless the contrary is demonstrated."[35]

During the next chapter, it will be (*inter alia*) discussed the meaning and evolution of the principle of sovereignty; namely, the source of the Statal authority over its territorial community and how it may apply in cyber context. Said this, when dealing with cyber domain, an obvious and necessary question regards when a State is entitled, under international law – therefore using the standard rules of enforcement based on a person's location, personal jurisdiction or extradition"[36] - to assert its authority in cyber domain.

To fully understand the issue, it seems opportune to briefly discuss fifth domain structure. "The concept of cyberspace, some 35 years ago coined by William Gibson, can be understood"[37] as "to cover all entities that are or may potentially be connected digitally."[38] Cyberspace is a notional environment "comprising the internet together with other computers and telecommunications networks"[39]. Its architecture can be described using a model based on three[40] layers: a 'physical layer' - which is composed by "the (physical) network components"[41], namely all "equipment and

[30] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 375.

[31] Lehto M., *The rise of cyber norms*, in *Research Handbook on International Law and Cyberspace*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 38.

[32] Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, 2013 report, UN Doc. A/68/98 (GGE 2013 Report), para. 16. Emphasis added.

[33] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 375.

[34] Council of the European Union, *Declaration on a Common Understanding of International Law in Cyberspace*, 18 November 2024, p. 4.

[35] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 375.

[36] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 14.

[37] Ducheine P.A.L. Pijpers P.B.M.J., *The notion of cyber operations*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 272.

[38] Gibson W., *Neuromancer*, Penguin Press, 2018.

[39] Delerue F., Zhu L., Wrange P., Yang F., Working Paper: *The principle of sovereignty and the application of international law in cyberspace*, April 2024, p. 9.

[40] The position favourite by most of the Chinese doctrine proposes 4 layers: a physical layer, a logical layer, an application layer and a social layer. See about: Zhang X. and Xu K., *A Study on Cyberspace Sovereignty*, China Legal Science 4:5, 2016, pp. 35–75; Yang F., *The Emergence of the State in Cyberspace and Its Theoretical Bases: Cyber-Sovereignty from the Perspective of Layer Model* '(国家的'浮现'与'正名'—网络空间主权的层级理论模型释义)', Journal of International Law Study (国际法研究), Vol. 4, 2018, pp. 31–47.

[41] Schmitt M.N. (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge, 2017, p. 12.

infrastructure located on national territory"[42] - a 'logical layer' – which "consists of the connections that exist between network devices"[43] – and a "social layer" - which "focuses on the interaction between the users and the computer networks"[44]-.

Therefore, the point regards how Westphalian Actors effectively assert their jurisdiction over a notional environment.

A State exercising its authority over its nationals and over all persons (comprising legal persons) within its territory will assert its jurisdiction over the social layer.

Similarly, a State exercising its authority over cyber infrastructures located on its territory, would be asserting its jurisdiction over the physical layer.

"A State can [also] exercise jurisdiction over information circulated through cyberspace at the point of delivery, the point of reception, or when the information crosses through wires and lines falling within its [borders]"[45]; therefore asserting its jurisdiction over the logical layer.

Standing to the 'effects doctrine'[46] first enunciated in the Lotus case and, since then, generally accepted as a jurisdictional ground[47], a State is also entitled to exercise its jurisdiction "over the effect of cyber acts if they were felt within its territory"[48].

Furthermore, jurisdiction may also be asserted indirectly by a State "when the application of its law has 'spill over' effects on cyberspace. For instance, if a State regulates access to certain materials such as pornographic or terrorist materials."[49]

1.2 Cyberoperations and the prohibition on the use of force

As discussed, given the object of the work, to discuss cyberoperations below the use of force, it seems necessary to firstly delimit the prohibition *de quo*.

"We people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind"[50]. These words poignantly

[42] *International Law applied to operations in cyberspace*, Paper shared by France with the Open-ended working group established by resolution 75/240, p.6.

[43] *Ibidemi*.

[44] Delerue F., Zhu L., Wrange P., Yang F., Working Paper: The principle of sovereignty and the application of international law in cyberspace; April 2024, p. 10.

[45] Tsagourias N., *The legal status of cyberspace: sovereignty redux?,* In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 15.

[46] *The Case of the SS 'Lotus*', France v Turkey, Judgment of 7 September 1927, PCIJ Series A No 10, para. 23.

[47] Tsagourias N., *The legal status of cyberspace: sovereignty redux?,* In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 15.

[48] *Ibidemi*.

[49] *Ivi*, p. 16.

[50] *Charter of the United Nations*, San Francisco, 26 June 1945, Preamble.

reveal how bumpy has been the road to find their essence: the prohibition of threat[51] or use of armed force[52] - and its embedment[53] in *jus cogens*[54] -.

"*Toutes les nations ont un droit des gens; et les Iroquois mêmes, qui mangent leurs prisonniers, en ont un;*"[55] and, nevertheless "tremendous progress has been its dominant trait, there [still] is an unusual amount of futility and mere show in international legal activities"[56], as written in 1947, in a scarily actual way.

Said this, nor the UN Charter neither the ICJ did produced a scientific "methodology"[57] to evaluate if an offensive operation is qualifiable as a prohibited use of force.

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[51] See upon: Doc. 1123, I/8, 6 UNCIO Docs. 65, 1945; Doc. 784, I/1/27, 6 UNCIO Docs. 336, 1945,; Doc. 885, I/1/34, 6 UNCIO Docs. 387, 1945; see also, coherently, Ronzitti N., *Diritto internazionale dei conflitti armati*, Giappichelli, Torino, 2017, p.29.

[52] **UN Charter, art 2.4. precepts "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".**

[53] The *travaux préparatoires* relating to article 2.6 evidence how, at the time of the Charter negotiations, the *prohibition* on the use of force was not accepted as a customary rule by States.

[54] In *Nicaragua* the ICJ was driven to consider this issue at greater length partly because of the US multilateral treaty reservation shaping the decision according to international customary law. The Court approached to the issue adopting the traditional model based on *opinio iuris* and *diurnitas* (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Jurisdiction and Admissibility*,* Judgment, I.C.J. Reports 1984, paras. 202, 204.); identifying the former by reference to General Assembly resolutions - specifically the *Declaration on Friendly Relations* and the *Definition of Aggression* - and, with respect to the latter, stated that "absolutely rigorous conformity with the rule was not necessary. It was sufficient that the practice of states should in general be consistent with such rules, and that instances of state conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule." (Gray C., *The International Court of Justice*, in Tams C.J., Sloan J. (eds.), *The Development of International Law by the International Court of Justice*, Oxford, 2013) Confirming that, "if a State acts in a way *prima facie* incompatible with a given rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule." (*Nicaragua,* Merits, para. 186). See coherently: *Legal consequences of the construction of a wall in the occupied Palestinian territory (Advisory Opinion,* para 87.); UN CGE Report 2013, para.19; UN CGE Report 2015, paras. 25,26,28c; for Ago "the core prohibition contained in art 2(4), that of aggression, is also a peremptory norm of general international law." (Ago R., *Addendum to the Eighth Report on State Responsibility*, 1980, II/1 Yearbook); see also, *inter* alia, Ronzitti N., '*Use of Force, Jus Cogens and State Consent'*, in Cassese S. (ed), *The Current Legal Regulation of the Use of Force*, Nijhoff , Dordrecht, 1986, p. 147; "The law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of jus cogens" (International Law Commission, 'Document A/6309/ Rev.1, *Reports of the International Law Commission on the second part of its seventeenth and on its eighteenth session*, Yearbook of the International Law Commission Vol. II, 1966, p. 76); Gray C., *International Law and the use of force*, OUP, 2018, p. 32; Roscini M., Cyber operations as a use of force, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021; Ronzitti N,. *Diritto Internazionale dei Conflitti Armati*, Giappicheeli, Torino, 2017, pp. 27-29.

[55] Montesquieu, *De l'esprit des lois*, 1848, from Biblioteca Nazionale di Napoli collection. - Ethnologist disserted Montesquieu idea supporting an innate concept of law of *droit des gens* – see about Taube le Baron M., "*Etude sur le développement historique du droit international dans l'Europe oricntale*,", 1926. – And, according to Nussbaum (see below) the first documented example of law of the nation is a treaty – dated about 3100 b.c. – between the Babylonian city of *Umma* and *Lagash.*

[56] Nussbaum A., *A Concise History Of The Law Of Nations*, Macmillan, New York, 1947, p. ix.

[57] See about: Gray C., *"The International Court of Justice and the Use of Force"*, Tams C.J., and Sloan J. (eds), *The Development of International Law by the International Court of Justice*, Oxford, 2013, pp. 243-246.

Art. 2(4) and its customary counterpart only protect from armed force.[58] 'Armed' means "[e]quipped with a weapon" or "[i]nvolving the use of a weapon"[59]; however, armed force is not only about the use of weaponry[60], as, for instance, "the violation of airspace or territorial waters by military aircraft or ships, are usually treated as violations of sovereignty, but not as a use of force under Article 2(4)."[61] And, to fully understand its essence, it is necessary to take a step back.

Literature usually refers to the prohibition on the use of force and the principle of sovereignty as the constitutive and fundamental principles of modern international law. The two rules are profoundly inter-related and consequential (and, as will be widely discussed in Chapter II) sovereignty is about the whole sphere of rights of a State *vis-à-vis* with Others.[62] The principle of non-intervention (which will be also discussed below) evolved as a sovereignty corollary, protecting the domestic jurisdiction of a State from coercion. "Indeed, 'armed force' is nothing other than an extreme form of intervention which, like economic and political coercion, is characterized by the intention of the coercing State to compel the victim State into doing or not doing something through a 'dictatorial interference' in its internal or external affairs."[63] Therefore "unlike mere intervention, armed force entails the cumulative presence of two elements: the use of weapons and an intention to coerce."[64] International law did not produced a conventional definition of weapon, but, analysing different sources[65], one could arguably sustain that the a weapon is an instrument capable of producing violent consequences.[66] "Weapons, therefore, are identified by their effects, not by the mechanisms through which they produce destruction or damage. If this is correct, armed force prohibited by Article 2(4) could be defined as the form of intervention by a State to exercise coercion on another State that involves the use of instruments (weapons) capable of producing violent consequences."[67]

The ICJ, in the famous Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, precepted that the prohibition - albeit limited to the armed force - applies to any use of it, regardless of the means employed[68], therefore the rule *de quo* clearly has the potential to apply to cyber conducts

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[58] The point will be better discussed. See upon: Brazil's draft of Article 2(4), UN Charter *travaux préparatoires*; see also upon: Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In *Journal of Conflict and Security Law* 17, no. 2, 2012, pp. 215-216.

[59] Garner B.A. (ed.), in *Black's Law Dictionary*, Thomson-West, 2009, p.123.

[60] Roscini M., *Cyber operations as a use of force*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 300.

[61] *Ibidem*.

[62] See: pp. 21-23 of the work.

[63] Roscini M., *Cyber Operations and the Use of Force in International Law*, Oxford, 2014, p. 46.

[64] *Ivi*, p. 301.

[65] *Black's Law Dictionary* (p. 1730) defines weapon as" [a]n instrument used or designed to be used to injure or kill someone". The *ICRC Study on Customary International Humanitarian Law* defines weapons as 'means to commit acts of violence against human or material enemy forces". Rule 1(ff) of *the HPCR Manual on International Law Applicable to Air and Missile Warfare* (*HPCR Manual*) concentrates on the capability to cause either injury/death of persons or damage/destruction of objects. See Similarly Dinstein Y., *The Conduct of Hostilities under the Law of International Armed Conflict*, CUP, 2016, p. 2.

[66] Roscini M., *Cyber operations as a use of force*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p ., p. 302.

[67] *Ibidem*.

[68] ICJ Reports 1996, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, para. 39; see also coherently, *inter alia*, the National Positions Papers of Brazil, France, Germany, the Netherlands and Sweden.

too. This is also emphasized by an established and uniform *opinio*[69]*;* as clearly remarked, *inter alia*, by the Commentary to the HPCR Manual standing to which '[m]eans of warfare include non-kinetic systems, such as those used in EW [electronic warfare] and CNAs [Computer Network Attacks]. The means would include the computer and computer code used to execute the attack, together with all associated equipment"[70]; and by the International Committee of the Red Cross that precepted that when States' cyber capabilities have the potential to qualify as weapons, means and methods of warfare 'be they lethal or non-lethal', (States) remain bound to the obligations flowing from Art. 36 of the 1977 Protocol I Additional to the 1949 Geneva Conventions on the Protection of Victims of War.[71]

Therefore, one could arguably sustain that, "any cyber operation that causes or is reasonably likely to cause the damaging consequences normally produced by kinetic weapons would be a use of armed force"[72]; or, using the shorthand term chosen by the Tallinn Group of Experts to capture quantitative and qualitative factors - such as, inter alia, severity, immediacy, directness, invasiveness, measurability, military character – that any cyber operation that causes or is reasonably likely to cause the damaging comparable for "scale and effects"[73] to kinetic weapons would breach the prohibition *de quo*.

"There is general agreement that, if a cyber attack employs capabilities that cause, or are reasonably likely to cause, physical damage to property, loss of life or injury of persons in a manner equivalent to kinetic attacks through the alteration, deletion or corruption of software or data, it will fall under the prohibition contained in Article 2(4) of the UN Charter."[74] Very obvious examples may be represented, *inter alia*, by a cyberattack which tampers with the navigation systems of a plane causing its crash or by an attack which "interfere[s] with and corrupt[s] the operating system of a power station and cause a nuclear meltdown."[75] What above anchors on the view that cyber operations indirectly[76] can produce multiple effects. [77] "The primary effects are those on the attacked computers, systems or networks; […] the secondary are those on the infrastructure operated by the attacked system or network, while the tertiary effects are those on the persons affected by the attack"[78].

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[69] See upon, *inter alia*, National Position Paper of the African Union (2024), European Union (2024); Australia (2020); Austria (2024); Brazil (2021); Canada (2022); Finland (2020); France (2019); Germany (2021); Israel (2020); Italy (2021); Japan (2021); Netherlands (2019); Pakistan (2023); United Kingdom (2021); United States of America (2021).

[70] HPCR Manual, p. 31.

[71] ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977*, International Review of the Red Cross 88, 2006, 931-956, p 937.

[72] Roscini M., *Cyber Operations and the Use of Force in International Law*, Oxford, 2014, p. 48.

[73] Schmitt M. N., (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge, 2017, pp. 332-337.

[74] Roscini M., *Cyber operations as a use of force*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021,, p. 305.

[75] Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In Journal of Conflict and Security Law 17: 2, 2012, p. 212.

[76] In *Nicaragua* the ICJ expressly precepted that armed intervention may occur either directly or indirectly. ICJ Reports (1986), *Case Concerning Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, para. 205.

[77] See upon: Owens W. A. Dam K. A. Lin H. S., *Technology, Policy, Law, and Ethics Regarding U.S. Acquisition and Use of Cyberattack Capabilities,* National Academies Press, Washington, 2009, p 80.

[78] Roscini M., *Cyber Operations and the Use of Force in International Law,* 2014, Oxford, pp. 52-53.

"No cyber attack has so far been reported to have caused injuries or deaths of persons. If one excludes the almost legendary case of the explosion of a Soviet gas pipeline in Siberia in June 1982, apparently caused by a logic bomb inserted in the computer-control system by the Central Intelligence Agency"[79] and the Springhill Medical Center ransomware attack. While different cyberattacks producing secondary physical destruction can be mentioned such as, *inter alia*, the 2022 *Predatory Sparrow* operation against Iranian steel maker[80]; the 2014 *Steel mill* in Germany[81]; and the well-known 2010 *Stuxnet*.

Said this, the issue of determining the exact threshold between a prohibited intervention and a use of force appears much less consensual, as emphasized by the issue of cyberattacks which do not produce any physical damage, but still have a destructive impact.

A first view argues that, considering that "Article 2(4) is an effects-based prohibition[,] the generally accepted interpretation of Article 2(4) is that only those interventions that produce physical damage will be regarded as an unlawful use of force."[82] Brownlie, well before the arise of cyber means, identified "destruction to life and property"[83] as "litmus test for determining whether an unlawful use has been committed."[84] And, coherently, Harold Koh argued that "[c]yber activities that proximately result in death, injury or significant destruction' […] would be considered a use of force."[85] Buchan also precised that an "interpretive reorientation"[86] of the term 'force' would appear unlikely in the absence of any Statal practice or Treaty Law in support.[87]

Other "commentators point[ed] out that in the Information Age an attack against computers servers or information located on them can be just as destructive as an attack that produces physical damage."[88] And, considering art. 2(4) anachronistic and unable to protect states from new methods of warfare like cyberattacks[89]; opening their calls for a "new, comprehensive legal framework"[90] expressly devised for these new means of coercion.

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[79] Roscini M*., Cyber operations as a use of force*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p. 306.

[80] See upon on the *Cyber Law Toolkit*.

[81] *Ibidem*.

[82] Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In *Journal of Conflict and Security Law* 17:2, 2012, p. 212.

[83] Brownlie I., *International Law and the Use of Force by States*, Clarendon, Oxford, 1963, p. 362.

[84] Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In *Journal of Conflict and Security Law* 17, no. 2, 2012, p. 217.

[85] Koh H., *International law in cyberspace,* Speech at the USCYBERCOM, 18 September 2012, in Guymon CL. D. (ed), *Digest of United States Practice in International Law*, United States Department of State, 2012, pp. 593, 595 (emphasis added).

[86] Waxman M., *Cyber-Attacks and the Use of Force: Back to the Future of Article 2(4)*, 36 The Yale Journal of International Law, 2011, 421-458, p. 437.

[87] Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In *Journal of Conflict and Security Law* 17, no. 2, 2012, p. 214.

[88] *Ivi*, p. 213.

[89] Hoisington M., *Cyberwarfare and the Use of Force Giving Rise to the Right of Self-Defense*, 32 Boston College Intl Comparative L Rev, 2009, p. 454.

[90] Hathaway O. and Others, *The Law of Cyber-Attack*, 100 California L Rev, 2012, 5.

It seems worth to note that the Russian Federation, co-sponsored by Belarus, North Korea, Nicaragua and Venezuela, proposed the adoption of a Convention[91] to answer to the "main threats to international information security"[92] and the "prevention and resolution of international conflicts in the global information space."[93] "This proposal has [however] been met with considerable resistance from numerous states and organisations, such as Switzerland[94], Israel[95] and the European Union[96], which all consider it imperative to first clarify how the existing rules apply before creating any new binding convention."[97]

A third position sustains "that cyber operations causing mere loss of functionality of infrastructures could also be considered as falling under the prohibitive scope of Article 2(4) if the loss of functionality is significant enough to affect State security, or, to use the words of the 2012 US Presidential Policy Directive"[98] "national security, public safety, national economic security, the safe and reliable functioning of 'critical infrastructure', and the availability of 'key resources'."[99]

For Roscini an evolutionary interpretation of the art. 2(4) - which is also implied in Article 31(3)(b) of the Vienna Convention on the Law of Treaties - adopted on several occasions by the ICJ[100], would imply that "where the parties have used generic terms in a treaty ... [they] must be presumed, as a general rule, to have intended those terms to have an evolving meaning."[101]

> Coherently, Norway stated that "Cyber operations that cause death or injury to persons or physical damage to or the destruction of objects could clearly amount to the use of force. Likewise, a cyber operation causing severe disruption to the functioning of the State such as the use of crypto viruses or other forms of digital sabotage against governmental or private power grid or telecommunications infrastructure, […] could amount to the use of force in violation of Article 2(4). Similarly, the use of crypto viruses or other forms of digital sabotage against a State's financial and banking system, or other operations that cause widespread economic effects and destabilisation, may amount to the use of force in violation of Article 2(4)."[102]

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[91] Proposal of the Russian Federation Cosponsors: Republic of Belarus, Democratic People's Republic of Korea, Republic of Nicaragua, Syrian Arab Republic, Bolivarian Republic of Venezuela, UPDATED CONCEPT OF THE CONVENTION OF THE UNITED NATIONS ON ENSURING INTERNATIONAL INFORMATION SECURITY.

[92] *Ivi*, p. 2.

[93] *Ivi*, p. 3.

[94] *Déclaration de la Suisse, Groupe de travail à composition non limitée sur la sécurité du numérique et de son utilisation (2021-2025)*, Session formelle, 06 – 10 Mars 2023, Déclaration sur le droit international, New York, 08 Mars 2023.

[95] Statement by Mr. Amir Sagie - Cyber Affairs Coordinator, MFA, Jerusalem - Open-ended Working Group on security of and in the use of information and communications technologies Fourth Substantive Session, United Nations, New York, 8 March 2023.

[96] EU statement - Thematic Session: International Law, Open-Ended Working Group (OEWG) on security of and in the use of information and communications technologies 2021-2025 Intersessional Meeting, 23-26 May 2023.

[97] Kajander A., *Unnecessary Repetition: Russia's Latest Attempt at a New UN Convention on Cyberspace*, p.2.

[98] Roscini M., *Cyber operations as a use of force*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p, p. 308.

[99] *US Presidential Policy Directive/PPD–20* October 2012, p. 3.

[100] See, for instance, *Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* (*1970*), Adrisory Opinion, I.C.J. Reports 1971, para 53,

[101] *Dispute regarding Navigational and Related Rights* (*Costa Rica v. Nicaragua*), Judgment, I.C.J. Reports 2009., para. 66.

[102] UNODA, A/76/136, Official compendium of voluntary national contributions about how international law applies to the use of information and communications technologies by States, August 2021, p. 70.

In response one could sustain that "Article 32 VCLT provides that if after the application of Article 31 the meaning of the term or provision is still ambiguous recourse can be had to the preparatory materials of the treaty."[103] And, in the context of the use of force, it is well known that, during the drafting of the UN Charter, the Brazilian delegation propose to prohibit under the Article 2(4) "the threat or use of force and the threat or use of economic measures in any manner inconsistent with the purposes of the Organization"[104] was vetoed by the committee; revealing "that the drafters did not intend to extent the prohibition to economic coercion and political pressures."[105] Therefore, using Netherlands words, "the customary interpretation of this provision is that all forms of armed force are prohibited. Purely economic, diplomatic and political pressure or coercion is not defined as force under article 2, paragraph 4."[106]

However, economic coercion, as will be discussed, means coerce using economic means of pressure – or in UE words, "by applying or threatening to apply measures affecting trade or investment […] to prevent or obtain the cessation, modification or adoption of a particular act by [a State]"[107] - therefore, with respect of a "cyberattack producing significant economic effects such as the collapse of a State's financial system or parts of its economy"[108], the economic nature of the target would not appear the key factor when discussing economic coercion.

> Emphasizing – "if the stock exchange or other financial institutions were to be bombed kinetically and the markets disrupted as a consequence, this would certainly be considered a use of armed force, and not economic coercion, even though the economic consequences of the action would probably outweigh the physical damage to the buildings: one cannot see why the same conclusion should not apply when the stock exchange, instead of being bombed, is shut down for an extended period of time by a virus in its computer system; […] having more in common with a surgical kinetic attack [than an embargo]".[109]

Therefore, for instance, one could similarly sustain that a campaign of cyberattacks against the Governmental, Military and Civil Satellites which serve the telecommunications and the internet operations of a State, cutting them off for several weeks, would be a severe violation of the UN Charter producing effects comparable to a kinetic attack, violating, *inter alia*, art. 2(4).

Ad colorandum, as noted by Roscini, this might also be interpreted as reflection of the "trend in modern warfare to favour incapacitation to destruction. In the 1999 Operation Allied Force against Yugoslavia, for instance, NATO targeted switching stations instead of generation stations to enable fast repair after the conflict and used carbon-graphite filaments in such a way as to cause only temporary incapacitation of electricity."[110] Similarly, during the *Iraqi Freedom* operation, the Rules

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[103] Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In *Journal of Conflict and Security Law* 17, no. 2, 2012, p. 216.

[104] 6 UNCIO Docs, 1945, p. 559.

[105] Roscini M., *World Wide Warfare – Jus ad bellum and the Use of Force*, 14 Max Planck Ybk UNL, 2010, p. 105.

[106] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p. 4.

[107] European Commission, *Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries*, Brussels, 8 December 2021, Art. 2.1.

[108] Finland's national position, *International law and cyberspace*, p.6.

[109] Roscini M., *Cyber Operations and the Use of Force in International Law,* 2014, Oxford: Oxford University Press, p. 62.

[110] Roscini M., Cyber operations as a use of force, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, pp. 310-311. See also upon: "Steiger D., *Civilian objects*, in Wolfrum (ed), Max Planck Encyclopedia (n 26) vol II, p. 187.

of Engagement also provided attacks on the enemy infrastructure, lines of communication and economic objects aimed at disabling and disrupting them, avoiding destruction whenever possible.[111]

Said this, it must also be expressly remarked that, in general terms - as will be discussed - it would appear more likely that the absolute majority of cyberattacks causing loss of functionality – in the absence of any secondary or tertiary effect – would qualify as prohibited intervention rather than a violation of the art. 2(4). A prohibited use of force is and must remain an exceptionally severe breach of international law; and, if everything is use of force, nothing is.[112] Therefore, only cyberattacks that "significantly disrupt the functioning of critical infrastructure[113] - intending critical as "vital for national security, including individual, societal, and governmental security"[114] - would eventually be qualifiable as a breach of the art. 2(4).[115]

It is impossible to set a standard threshold to evaluate whether the operations *de quo* breached the art. 2(4), however, it shall be jointly considered – on a case-by-case approach – the 'scale' and 'effects' (including the temporal and economic reparatory efforts); the nature and the functions of the target; as well as the cyberattack destructive/disruptive potential, namely its payload.[116]

Therefore, for instance, "a cyber attack that shuts down a university network is not a use of force, even if it causes prolonged and severe service disruption, because the services affected are not critical."[117] While, when considering an attack against a power plant (which does not produce any secondary or tertiary destruction), one could argue that whether it "shuts down the national grid [for a week], and thus leaves millions of people without electricity"[118] it would seem comparable for scale and effects to a kinetic attack. Differently, whether the malicious consequences of the attack would be limited by the target State quickly recovering their distribution systems using manual operation,[119] albeit hitting a vital infrastructure, it would appear more likely to qualify as a prohibited intervention, as will be discussed.

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[111] Human Rights Watch, *Off target. The conduct of the war and civilian casualties in Iraq*, 2003, pp. 138–9; see also: Roscini M., Cyber operations as a use of force, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p. 311.

[112] Thomarson K.K. similarly wrote "If Everything is Genocide, Nothing Is". Thomason K.K., *If Everything is Genocide, Nothing Is: Scepticism and the Concept of Genocide*, Journal of Genocide Research vol 20, 2018, 412-416.

[113] Roscini M., *Cyber Operations and the Use of Force in International Law,* 2014, Oxford, p. 63.

[114] *Ivi*, p. 58.

[115] See coherently: Roscini M., *Cyber Operations and the Use of Force in International Law,* 2014, Oxford: Oxford University Press, p. 63; Antolin-Jenkins M., *Defining the Parameters of Cyberwar Operations: Looking for Law in All the Wrong Places?*, Naval Law Review 51, 2005, p 172; Ziolkowski K., *Computer Network Operations and the Law of Armed Conflict*, Military Law and Law of War Review 49:1, 2010, 47-94, pp 74–75.

[116] In cyber context the payload is a clear manifestation of the offending State's *animus*. For instance Roscini noted that "*animus aggressionis* means a deliberate intention to cause damage to property, people or systems of a certain state. In the cyber context, this hostile intention can be inferred from 'such factors as persistence, sophistication of methods used, targeting of especially sensitive systems, and actual damage done'." Roscini M., *Cyber Operations and the Use of Force in International Law,* 2014, Oxford, p. 77.

[117] Roscini M., Cyber operations as a use of force, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 313.

[118] *Ibidem*.

[119] This example is based on the '*Cyberattack against the Ukrainian power grid'.* See upon: US Department of Homeland Security NCCIC, *ICS-CERT INCIDENT ALERT IR-ALERT-H-16-043-01AP CYBER-ATTACK AGAINST UKRAINIAN CRITICAL INFRASTRUCTURE, UPDATE A*, 7 March 2016.

To precise, note that the ICJ, in the context of non-cyber means, precepted that a minimum use of force might be a "natural and reasonable" interpretation of the prohibition.[120] And that, minimum manifestations of armed force – such as boarding, inspection, arrest (and more generally those measures commonly understood as enforcement of conservation and management ones)[121]- would be consistent with the art. 2(4). Thus, cyberattacks that produce minimal physical damage, such as an operation that (physically) harm the illumination of the façade of a governmental building, given the physical consequences, would not appear comparable for scale and effects to a non-cyber attack; seeming more likely to qualify as a prohibited intervention.[122]

[120] ICJ Reports 1998, *Fisheries Jurisdiction* (Spain v Canada), Judgment, 4 December 1998, para. 84; see also similarly: International Law Reports 35 (1967), *Report of the Commission of Inquiry (Denmark–United Kingdom) on the Red Crusader incident*, 23 March 1962, pp 485-487.

[121] *Ibidem.*

[122] To precise note also that the ICJ, in *Corfu Channel* (para. 35.), analysing the UK mine-clearing operations, argued that a mere display of force would not be *per se* unlawful, whether it is not aimed at exercising political pressure. The point will be better discussed.

Chapter 2 Cyberoperations and international law: a reconstruction of the principle of Sovereignty and Non-Intervention, and the People's Right to Self-Determination

2.1 The Sovereignty Principle

"Sovereignty is a cornerstone and pivotal principle of international law, and, is also the foundation on which various rules and principles of international law are grounded,"[123] such as the principle of equality and non-intervention[124], the prohibition on the use of force and the right of self-defence.[125]

"The rules and practices of sovereignty did not begin at any particular point in time. Rather they evolved over several centuries."[126]

2.1.1 The evolution of *princeps'* authority

A far ancestor of the modern concept of sovereignty can be traced back to the Imperial Rome. The *lex regia*[127] was "the legal device or instrument enacted to effect the transfer of plenary public authority from the Roman people to the Roman emperor. Its purpose was to function not only as a kind of "enabling act" whereby the powers traditionally held by the populus in the Republic would thereafter be exercised by the *princeps"*[128]. Or, using Clifford Ando image, a "(re)foundation of Rome itself *de novo*"[129]. To precise, "*populus* as the sole source of princely authority became instead more of a perfunctory afterthought"[130] part of Roman popular civic mythology.

After centuries of dormancy, in the 11th century Roman law texts were rediscovered and methodically studied and reinterpreted in Italian *Università*, renewing the interest in legal science and giving a

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[123] Delerue F., Zhu L., Wrange P., Yang F., Working Paper: The principle of sovereignty and the application of international law in cyberspace; April 2024, p. 6.

[124] *Ibidem*.

[125] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p. 1.

[126] Krasner S. D., *The durability of organized hypocrisy*, in Kalmo H. Skinner Q. (eds.), *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* Cambridge, 2010, p. 96.

[127] It was an "*ex post facto juristic construction* [… - traceable since 69 C.E. *lex de imperio Vespasiani* discovered by Cola di Rienzo[127] -], postulated by later Imperial jurists - above all, the third-century jurist, Ulpian - to legitimize the authority of the Roman Emperor by tracing the roots of Imperial power to a comitial act of the Roman populus to invest *imperium* in *Augustus*"[127] Lee D., *The Lex Regia: The Theory of Popular Sovereignty in the Roman Law Tradition', Popular Sovereignty in Early Modern Constitutional Thought*, Oxford, 2016, p.28. See coherently: See coherently: Bodin J, *Commonweale* p. 98 [1.8]; cp. *Methodus* p. 177 and *Commonweale* pp.188–89 [2.1], p. 244 [2.7], p. 249 [2.7], see coherently Nicholas de Grouchy studies on the Roman comitia, *De Comitiis Romanorum* (Paris, 1555). On Grouchy's influence on Bodin, see Tuck R., "*Hobbes and Democracy," Rethinking the Foundations of Modern Political Thought*, (eds.) Brett A., Tully J. Hamilton-Bleakley H., Cambridge, 2006, pp. 182–3.

[128] Lee D., *The Lex Regia: The Theory of Popular Sovereignty in the Roman Law Tradition', Popular Sovereignty in Early Modern Constitutional Thought*, Oxford, 2016, p.27.

[129] Ando C., *The Origins and Import of Republican Constitutionalism*, Cardozo Law Review 34:3, 2013, 917–36, p. 933.

[130] Lee D., *The Lex Regia: The Theory of Popular Sovereignty in the Roman Law Tradition', Popular Sovereignty in Early Modern Constitutional Thought*, Oxford, 2016*,* p.31.

"second life of Roman law"[131]. In this context, Italian glossators started to envision rules of *principi* and *signori* and their source as something similar to constitutional norms.[132]

For Irnerius[133] the People of Republican Rome may have had the power to "make and unmake law […], but they had fully lost that capacity in his day "because such power has already been [permanently] transferred (*translata*) to the Emperor." As standing to the Digest (D.1.3.32) "on the residual ability of the people to "abrogate" (*abrogentur*) a law simply by the "tacit consent of all the people through desuetude" - *tacito consensu omnium per desuetudinem* - was no longer valid and, thus, should be treated merely as a curious historical artifact of pre-Imperial Rome (*sua tempora*)"[134] as "the outcome of the *lex regia,* which constituted the Augustan regime, was an irreversible and historically unique act. Just because the people were, historically, the source of the emperor's power, it did not follow from that fact alone that the people were entitled to recover it at some later date."[135]

> "One important consequence of the translation theory is that it seems to make popular sovereignty not so much the antithesis of princely absolutism, but rather its original foundation […] By co-opting the Republican language of popular sovereignty in this way, these jurists have managed to turn the *lex regia* into a formula that effectively muzzles the popular will while lending popular legitimacy to even the most absolutist arrangements of princely rule" [136];

envisioning (all in all) 'popular sovereignty doctrines' similarly to later natural rights theorists as Hobbes and Locke

In the 13th century the *Università di Bologna* Glossators developed the Brocard *rex superiorem non recognoscens, in regno suo est imperator;* a theory largely used as basis for the independence claims from the Empire of the French, Spanish and Sicilian monarchies.[137] The *maxima* is composed, on one side by the denial of any superior authority by the king - the *rex superiorem non recognoscens* - and, on the other, by the attribution of the exclusive right to *imperium* over its territorial community - *rex in regno suo est imperator* -[138]; assuming a pivotal moment at the collapse of the Holy Roman Empire, when most of the forms of States dependencies from the Emperor and the Pope fell off. In this context, the absolute sovereigns exercised their powers administering the(ir) territory, and all persons and things there on, as his own property[139]. Rolando Quadri emphasized the essence of the

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[131] Vinogradoff P., *Roman Law in Medieval Europe*, Clarendon Press, Oxford, 1929, p. 13.

[132] Lee D., *The Lex Regia: The Theory of Popular Sovereignty in the Roman Law Tradition', Popular Sovereignty in Early Modern Constitutional Thought*, Oxford, 2016, p. 33.

[133] His positions represented the standard doctrine for many later Glossators.

[134] *Ivi*, p.34; on *Digestus:* Irnerius on D.1.3.32, quoted in Savigny F.C., *Geschichte des Römischen Rechts im Mittelalter* Mohr, Heidelberg, 1815, 4:387 (texts for n.49). Savigny is citing MS.Par.4451.

[135] Lee D., *The Lex Regia: The Theory of Popular Sovereignty in the Roman Law Tradition', Popular Sovereignty in Early Modern Constitutional Thought*, Oxford, 2016, p. 34. Coherently, for Placentinus (He studied at Università di Bologna and later taught civil law at Montpellier) "the people, in transferring (*transferendo*) their public power to the Emperor, reserved nothing for themselves". (Placentinus, *Summa Institutionum* 1.2, quoted in Carlyle, *History of Mediaeval Political Theory 2*:60, n.2.).

[136] Lee D., *The Lex Regia: The Theory of Popular Sovereignty in the Roman Law Tradition', Popular Sovereignty in Early Modern Constitutional Thought*, Oxford, 2016, p. 34.

[137] Calasso F., *I glossatori e la teoria della sovranità*, Giuffrè 1957, pp. 34-36. Coherently, in 1202, Pope Innocenzo III declared that "*insurper cum rex superiorem in temporalisbus minime recognoscat*".

[138] *Ivi,* pp. 39-41. Bodin preferred to employ the *maxima* "*universitates superiorem non recognoscentes*". (as quoted in Bodin J., *Les six livres de la République*, (eds.) Fremont C., Couzinetand M.D. Rochais H., Paris, 1986, Book I and passim).

[139] Conforti B., *Diritto internazionale*, Napoli, 2013, p. 201.

maxima writing that "the territory was all: persons were pertinence of the territory (*Quisquis in territorio meo est, meus subditus est).* State power over persons and things was a mere manifestation derived from the king's power over the territory."[140]

A key moment for the development of the modern concept of sovereignty was represented by Marsilio da Padova 'Radical Aristotelians' *Defensor pacis*, which proposed - on earth - the submission of the spiritual power to the civil governors and to its acts – reserving for the guide of revelation only eternal life –. Marsilio 'Radical Aristotelians' ideas are the basis of the modern political thought[141] arriving (especially during the XIX and XX Centuries) to represent the basis for the development of *Politic Averroism* thesis.[142]

Jean Bodin is often defined the father of the sovereignty principle[143], the Author envisioned *souveraineté* as an absolute power[144] (which is different than 'absolutism'[145]), declining the principle like *"la puissance absolue* **&** *perpetuelle d'une Republique"*[146]. From a legal perspective, the pivotal aspect of sovereignty for Bodin is the "[*roi*] *puissance de donner, & casser*[147] *la loi*"[148], considering that from the "*imperium*" descend the idea of a "*Potestas Absuluta*" – as described by *Innocenzo IV* - which "*ordinario iuri derogare potest*".[149] It would be the imperium itself the legal basis of king's rights (called *Regalia Maiora*) "to declare war and conclude peace, the right of final appeal, the right to appoint and dismiss magistrates, and the right to grant pardons and other dispensations against the rigour of the law – [these rights] were indivisibly bundled together and really just various 'legislative' acts, precisely because they were formal expressions of sovereign imperium."[150]

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[140] Quadri R., *Diritto Internazionale Pubblico*, Liguori, Napoli, 1966, p. 628.

[141] Piaia G., *Marsilio da Padova, Il Contributo italiano alla storia del Pensiero: Filosofia*, in Treccani, 2012. Last accessed 2025.

[142] See for instance upon: Gilson E., La philosophie au moyen âge, Payot, Paris, 1922.

[143] he did not coin the term *souveraineté,* see upon David M., *La souveraineté et les limites juridiques du pouvoir monarchique du IXe au XVe siècle*, Dalloz, Paris, 1954; Dennert J., *Ursprung und Begriff der Souveränität*, Fischer, Stuttgart, 1964; Quaritsch H, *Souveränität: Entstehung und Entwicklung des Begriff in Frankreich und Deutschland vom 13. Jahrhundert bis 1806,* Duncker & Humblot, Frankfurt, 1986; but "offered what was perhaps the first systematic treatment of this mystical concept in the West." (Lee D., *The Right of Sovereignty: Jean Bodin on the Sovereign State and the Law of Nations, The History and Theory of International Law*, Oxford, 2021, p.7).

[144] Lee D., *The Right of Sovereignty: Jean Bodin on the Sovereign State and the Law of Nations, The History and Theory of International Law*, Oxford, 2021, p.148. To precise, "for Bodin, 'absolute power' was not 'absolutist'" considering how he firmly rejected the thesis of arbitrary rule that would eventually [later] be associated with the term, 'absolutism'." (Lee, p. 149).

[145] The term absolutism was developed during the French Revolution to reinterpret the Ancien Régime Institutions; it is attributed to François-René de Chateaubriand, who used the term in his 1797 Essai sur les revolutions, over two centuries after Bodin's death. As noted by Lee, as above, p.149, note 4.

[146] Adapted to modern French, Bodin J., *Les six livres de la Republique*, 1577, p.125, original text: "*A fouucraineté eft la puiflànce abfoluë & perpetuelle d'vne Republique*" Book From the Biblioteca Nazionale Centrale di Roma collection.

[147] The King power to make and un-make the law has largely been investigated, see, for example: *Cicero,* classification "*derogare, abrogare, subrogare, obrogare*" from *De Re Publica* and Kelsen positive and negative legislation from *General Theory of Law and State*.

[148] Adapted, Bodin J., *Les six livres de la Republique*, 1577, p.199. Book From the Biblioteca Nazionale Centrale di Roma collection.

[149] Innocenzo IV [Sinibaldo Fieschi], *Commentaria Super Libros Quinque Decretalium*, Frankfurt am Main, 1570, 49vo–50ro [Innocenzo IV on X.1.6.20, s.v.: *Ordinatione*].

[150] Lee D., *The Right of Sovereignty: Jean Bodin on the Sovereign State and the Law of Nations, The History and Theory of International Law*, Oxford, 2021, p.152.

One hundred years after Bodin, Thomas Hobbes argued in his Leviathan that originally human life was in a 'state of nature'[151], until, as consequence of a (social) contract among individuals, persons would have "secure[d] peace in exchange for freedom"[152], entering the civil society. Hobbesian "Mortall God"[153], in fact, does not only administer physical power, being also the Protestant God[154]; emphasizing how for the Author the source of sovereignty is not only positive, but also natural.[155]

John Locke, albeit influenced by Hobbes ideas, envisioned a social contract which no longer derives from an agreement among individuals, but between individuals and the king; the contract designates the depositary of power[156] and the sovereign "can therefore be held accountable for a violation of the contract. […] As a result, Locke's approach to sovereignty, by contrast to Bodin's or Hobbes', […] conceives of a limited sovereign but also of a legal sovereign that is a source of law but at the same time bound by its own laws. "[157] "Monarchical sovereignty implies that the full recognition of the monarch's quality of being as a person will best serve the interest of the community. Yet, ascribing 'rights' to him also implies that he is not the sole power in the state."[158]

For Rousseau, in his *Discours sur l'origine de l'inegalité*, the key moment for the development of "*nascent societies*" is represented by the born of "private property" - namely the moment "*de facto* ownership [developed] into rightful ownership"[159]-. The Genevan Author believed into the possibility to create a genuine social contract, driven by the *Volonté Générale*, to "*produit un Corps moral & collectif composé d'autant de membres que l'assemblée a de voix, lequel reçoit de ce même acte son unité, son moi commun, sa vie & sa volonté. Cette personne publique, qui se forme ainsi par l'union de toutes les autres*"[160], imagining the State as a moral entity. Thus, for Rousseau, "Natural law is

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[151] Characterized by disorder and war.

[152] Besson S., in Wolfrum R. (ed), MPEIL, 2014, para. 19. In Quadri words "the territory was all: persons were pertinence of the territory (*Quisquis in territorio meo est, meus subditus est*). State power over persons and things was a mere manifestation derived from the king's power over the territory." (Quadri R. *Diritto Internazionale Pubblico*, Napoli: Liguori, 1966, p. 628.).

[153] See, for instance: Hobbes T., *Leviathan,* chapt. 17 p. 73: "This is the Generation of that great LEVIATHAN, or rather (to speak more reverently) of that Mortall God, to which we owe under the Immortal God, our peace and defense." See also: Li Z., *Why the Leviathan Is a Mortal God: From Nominalism to Mortalism*, in The Asian Conference on the Social Sciences 2023: Official Conference Proceedings, 31-41: "As God, he is immortal, but as an artificial God, he is mortal".

[154] The term sovereignty was largely used by theologist to describe God's Divinity and Supremacy, see about: Mackie J.L., *Evil and Omnipotence,* Mind 64:254, 1955; and Kantorowicz E., *The King's Two Bodies: A Study in Medieval Political Theology*, Princeton, 1957, but it was during the XVIII Century that it assumes the modern notion.

[155] The orders of the Mortall God shall free the will of His subjects as "the Common-peoples minds, unlesse they be tainted with [false opinions] are like clean paper, fit to receive whatsoever by Publique Authority shall be imprinted in them." (Hobbes T., *Leviathan*, (ed.) Tuck R., Cambridge, 1996, p. 233). To precise, in this context, "the difficulty' then consists in 'the evidence of the authority' derived from the sovereign. Authority is a matter of persons. The authority of the law entirely depends on the ability of law to bear on its face certain evident, knowable (Bentham would later use the word 'cognoscible'), signs of the sovereign's person." (Baranger, as in note 158, at p. 58) Bodin thesis is dependent on a reflexion of the King's will as manifestation of law.

[156] This can be inferred from Locke's *First Treatise,* from para. 81.

[157] Besson S., Sovereignty, in Wolfrum R. (ed), MPEIL, 2014, para. 21.

[158] Baranger D., *The apparition of sovereignty,* in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* (eds.) Kalmo H. Skinner Q., Cambridge, 2010, p. 54.

[159] Britannica Encyclopedia, *The social contract, The social contract in Rousseau*, last update 2025.

[160] Rousseau J.J., *Du Contrat Social ou Principes du droit politique*, Chapter VI, 1758- 1761(première version), Bibliothéque publique et universitaire de Geneve.

irrelevant […] because sovereignty, conceived as a moral property, can never be an attribute of a person or a group not coextensive with the people as a whole."[161] This means that the (king's *sujets*) obligation source is physical not moral, emphasizing how authority must remain submitted to the *Volonté Générale.* "Political sovereignty becomes a mere reflection of popular sovereignty; if the sovereign does not respect popular will, it risks losing its attributions. Seen in those terms, sovereignty can both be deemed absolute when it is original, and limited when it corresponds to derived political or institutional sovereignty. Sovereignty and democracy were clearly bound from then on. "[162] The attention was progressively shift from the manifestation of political power to the (original) issue of the depositary of the only legitimate power which (for Rousseau) shall be submitted to the *Volonté Générale*[163] – "disqualify[ing] former modes of apparition [of authority]"[164]; as emphasized by Rousseau's *Contrat Social* famous passage on *Japanese charlatans*.[165] -

"In the classical table, states were ordered in a continuous series according to their interests, and were - theoretically as well as practically - well able to entertain relations with one another; but these relations were never themselves representable within the table. "[166] "The state and the king were metaphors for one another, and the analytical separation between domestic and foreign policy was based upon a fragile identity of interests between the king and his state."[167] Coherently, it was only between the XVIII and XIX centuries that the concept of (external) sovereignty took a "*centralitè quelconque*"[168] within inter-State relations.[169] "This gradual realization coincided with the development of classical international law from the early 19th century onwards and the Vienna Congress (1815)"[170], "rapidly [becoming] clear that public international law and sovereignty implied each other. To be fully in charge of its relations with other States in a society of equally sovereign

[161] Noone J. B., The *Social Contract and the Idea of Sovereignty in Rousseau*, in Journal of Politics 32:3, 1970, p. 697.

[162] Besson S., in Wolfrum R. (ed), MPEIL, 2014, para. 24.

[163] See generally upon: Rousseau J., *Oeuvres Complètes – Du Contrat Social*; écrits politiques, Paris, 1964.

[164] Baranger D., *The apparition of sovereignty,* in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* (eds.) Kalmo H. Skinner Q., Cambridge, 2010, p. 59.

[165] Note that, contrarily, some Authors, such as Carré de Malberg, interpreted the passage as critique to Montesquieu. For Others, like Derathé, it was an indictment of Grotius and Pufendorf.

[166] Bartelson J., *A Geneology of Sovereignty*, CUP, 1993, p. 188.

[167] *Ivi*, p. 190-191.

[168] "A certain centrality" an expression, used in the 1815 Vienna Congress for a river commission such as the Central Commission for the Navigation of the Rhine (considered the first international organization) as quoted by Schermers and Blokker (2018) p.7. See also W.J.M. van Eysinga, *De oorsprong van de moderne internationale rivierencommissie (Deel 74, serie B, No. 8 van de Meededelingen der Koninklijke Akademie van Wetenschappen, afdeling letterkunde* (1932)). Note that the concept of external sovereignty was not entirely absent from classical authors' considerations and may be retrievable, for instance, in Machiavelli and Hobbes works.

[169] See upon: Bonnot de Mably G., *Des principes des nigociations pour servir d'introduction au droit public de I'Europe*, fondi sur les traitis, Amsterdam, 1758, chs. 2,3,4,5. "In Mably's Principes des Negotiations (1758), the revolution in interstate relations is produced by colonial trade, and its impact on the nature and distribution of capabilities between states. Wealth, acquired through trade rather than from cultivating the soil, radically alters the zero-sum nature of classical power. Consequently, state interests are no longer deducible from the specific individual character of each state; rather, their maximes are determined solely from their relation to other states; what matters is whether a state is a puissance dominante or a puissance rivale. States are no longer situated in a position in which God has placed them, but displaced into a succession of altering power relations." (Bartelson J., *A Geneology of Sovereignty*, CUP, 1993, p. 192.)

[170] Besson S., in Wolfrum R. (ed), MPEIL, 2014, para. 32.

States and to be externally sovereign [*par in parem non habet imperium*[171]], and hence in turn to be able to protect its internal sovereignty, a State needed to be submitted to public international law."[172] To precise, classic international law was merely envisioned as an instrument to deem States coexistence, "through which States organized their external relations more efficiently than on the basis of one-to-one relationships."[173] This means that whether one looked at sovereignty from a domestic or international law perspective, two and different regimes would emerge. Internal sovereignty was yet deemed of an impersonal function, while external one – in the context of international law "as a [mere] network of conventions and mutual promises whose source was State consent"[174] - was essentially envisioned as a personified State function.[175]

2.1.2 The content of Sovereignty in modern International Law

> "Since the end of the Second World War, the traditional Westphalian notion of sovereignty that emphasizes the autonomy of individual states […] has evolved into a new understanding that complements the allegedly supreme power of a sovereign state with duties and obligations that deny the theoretical possibility of absolute state rights. As a juridical entity, [states are often described] as an analogy of the moral person that is capable of both rights and duties." [176] "As a result, modern State sovereignty now finds its source both in constitutional and international law." [177]

The principle *ex facto oritur jus* stands beside the acquisition of the States' right to govern, thus, effectively govern the territorial community builds the right itself (to govern effectively and undisturbed). With the development of modern international law, the "concept of sovereignty was being [fully] internationalized,"[178] evolving vertically on the internal side and horizontally on the external, finally, creating "uniform legal personalities"[179].

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[171] The maxim is traceable back to the fourteenth-century-jurist Bartolus, who wrote "*Non enim una civitas potest facere legem super alteram, quia par in parem non habet imperium*." Badr, *State Immunity* (1984) 89, citing Bartolus, Tractatus Repressalium (1394) Quaestio 1/3, §10. Further: Dinstein (1966) 1 Is LR 407.

[172] Besson S., *Sovereignty*, in Wolfrum R. (ed), MPEIL, 2014, para. 31.

[173] *Ivi*, para. 32.

[174] *Ivi*, para. 33.

[175] "There was only one sovereign on the inside, but many and equal ones on the outside in the absence of a global and single sovereign" (Besson S., in Wolfrum R. (ed), MPEIL, 2014, para. 34.), meaning that classic international law essentially dealt with external sovereignty.

[176] Minkkinen P., *Sovereignty, Knowledge, Law*, Routledge, 2009, p. 13. Note that those personification of Westphalian Actors' sphere of duty and rights shall only be intended as a metaphor for the unity of norms that stipulate such rights and obligations. See upon: Kelsen H, *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zueiner reinen Rechtslehre, 2*, Neudruck der 2, Auflage, Tübingen, Aalen: Scientia, 1928, p. 18.

[177] Besson S., *Sovereignty*, in Wolfrum R. (ed), MPEIL, 2014, para. 49. For instance: "*L'Italia è una Repubblica democratica, fondata sul lavoro. La sovranità appartiene al popolo, che la esercita nelle forme e nei limiti della Costituzione*." (La costituzione, *I principi fondamentali*, art. 1); "*L'ordinamento giuridico italiano si conforma alle norme del diritto internazionale generalmente riconosciute*." (La costituzione, *I principi fondamentali*, art. 10)

"National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof." (Constitution of October 4 1958, art. 2) "The President of the Republic […] shall be the guarantor of national independence, territorial integrity and due respect for Treaties." (Constitution of October 4 1958, art. 5).

[178] Besson S., *Sovereignty*, in Wolfrum R. (ed), MPEIL, 2014, para. 34.

[179] Crawford J. Brownlie, I., *Brownlie's principles of public international law*, Oxford, 2019, p. 431.

see also upon: Caracciolo I. Leanza U., *Il diritto internazionale: diritto per gli Stati e diritto per gli individui Parte speciale,* Giappichelli, Torino, 2020, p.7.

Famously, for Oppenheim, sovereignty means "independence. It is external independence with regard to the liberty of action outside its borders. It is internal independence with regard to the liberty of action of a state inside its borders", emphasizing sovereignty's strong territorial dimension in international law[180]. That said, those borders are not "just a geographical or physical construct but a legal and political construct: it concerns the organisation of spaces for political and legal purposes"[181] or, in different terms, it regards the mode of organising Statal *pouvoirs* [182]

Coherently, Judge Alvarez described sovereignty as "the whole body of rights and attributes which a State possesses in its territory, to the exclusion of all other States, and also in its relations with other States"[183]. "Territory is an aspect of sovereignty and is protected by sovereignty, it is not synonymous with sovereignty. It is a container of sovereignty but sovereignty as authority and power can extend beyond territory"[184].

"In its most common modern usage, […] the term […] in character refer[s] in a 'catch-all' sense to the collection of rights held by a state, [comprehending both] its capacity as the entity entitled to exercise control over its [territorial community]"[185], "including the ability to regulate trans-border movements,"[186] – the *Ius vìtæ ac nècis* over Its territorial community -; and "its capacity to act on the international plane, representing that territory and its people."[187] - The *Ius excludendi alios* -. To precise, external sovereignty signifies "independence of outside authorities,"[188] (having embedded Westphalian/Vattelian sovereignty[189]) but "[it] is not a claim to absolute freedom of action in relation

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[180] As Judge Max Huber famously stated: "Territorial sovereignty serves to divide between nations the space upon which human activities are employed" (*Island of Palmas Case* (or *Miangas*) *United States v Netherlands*, 1928, Reports of International Arbitral Awards, p. 839; see also upon, *inter alia*, Bartelson J., *A Geneology of Sovereignty*, Cambridge, 1993, p. 26; *Montevideo Convention on the Rights and Duties of States,* 26 December 1933.

[181] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p. 13.

[182]; see about, *inter alia*, Forsberg T., *Beyond Sovereignty, Within Territoriality: Mapping the Space of Late-Modern (Geo)Politics,* Cooperation and Conflict 31:43, 1996, 355-386, p. 355; Ruggie J.G., *Territoriality and beyond: Problematising modernity in international relations*, International Organization 47:1, 1993, 139-174, p. 139.

[183] ICJ Reports 1949, *Corfu Chanel Case, UK v Albania*, Separate Opinion of Judge Alvarez, p. 43.

[184] Tsagourias N., *The legal status of cyberspace: sovereignty redux?,* In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p. 13.

[185] Crawford, J. Brownlie, I., *Brownlie's principles of public international law* (Ninth edition)., Oxford, 2019, p. 431. See upon: *Customs Regime between Germany and Austria Advisory Opinion*, Individual Opinion by Judge M. Anzilotti, PCIJ Series A/B. No 41., p. 57.

[186] Krasner S. D., *The durability of organized hypocrisy*, in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* (eds.) Kalmo H. Skinner Q., Cambridge, 2010, p. 96.

[187] Crawford, J. Brownlie, I., *Brownlie's principles of public international law*, Oxford, 2019, p. 431.

[188] Bull H., *The Anarchical Society. A Study of Order in World Politics*, Houndmills, Basingstoke, 1995, p. 8.

[189] Krasner noted that: "**The concept of sovereignty embeds two separate and distinct principles and one fundamental assumption about actual practice. The three core elements of sovereignty are**:

• **International legal sovereignty**: international recognition which implies the right to enter into contracts or treaties with other states, juridical equality, membership in international organizations.

• **Westphalian/Vattelian sovereignty: the absence of submission to external authority structures,** even structures that states have created using their international legal sovereignty.

• **Domestic sovereignty**: more or less effective control over the territory of the state including the ability to regulate trans-border movements." (Krasner S. D., *The durability of organized hypocrisy*, in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* (eds.) Kalmo H. Skinner Q., Cambridge, 2010, p. 96).

to other sovereign communities, but a claim that there is no superior authority over a particular sovereign community."[190]

In a broad "sense sovereignty is […] a precondition to statehood"[191] and a focal point of constitutional States' juridical construction[192]; and it is constitutive of international law giving its ontology[193] - "simultaneously provid[ing] an ordering principle for what is 'internal' to states and what is 'external' to them"[194] –. That said, "the increasing regulatory expansion of international law" [195], exemplified by "the democratization of States and the correlative development of human rights protection"[196] is objectively causing certain activities to fall outside States' *domaine réservé*.

2.1.3 Sovereignty redux?

"Interestingly, many of those new international limitations to internal sovereignty"[197] especially those protecting core rights - such as the prohibition on torture[198], the right to a sustainable development[199] or the rules regulating the exploitation of natural resources[200] - "are not consent-based, but stem from customary norms or general principles. This may be explained by the fact that these norms can be understood as the reflection of the minimal common denominator to the practice of all democratic sovereign States constituting the international community"[201], do not being in tension with the

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[190] Piirimäe P., *The Westphalian myth and the idea of external sovereignty*, in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* (eds.) Kalmo H. Skinner Q., Cambridge, 2010, p. 4.

[191] Crawford, J. Brownlie, I., *Brownlie's principles of public international law* (Ninth edition)., Oxford, 2019, p. 431.

[192] Kelsen H., *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zueiner reinen Rechtslehre, 2*, *Neudruck der 2,* Scientia, Tübingen, Aalen, 1928, p. V. "To perceive the state as an order and even as a juridical order, and to understand the representation of independence as the specificity of this order, is, consequently, also to recognize this order as supreme and that its validity does not require higher justification." (Kelsen, as above, pp. 85-86).

[193] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 13. Coherently, in *Nicaragua case*, the ICJ described sovereignty as a foundational principle on which international law rests generating and defining, *inter alia*, competences and the application and enforcement of international rules. (See *Military and Paramilitary Activities in and against Nicaragua*, (*Nicaragua v. Usa), judgment,* merits, I.C.J. Reports 1984, para. 263).

[194] Giddens A., *The Nation-state and Violence* (V. 2), University of California Press, 1985, p. 281.

[195] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, in EJIL:Talk!, 2020.

[196] Besson S., in Sovereignty, Wolfrum R. (ed), MPEIL, 2014, para. 48.

[197] *Ivi*, para. 51.

[198] In *Belgium v. Senegal case*, the ICJ in 2012 stated that: "the prohibition of torture is part of customary international law and it has become a peremptory norm"; (p. 457, para. 99).

[199] Many and variegate second and third generation human rights were born focusing on the social, cultural and economic (individual and collective) factors. Thus, for instance, "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development." (UN GA, 41/128, 4 Dec. 1986, art. 1.) In this context it was elaborated the concept of sustainable development, balancing between environmental protection and economic growth. (See, *inter alia,* upon Rio Declaration on Environment and Development, 1992, principle 3 and 4).

[200] Stockolm 1972, Rio 1992 Declarations and Rio+20 (later, 2012,) are, *per se,* non-binding acts. Said this, the ICJ argued that the "general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control[,] is now part of the corpus of international law relating to the environment." (ICJ advisory opinion, *Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996, para. 29.) See coherently, *inter alia*, *Gabčíkovo-Nagymaros Project* (*Hungary v. Slovakia*), I.C.J. Reports 1997, para. 53; see also *Pulp Mills on the River Uruguay,* (*Argentina v. Uruguay*), I.C.J. Reports 2010, paras. 193 s.; Permanent Court of Arbitration*, Iron Rhine arbitration, (Belgium/Netherlands)*, 2005, Award, para. 58).

[201] Besson S., in Wolfrum R. (ed), MPEIL, 2014, para. 51.

principle *de quo*, but "flesh[ing] out those minimal international standards in their respective jurisdictions."[202]

That said, "there is probably no single set of rules that could align interests, power and principles. […] Sovereignty has endured because the interests of key players in the system could be [consensually] accommodated by deviations from its rules and practices."[203] In 1967, for instance, the so-called Outer Space Treaty provided that the Outer space, including the Moon and other celestial bodies[204], shall remain free in all their areas for exploration, scientific research and use by all States; not being subjectable to any kind of occupation or Sovereignty claim[205], legally/politically declaring outer space 'out of men's patrimony'.

Similar considerations may be pointed out in regard of Antarctica Treaty System. During the centuries, different States unfoundedly tried to assert their exclusive jurisdiction over the Seventh Continent; however, in 1959, with the Washington Treaty, Antarctica was declared a common heritage of mankind[206] internationalizing its territory and prohibiting all kinds of military activities, preserving the right of all Nations to conduct free and cooperative international scientific research over its territory.

What needs to be emphasized, appearing necessary and functional to better analyse the positions offered by Prominent Authors dealing with the principle *de quo* in cyberspace, is that for Roman Jurists *res communes omnium* were (not only) not owned by anybody, they were ungovernable and "incapable to have a *dominus*, being forever considered 'out of the patrimony' of men."[207] Modern regimes, *au contraire*, are sovereign manifestations of authority agreed to by States that expressly auto-limits their jurisdiction (do not being based on the impossibility to assert sovereignty over an environment).

2.1.4 Cyberoperations and the Sovereignty principle

Given the centrality of sovereignty in international law and its relation to territory and the persons and things thereon, the issue regards how it may apply to cyberspace. It comes by itself that the absence of a clear link between the territorial and the virtual element[208] makes the concepts of territoriality and physical tangibility often less clear[209] crafting different and less consensual interpretations of the principle and its related activities. [210]

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[202] *Ibidem*.

[203] Krasner S. D., *The durability of organized hypocrisy*, in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* (eds.) Kalmo H. Skinner Q., Cambridge, 2010, p. 98.

[204] In 1964, the Institute of Space Law defined celestial bodies as all "natural objects in outer space that cannot be artificially moved from their natural orbits".

[205] See arts. 1 and 2.

[206] See coherently, *inter alia*, UN GA res. n. 40/156, 21 January 1986.

[207] Capurso A., *The Non-Appropriation Principle: A Roman Interpretation*, 69th International Astronautical Congress, Bremen, 2018, 1-5. p.3.

[208] New Zealand, *The Application of International Law to State Activity in Cyberspace*, § 13.

[209] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p. 2.

[210] Delerue F., Zhu L., Wrange P., Yang F., *Working Paper: The principle of sovereignty and the application of international law in cyberspace*; April 2024, p. 6.

2.1.4.1 Cyberspace as a *res communes omnium*

At the dawn of cyberspace different scholars[211] proposed "no-sovereignty thesis […] based on a concept of cyber-exceptionalism and on a territorial reading of sovereignty"[212] sustaining that "the lack of borders in cyberspace deprives sovereigns of the ability to exercise their power over defined peoples and territories and deprives sovereign power from the legitimising effect of consent"[213]. Goldsmith challenged the normative premises of no-sovereignty sustaining that there is nothing unexceptional in cyberspace as, if it consists of persons and objects, States asserting their authority over those persons and objects (and their citizens abroad) are effectively exercising their sovereignty over cyberspaces' layers.[214] *Ad colorandum*, given the Brocard *ex facto oritur jus* as source of sovereignty, a mere legal statal manifestation of authority, such as the efforts to protect and control the National Cyberborders comparably with the non-cyber one or enforcing their criminal national jurisdiction over cybercrimes, would be enough to absorb those 'cyberborders' into its sphere of sovereignty.

It has also been argued that "the global commons consist of international waters and airspace, space, and cyberspace"[215]. As discussed, Roman Jurists considered the sea and the air non-appropriable and ungovernable; with the collapse of Roman Empire different actors tried to assert their sovereignty over the seas using positions "based on some mix of the commercial aspect of the claims, national security, protection of fisheries, and collection of tariffs"[216]; essentially leading to centuries of anarchy. Since the late fifteenth century, it started to rise a two-century doctrinal discussion upon the control of the seas championing between *mare clausum* and *liberum*[217] at the end of which most of the authors sustained that States "enjoy some rights to regulate in their own interests activities in the seas adjoining their coasts"[218] considering controllable – thus sovereign - 'those waters protected by the shooting range of the coastal State's cannons'. This concept can still be found in the Art. 2 of the Geneva High Seas Convention (1958) and in Arts. 87, 89 and 139 UNCLOS but, as discussed through the past chapter with regard of the Outer Space Treaty and the Antarctic Treaty System, the *rationale* behind the modern systems of global common does not stand on the impossibility to exercise authority, rather founding on the legal-politic choice to "refrain from claiming ownership over that area and agree to exercise their authority concurrently with that of other States. […] This indicates that the global commons concept is a legal-political construct which is not adverse to the principle of

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[211] See: Johnson R.D. Post D., *Law and Borders: The Rise of Law in Cyberspace*, in Stanford Law Review 48:5, 1996, pp. 1367-1402.

[212] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p.14.

[213] *Ibidem*.

[214] Goldsmith J., *Against cyberanarchy, in University of Chicago Law Review 65:4*, 1998, 1199-1250.

[215] U.S. Department of Defense*, The Strategy for Homeland Defense and Civil Support*, 2005, at 12.

[216] Buck S. J., *The Global Common: an introduction*, Island Press, Washington, 1998, pp. 76-77.

[217] Grotius, *inter alia,* characterised the high seas as res communes because "it is so limitless that it cannot become a possession of anyone, and because it is adopted for the use of all, whether considered from the point of view of navigation or of fisheries." Grotius H., *The Freedom of the Seas, or, the Rights which Belongs to the Dutch to take part in the East Indian Trade*, (ed.) Scott J.B., Oxford, 1916, p. 28.

[218] Churchill R.R., Lowe A. V., *The Law of the Sea,* rev. ed., St. Martin's Press, 1988, p. 59. See coherently Vattel E., *Le Droit Des Gens ou Principes de la Loi Naturelle*, *appliques à la Conduite et aux Affaires des Nations et des Souverains,* de l'imprimerie de la Societe Typographique, Neuchatel, 1777, Ch XXIII pp. 125–127.

sovereignty"[219] - considering that auto-limitation is an expression of sovereignty[220]-, meaning that States might eventually agree to designate cyberspace as a global common. Said this, "at this point in time, there is no political or legal impetus to do so. […] The underlying question is whether cyberspace"[221] eventually exhibits those typical characteristics of global commons.

A first major difference is that high seas, space and Antarctica, differently from cyberspace, all have a physical dimension potentially utilizable to exploit natural resources, while cyber resources are man-made objects controlled by humans that cannot be naturally deployed but can only technically exploited.[222] A second point is that the social and physical layers of cyberspace necessarily end to physically fall into States boundaries and, thus, their authority – that would need to be partially excluded -[223]. The "cyberspace does not exist independently from the physical world but is instead rooted in it."[224] For third, "whereas global commons are non-excludable in the sense that others cannot be excluded, the extent that cyber infrastructure belongs to States means that others can be excluded.[225]" Fourthly, the physical layer of cyberspace, is mostly owned by private and, in order to be a *res communes omnium,* it would need to be de-owned[226], with more than a legal issue,,,

Some authors, looking at the virtual dimension of cyberspace, sustain that often States have not the capability to control their cyberborders and to identify specific actors and that, for these reasons, inspired by the classic high seas positions, it should remain *liberum*. However, from an ontological perspective, cyberspace is an artificial notional environment, and, also if its placelessness, ubiquity and apparent anonymity, for instance, may render more complex its effective control, cyber domain remains a mere translation of those 'controllable' persons and objects, emphasizing why, more than a global common, it might resemble an "imperfect common"[227].

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[219] Tsagourias N., *The legal status of cyberspace: sovereignty redux*?, In Tsagourias N. Buchan R. (eds*.), Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p.30.

[220] *SS.'Wimbledon'*, *United Kingdom, France, Italy & Japan v. Germany*, Judgment of 17 August 1923, PCIJ Rep Series A No 1, p. 25.

[221] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p.30.

[222] Similarly, in a different context, see Hardin G., *The tragedy of the commons*, in Science 162, 1968, p. 1243.

[223] See also upon: Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, pp.28-30.

[224] Buchan R., *Cyber Espionage and International Law*, Hart, Oxford, 2019, p. 50.

[225] *Ivi*, p. 30.

[226] *Ibidem*.

[227] Expression used by Nye J. S. Goldsmith J. L., *The Future of Power,* in Bulletin of the American Academy of Arts and Sciences 64:3, 2011, 45-52.

2.1.4.2 Sovereignty: a legal principle producing legal obligations

Coherently, many and various declarations from the EU[228], AU[229], NATO[230] and OSCE[231], firmly rejected any no-sovereignty thesis, remarking that "no states have their hands free in cyberspace"[232] and, as discussed, during the CGE 2015 Report, it was stated that "State sovereignty and international norms and principles that flow from sovereignty apply to the conduct by States of ICT-related activities and to their jurisdiction over ICT infrastructure within their territory"[233], confirming that the principle is a primary international rule[234] which governs cyberspace. Coherently, in most of the National Position Papers[235] it is observable a general tendency to reaffirm the principle of sovereignty as a bounding international rule.

A peculiar view is traceable from the UK Position Paper standing to which "the general concept of sovereignty by itself does not provide a sufficient or clear basis for extrapolating a specific rule of sovereignty or additional prohibition for cyber conduct going beyond that of non-intervention"[236]. This thesis essentially limits sovereignty to a political principle and, "in response, I argue that the principle of sovereignty is a stand-alone legal principle that applies to cyberspace and produces legal consequences"[237]. The ICJ stated that Customary rules can be deduced[238] from the fundamental principles of the international law system[239] and, using the methodological approach followed by the Court in *Nicaragua*[240], it is clear that non-intervention and sovereignty cannot be steadily separated

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[228] Council of the European Union, *Council Conclusions on the Joint Communication to the European Parliament and the Council: Resilience, Deterrence and Defence: Building strong cybersecurity for the EU*, 20 November 2017. See coherently: Council of the European Union, *Declaration on a Common Understanding of International Law in Cyberspace*, Brussels, 18 November 2024.

[229] African Union Peace and Security Council, *Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*, 29 January 2024.

[230] North Atlantic Treaty Organization, *Wales Summit Declaration*, 5 September 2015, para 72.

[231] Organization for Security and Cooperation in Europe, *Decision No. 1202, OSCE Confidence-Building Measures to Reduce the Risks of Conflict Stemming from the Use of Information and Communication Technologies*, Permanent Council, 10 March 2016, PC.DEC/1202.

[232] *Statement by the Representative of Australia to the fourth substantive session of the open-ended working group on the security of and in the use of ICTs*, March 2023, pp. 1-2.

[233] GGE 2015 Report, para. 27.

[234] See coherently, *inter alia*, Tallinn Manual 2.0. and the Austrian, Brazilian, Canadian, Estonian, Finnish, French, German, Italian, Japanese, Dutch, Norwegian and Swedish Position Papers.

[235] *Ibidem.*

[236] Attorney General and the Rt Hon Suella Braverman, *International Law in Future Frontiers*, 19 May 2022.

[237] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p.19.

[238] "[Custom] comprises a limited set of norms for ensuring the co-existence and vital co-operation of the members of the international community, together with a set of customary rules whose presence in the *opinio juris* of States can be tested by induction based on the analysis of a sufficiently extensive and convincing practice, and not by deduction from preconceived ideas." *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, (Canada v. United States of America), Judgment, I.C.J. Reports 1984, para. 111.

[239] For example, "[T]he rule of State immunity […] derives from the principle of sovereign equality of States.' ICJ Reports 2012, *Jurisdictional Immunities of the State, Germany v. Italy*, Judgment, para. 57.

[240] The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parce1 of customary international law. As the Court has observed: "Between independent States, respect for territorial sovereignty is an essential foundation of international relations" (I.C.J. Reports 1949, p. 35), and international law requires political integrity also to be respected. […] [The principle of non-intervention] has moreover been presented as a corollary of the principle of the sovereign equality of States […] in the Declaration on Friendly Relations. (ICJ Reports, *Nicaragua*,

considering that it is from the latter that descends the aggregate of rights that States have as a State and vis-à-vis other States[241]; and that "the basic duty of non-intervention" logically and necessarily implies sovereignty[242] and independence[243], constituting two self-sufficient (but profoundly interconnected) set of duties and rights. As consequence, the UK words, as delivered, cannot deny the existence of sovereignty in cyberspace, they rather politically choose to refuse its applicability.

> Corn and Taylor endorsed the 'sovereignty as a principle' view, sustaining that "through both custom and treaty, international law establishes clear proscriptions against unlawful uses of force and prohibits certain interventions among states. And while questions remain as to the specific scope and scale of cyber-generated effects that would violate these binding norms, the rules provide a reasonably clear framework for assessing the legality of state activities in cyberspace above these thresholds, including available response options for states. Below these thresholds, there is insufficient evidence of either state practice or *opinio juris* to support assertions that the principle of sovereignty operates as an independent rule of customary international law that regulates states' actions in cyberspace."[244]

Rather, for them "sovereignty is a baseline principle of the Westphalian international order undergirding binding norms"[245] that do not dictate binding results under international law[246], but guides States interactions.

> Adding that "the differences in how sovereignty is reflected in international law with respect to the domains of space, air, and the seas further support the view that sovereignty is a principle, subject to adjustment depending on the domain and the practical imperatives of states rather than a hard and fast rule"[247], and that "the fact that states have developed vastly different regimes to govern the air, space, and maritime domains underscores the fallacy of a universal rule of sovereignty with a clear application to the domain of cyberspace. For instance, in the case of the space domain, objects in orbit are beyond the territorial claims of any nation, and outer space – including outer space above another state's territory – is available for exploitation by all. In the case of the air domain, the regime is highly restrictive, such that any unconsented entry into the airspace of another state is regarded as a serious violation of international law subject to such exceptions as selfdefense, Security Council authorization, or force majeure. In the case of the seas, many entries into and travels through the territory of another state are permissible without the consent of that state, but there are conditions under which such entry would be a violation of international law – it depends on the particular facts and circumstances."[248]

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para 202. As discussed by Wheatley "There are four points to note here: first, non-intervention is tied to sovereignty; second, the ICJ appears unconcerned with the 'not infrequent' instances of inconsistent state practice; third, the ICJ references a deductive methodology when it notes that non-intervention has been 'presented as a corollary of the principle of the sovereign equality of States'; finally, the ICJ aligns its deductive conclusions with the knowledge and beliefs of states, reflected in the Declaration on Friendly Relations." (Wheatley S., *Election hacking, the rule of sovereignty, and deductive reasoning in customary international law*, in Leiden Journal of International Law, 36:3, 2023, 675-698, p. 688).

[241] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace,* Elgar, Reading, 2021, p.19.

[242] For Alfaro sovereignty and independence "are consubstantial with the State and inseparable from it." (Alfaro R.J., *The Rights and Duties of States*, Recueil des Cours 97, 1959, p. 96).

[243] Wheatley S., *Election hacking, the rule of sovereignty, and deductive reasoning in customary international law*, in Leiden Journal of International Law, 36:3, 2023, 675-698, p. 687. See also *Ibidem p. 688*: "The factual existence of the fundamental rights of states is understood to be logically and necessarily implied by the principle of state sovereignty.".

[244] Corn G. P. Taylor R., *Sovereignty in the Age of Cyber*, in AJIL UNBOUND, Vol. 111, 2017, 207-212, pp. 207-208.

[245] Corn G.P., *Tallinn Manual 2.0—Advancing the Conversation*, in JUST SECURITY, 15 February 2017.

[246] Corn G. P. Taylor R., *Sovereignty in the Age of Cyber*, in AJIL UNBOUND, Vol. 111, 2017, 207-212, 2017, p. 208.

[247] *Ivi*, p. 210.

[248] *Ibidem*, 207-212, p. 210.

"This is where their argument breaks down, for it fails to recognize that each of the legal regimes cited - air, space, maritime, and that governing espionage - are premised on territorial integrity and inviolability. "[249] Regarding the air domain, No State Practice support the treatment of the penetration of the national airspace by a third State military aircraft as a use of force or a prohibited intervention[250], but as a violation of the State's Territorial Sovereignty[251].

In *Nicaragua* the ICJ stated that "'[t]he principle of respect for territorial sovereignty is also directly infringed by the unauthorized overflight of a State's territory by aircraft belonging to or under the control of the government of another State."[252]

Coherently, for instance, when in 2001 a US unarmed EP-3 in state of distress, entered China's airspace without permission, and proceeded landing, the Chinese authorities lamented a serious violation of China's territorial sovereignty.[253] Note that "the dispute in the case was not over the existence of a rule prohibiting unconsented-to entry into another State's sovereign airspace, but rather the application of a circumstance precluding wrongfulness"[254].

Regarding the law of the sea Corn and Taylor correctly pointed out that "many entries into and travels through the territory of another State are permissible without the consent of that State, but there are conditions under which such entry would be a violation of international law - it depends on the facts and circumstances."[255] But, as noted by Schmitt and Vihul:

> "the authors did not consider the reason why consent of the coastal States need not be obtained when another State's vessel wishes to sail through the former's territorial sea. States have long enjoyed territorial inviolability[256] vis-à-vis their coastal waters. The regimes of innocent, transit, and archipelagic passage developed as customary and treaty-law exceptions to the territorial sea's inviolability; they modify the baseline principle that maritime borders may not be pierced by other States. Territorial inviolability remains intact, subject to the exceptions."[257]

Ad colorandum, note that in *Corfu Channel case* it was never contested by the UK Albania's sovereignty over the waters, arguing, instead, the existence of a "special maritime legal regime,

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[249] Schmitt M. N. Vihul L., *Respect for Sovereignty in Cyberspace*, in Texas Law Review Vol. 95, 1639-1671, 2017, p. 1644.

[250] See upon NATO, *Air—Policing Mission.*

[251] See coherently Schmitt M. N. Vihul L., *Respect for Sovereignty in Cyberspace*, in Texas Law Review 95, 2017, 1639-1671, p. 1644.

[252] *Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, I.C.J. Reports 1986, para. 251.

[253] *Surveillance Activities and Emergency Landing by U.S. Aircraft on Hainan Island*, People's Republic of China, 2001 Digest of United States Practice in International Law, ch. 12, § A(6)(3) at 707. Similarly, in 1960, an American U2 and (an American) RB-47 performing similar intelligence missions, were downed by the Soviet Union and their crew captured. The difference between the two is that the U-2 was downed in Soviet Union airspace, and, in fact, the shoot-down was not protested by the US; while, the RB-47 was flying in international airspace, above the high seas, provoking a serious condemnation by the US. (Lissitzyn O., *Editorial Comment*, *Some Legal Implications of the U-2 and RB-47 Incidents*, AJIL 56, 1962, 135-142, pp. 135-136. Describing the incidents).

[254] Schmitt M. N. Vihul L., *Respect for Sovereignty in Cyberspace*, in Texas Law Review Vol. 95, 2017, 1639-1671, p. 1657.

[255] Corn G. P. Taylor R., *Sovereignty in the Age of Cyber*, in AJIL UNBOUND 111, 2017, 207-212, p. 208.

[256] UNCLOS, arts. 17, 38, 52, 53.

[257] See coherently Schmitt M. N. Vihul L., *Respect for Sovereignty in Cyberspace*, in Texas Law Review Vol. 95, 2017, 1639-1671, p. 1645. Emphasis abridged.

innocent passage, allowing for transit through international straits even in the absence of consent"[258] The Court, coherently, was "unable to accept the Albanian contention that the Government of the United Kingdom ha[d] violated Albanian sovereignty by sending the warships through the Strait without having obtained the previous authorization of the Albanian Government"[259]; confirming the exception and barring Schmitt and Vihul words.

Finally, regarding the outer space[260], apart from the point that, as discussed, States' renounce to claim sovereignty is manifestation of reserved authority *per se*. The OST is devised to avoid to extent by default territorial sovereignty beyond the airspace above a State's sovereign territory into outer space[261]; granting the opportunity to States to place objects into geostationary orbit above the subjacent territory of other States.[262] "It is a legal accommodation agreed to by States that is designed to permit them to operate in outer space in ways that might otherwise be prohibited through application of the *lex generalis* rules of territorial sovereignty"[263]; thus, until any conventional or consuetudinary *lex specialis* regarding cyber space would (eventually) crystallize, cyber operations that violate a State's territorial sovereignty remain prohibited under international law.

Ad colorandum, as noted by Schmitt and Vihul, "the evidence of the rule is so dense that those asserting its nonapplicability to cyber operations manifesting on the territory of another State must, as a matter of law, bear the burden of establishing why it does not apply to cyber operations. This they have failed to do. Instead, policy arguments and analysis are offered in the attempt to rebut a well-established legal notion"[264]. "For the rules to change, key actors, those with an ability to change the system, would have to support some alternative set of constructs, something that they would only do if such alternatives could provide better outcomes."[265]

Given the applicability of sovereignty in cyberspace and that it "countries an obligation in its own rights"[266] , the question remains to establish the threshold to consider the principle breached. States

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[258] See coherently *Ivi*, pp. 1651-1652.

[259] *Corfu Channel case*, (United Kingdom v. Albania), Judgment, I.C.J. Reports 1949 at 29 and 30.

[260] A better argumentation that the authors might have considered consists in pointing out at the electromagnetic signals used to communicate with spatial objects and operate them, which (often) travel through various and different jurisdiction, before reaching its target. Note, in any case, that no State has ever publicly considered hostile the transition of those type of signal through its territory.

[261] See coherently Schmitt M. N. Vihul L., *Respect for Sovereignty in Cyberspace*, in Texas Law Review Vol. 95, 2017, 1639-1671, p. 1644.

[262] See upon, for instance, 2001 Digest of United States Practice in International Law*, Definition and Delimitation of Outer Space and the Character and Utilization of the Geostationary Orbit*, ch. 12, § C(4) at 722 ("Article II […] further states that outer space is not subject to national appropriation by claim of sovereignty or by any other means. Thus, a signatory […] cannot appropriate a position in the [geostationary orbit] either by claim of sovereignty or by means of use, or even repeated use, of such an orbital position").

[263] See coherently Schmitt M. N. Vihul L., *Respect for Sovereignty in Cyberspace*, in Texas Law Review Vol. 95, 2017, 1639-1671, p. 1645.

[264] *Ivi*, p. 1670. More in general Bartelson noted that "the concept of sovereignty is so firmly linked with the epistemic and ontological foundations of political inquiry, that it hardly can be touched upon without simultaneously evoking questions about these foundations. (Bartelson J., *A Geneology of Sovereignty*, CUP, 1993, p. 238.)

[265] Krasner S. D., *The durability of organized hypocrisy*, in Kalmo H. Skinner Q. (eds.), *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* Cambridge, 2010, p. 98.

[266] Buchan R. Navarrete I., *Cyber espionage and international law* In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p.243.

offered different views, but most of them[267] have adopted a '*de minimis* standard'[268] endorsing "Rule 4, proposed by the drafters of the Tallinn Manual 2.0, on establishing the boundaries of sovereignty in cyberspace. [For the Netherlands,] under this rule, a violation of sovereignty is deemed to occur if there is 1) infringement upon the target State's territorial integrity; and 2) there has been an interference with or usurpation of inherently governmental functions of another state. The precise interpretation of these factors is a matter of debate"[269]. "Germany [too] essentially concurs with the view proffered in the Tallinn Manual 2.0 that cyber operations attributable to a State which lead to physical effects and harm in the territory of another State constitute a violation of that State's territorial sovereignty."[270] Adding that, "in any case, negligible physical effects and functional impairments below a certain impact threshold cannot – taken by themselves – be deemed to constitute a violation of territorial sovereignty"[271]; and thus, ulteriorly characterized the Tallinn's threshold of "negligible effects" adding that "generally, the fact that a piece of critical infrastructure (i.e. infrastructure which plays an indispensable role in ensuring the functioning of the State and its society) or a company of special public interest in the territory of a State has been affected may indicate that a State's territorial sovereignty has been violated"[272]. However, as admitted by the Germans themselves, "this cannot in and of itself constitute a violation, *inter alia* because uniform international definitions of the terms do not yet exist"[273].

In this context, the first issue of the *de minimis* approach is that, since a non-cyber intrusion, to breach the territorial sovereignty of another equal State has not to produce any malicious effects – as largely remarked by States practice[274] - it is not clear why the same operation, if conducted by cyber means, would be consistent with international law, "providing a State's sovereign cyber infrastructure with less protection from intrusion than a State's sovereign physical territory"[275]. Sovereignty protects the whole aspects of a State to be and exists and, in this context, "the harm […] is normative; it is the harm to the principle of sovereignty and the rights protected by it"[276]. *Ad colorandum*, the Permanent Court of International Justice in the *Lotus* case stated that "the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State."[277]

Secondly, "in any case, it should be noted that sovereignty and sovereign rights are not only about governmental functions [or their disruption]. In my opinion, any unauthorised or not legally justified operation that interferes with a State's sovereign rights may violates the principle of sovereignty

[267] See, *inter alia*, the Canadian, Czech, Dutch, German, Swedish, Swiss,

[268] Using Buchan and Nabarrete terminology. See *Ibidem*, p. 244.

[269] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p. 3.

[270] German Federal Government, *Position Paper On the Application of International Law in Cyberspace*, March 2021, p.4.

[271] Ibidem.

[272] Ibidem.

[273] Ibidem.

[274] See, *inter alia*, *Savakar Case*, *U2 Incident*, Pueblo, Rainbow Warrior and Cosmos 954.

[275] Buchan R. Navarrete I., *Cyber espionage and international law* In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.248.

[276] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.23.

[277] *The Case of the SS 'Lotus'*, France v Turkey, Judgment, 1927, PCIJ (Ser A) No 10 1, p. 18 (emphasis added).

regardless of the degree of interference or damage and regardless of whether it produces physical or non-physical effects or whether the operation targets governmental services and infrastructure or not."[278]

Thirdly, apart from the lack of consensus on the definition of various key terms such as 'critical infrastructure', also admitting the existence of those definitions, concepts as 'critical infrastructure', 'governmental services', 'inherently governmental functions' or 'level of protection' cannot be the main criteria to characterize a violation of sovereignty considering that, otherwise, there would be created different sphere and forms of sovereignty based on States different organizational choices, essentially subjectivizing sovereignty in cyberspace rather than creating an international legal standard.

A minority of the States (such as France and the African Union[279]) offered a broader declination of the principle – the so-called *wrong to personality* approach[280] - sustaining that "any cyberattack against French digital systems or any effects produced on French territory by digital means by a State […] or persons acting on the instructions of or under the direction or control of a State constitutes a breach of sovereignty"[281]. And that "the gravity of a breach of sovereignty will be assessed on a case-by-case basis"[282]; protecting the(ir) cyber-jurisdiction "not only when there are effects but also when there is interference with its information systems"[283]

Some might sustain that the absence of *a de minimis* threshold may increase the possibility of conflicts. In response I would argue that agreeing that a hostile cyber operation below the threshold of physical harm or which does not target governmental services/infrastructure cannot amount to an internationally wrongful act means essentially choose to "leave such operations unregulated and deprive the target State of an important opportunity to claim its rights"[284], this time, seriously increasing the risk of conflicts. Using the famous words of the Permanent Court of International Justice's Therefore, the sovereignty of a State is violated whenever "its power [are exercised] in any

[278] *Ivi*, pp. 22-23.

[279] "The African Union affirms that by virtue of territorial sovereignty, any unauthorized access by a State into the ICT infrastructure located on the territory of a foreign State is unlawful. Therefore, the African Union emphasizes that the obligation to respect the territorial sovereignty of States, as it applies in cyberspace, does not include a *de minimis* threshold of harmful effects below which an unauthorized access by a State into the ICT infrastructure located on the territory of a foreign State would not be unlawful." African Union Peace and Security Council, *Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*, 2024, para. 16.

[280] Using Buchan and Nabarrete terminology. See Buchan R. Navarrete I., *Cyber espionage and international law,* In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.244.

[281] *International Law applied to operations in cyberspace*, Paper shared by France with the Open-ended working group established by resolution 75/240, p.3.

[282] *Ibidem.*

[283]Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.23.

[284] *Ibidem.*

form in the territory of another State"[285] ("without the latter's valid consent or a permissive rule of international law"[286]).

2.1.4.3 Cyberespionage and transboundary law enforcement cyberoperations

A connected issue is represented by cyberespionage operations. "Espionage has been a fixture of international relations since the dawn of human history"[287]; it has been described as the world's "second oldest profession"[288] and its essence consists into the non-consensual[289] collection of non-publicly available information[290].

Peace-time espionage is unsettled by International Law; thus, State's cyberespionage operations do not violate international obligations *per se*[291]; it is the method they are carried out which might do so.[292]

> For instance, "submarine communication cables can be physically tapped in order to collect data transmitted through them. The International Group of Experts agreed that doing so in the territorial or archipelagic waters of another State constitutes a violation [… considering that] employing a submarine or unmanned underwater vehicle to tap in territorial or archipelagic waters is inconsistent with the navigational regime of innocent passage, as submarines are required to transit on the surface."[293]

A position widely used to defend espionage legality (under international law) roots on classic realist theory[294], abducing motivation based on intelligence strategic role in maintaining international security as, "in the absence of a centralised authority that is capable of protecting States from external threats, States must assume responsibility for their own survival in the system"[295].

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[285] *The Case of the SS 'Lotus*', France v Turkey, Judgment of 7 September 1927, PCIJ Series A No 10, 2, 18, emphasis added.

[286] Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 393. Schmitt coherently noted that "Cyber operations also violate sovereignty when they interfere with or usurp another State's inherently governmental functions, irrespective of whether or where damage or injury results." (Schmitt M.N. Biller J, The NotPetya Cyber Operation as a Case Study of International Law, in EJIL:Talk !, 2017.)

[287] Buchan R. Navarrete I., *Cyber espionage and international law,* In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.232.

[288] Barret M. J., *Honorabòle Espionage,* in Journal of Defence and Diplomacy 2:2, 1984, 13-25, p.14.

[289] Note that "intelligence analysis that relies on open source information is legally unproblematic"(Chesterman S., *The Spy Who Came in From the Cold War: Intelligence and International Law*, 27 Michigan Journal of International Law , 2006, 1077-1126, p. 1073. considering, for instance, that, some treaty permit State Parties to access each others confidential information.

[290] Buchan R. Navarrete I., *Cyber espionage and international law* In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.232.

[291] Schmitt M. N., (ed,) Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations, 2017, p. 169.

[292] See: *Ibidemi,* generally, *Rule 32*, specifically, p. 168.

[293] Schmitt M. N., (ed,) Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations, 2017, p. 257. See also about *Ibidem* note 52.

[294] See, *inter alia*, Carr E. H., *The Twenty Years' Crisis: 1919-1939*, MacMillan, London, 1939.

[295] Buchan R. Navarrete I., *Cyber espionage and international law*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspac*e, Elgar, Reading, 2021, p.235.

However – also admitting the importance of understanding other States capabilities and intentions [296] - States are not in a Hobbesian anarchical state of nature and realist theories does not take fully in account the complex nature and structure of contemporary international relations[297] considering that, at least since 1945, it transformed from an anarchical international structure to an international society based on mutually agreed principles and rules[298], recognizing "States common interest in devising a more effective system for maintaining international peace and security. To this end, the principle of the sovereign equality of States was posited as the foundational (or even constitutional) norm of the international society, and the United Nations was subsequently devised in order to institutionalise – and therefore buttress – this normative framework" [299], casting sovereign and equal entities. . Note that what above applies *mutatis mutandis* to espionage operations against non-state actors located in another State territory (including terrorists' group), remaining under another State territorial jurisdiction[300]. This is emphasized, *inter alia*, by the ICJ approach in *Corfu Channel* which rejected any self-preservation thesis bearing that the "alleged has, in the past, given rise to the most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law"[301]

More recently, different authors[302] offered functionalist positions to justify international law 'tolerance' against espionage as, for them, in today complex world arena, espionage represents a tool for the maintenance of international peace and security[303], encouraging States effective cooperation and exchange of genuine information. However, neither this thesis can convince considering that history evidently recount how in the absolute majority of cases, how espionage, oppositely with Baker theories, can only "breed distrust and hostility rather than foster comity and cooperation between States, [acting] as a barrier to functional cooperation between States. As well illustrated, for instance, in espionage by non-cyber means, by 1960 Gary Powers affair, when a U-2 spy plane was shot down while in URSS airspace, permanently marking the relation between the two States as demonstrated by the consequent failure of the 1960 *Four Powers Peace Summit* held in Paris and by the rescission of an invitation extended to US President Eisenhower, by the Soviet President Khrushchev[304]. Or, focusing on cyber behaviours, at the devastating impact of the Edward Snowden fallout on the relations between the US and various Countries; which revealed, for instance, that the US routinely conducted cyberespionage activities against Brazil, leading, for example, to the cancellation of a scheduled meeting in Washington between the Brazilian President Dilma Rousseff and the Obama

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[296] Chesterman S., *The Spy Who Came in From the Cold War: Intelligence and International Law*, 27 Michigan Journal of International Law , 2006, 1077-1126, p. 1076.

[297] Slaughter A., *International Law in a World of Liberal States*, European Journal of International Law 6:3, 1995, 503-538, p. 503.

[298] See generally upon: Buchan R., *International Law and the Construction of the Liberal Peace*, Hart, Oxford and Portland, Oregon, 2013, Chapter 1.

[299] Buchan R. Navarrete I., *Cyber espionage and international law,* In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, p. 236.

[300] *Ibidem.*

[301] I.C.J. Reports 1949, *Corfu Channel* (United Kingdom of Great Britain and Northern Ireland v Albania). Merits, Judgement, Rep. 35.

[302] See, inter alia, Baker C. D., *Tolerance of International Espionage: A Functional Approach,* American University International Law Review 19:5, 2003, 1091-1113, p. 1091.

[303] Pelican L., *Peacetime Cyber-Espionage*: A Dangerous But Necessary Game, CommLaw Conspectus 20, 2012, 363-390, p. 385

[304] BBC News, *1960: East-West Summit in Tatters After Spy Plane Row*, 17 May 1960.

administration[305] and at the consequent formal denounce in front of the UN General Assembly against the NSA actions, remarking that "Friendly governments and societies that seek to consolidate a truly strategic partnership, such as is our case, cannot possibly allow recurring and illegal actions to go on as if they were normal, ordinary practice. Such actions are totally unacceptable."[306] Similar positions were, *inter alia*, assumed by Germany that defined the conduct "completely unacceptable"[307], France which claimed that it "cannot accept this kind of behaviour from partners and allies"[308] and PRC.[309]

Another point regards the existence of any 'customary cyberespionage exception', as the most quoted position, coherently with The Tallinn Group of experts[310], considers acceptable the mere monitoring and exfiltration of data, information and communications (creating those exception to the generally accepted rules [311]); strictly limited to cyberespionage, valid until no malicious effects manifest; and emphasized by States [apparent] acquiescence[312]. Brown and Poellet, for instance, argued that:

> "years of state practice accepting violations of territorial sovereignty for the purpose of espionage have apparently led to the establishment of an exception to traditional rules of sovereignty – a new norm seems to have been created. As cyber activities are frequently akin to espionage, even if conducted for another purpose, perhaps it is not too much of a leap to assert that most cyber activities can also occur without violating territorial sovereignty."[313]

Said this, of course the objective or material element of customary international law – which "consists of [positive and negative] conduct of the State, whether in the exercise of its executive, legislative, judicial or other functions" [314] - "play a pre-eminent role in the formation of customary international law."[315] But, "according to Article 38(1)(b) of the Statute of the International Court of Justice 1945, customary international law [emerges] on the basis of 'a general practice accepted as law' [… and must] possess two elements: first, state practice of the rule in question; and second, the belief that this practice is required or permitted by customary international law[, therefore the acceptance as a law]. […] State practice in combination with *opinio juris* induces the formation of custom."[316] This was also expressly confirmed by the ICJ in *Nicaragua* and in *North Sea Continental Shelf* cases bearing

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[305] Buchan R. Navarrete I., *Cyber espionage and international law,* In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021, 2021, p. 238.

[306] Borger J., *Brazilian President: US surveillance a 'breach of international law'*, in The Guardian, 24 September 2013.

[307] Quoted in *Merkel Calls Obama about "US Spying on Her Phone*", in BBC News, 23 October 2013.

[308] Quoted in *Hollande: Bugging Allegations Threaten EU-US Trade Pact*, in BBC News, 1 July 2013.

[309] Quoted in *China Demands Halt to 'Unscrupulous' US Cyber-Spying*, in The Guardian, 27 May 2014.

[310] See: *Ibidem, Rule 32. For* Yoo and Sulmasy for instance, regulate espionage "will likely prove counterproductive to the goal of promoting international peace and security". Sulmasy G. Yoo J., *Counterintuitive: Intelligence Operations and International Law*, in Mich. J. Int'l L 28:3, 2007, 625-638, p. 625.

[311] See also: "A few of the Tallinn Experts [sustained] that those extensive State practice of conducting espionage on the target State's territory has created an exception to the generally accepted premise that non-consensual activities attributable to a State [even] while physically present on another's territory violate sovereignty". *Ivi,* p. 19.

[312] See: *Ibidem, Rule 4* and *Rule 32.*

[313] Brown G. Poellet K., *The Customary International Law of Cyberspace*, Strategic Studies Quarterly 6:3, 2012, 126-145, p. 134

[314] International Law Commission, *Draft conclusions on identification of customary international law*, 2018, conclusion 5.

[315] Wood S. *Identifcation of Custom International Law*, Oxford, Portland (Oregon), 2024, p. 101.

[316] Buchan R., *Cyber Espionage and International Law*, Hart, 2018, p. 148.

that '[F]or a new customary rule to be formed, not only must the acts concerned "amount to a settled practice", but they must be accompanied by the *opinio juris sive necessitates*".[317]

Therefore, analysing States' *opinionēs*, the US Department of Defense, for instance, sustained that "The United States conducts [intelligence and counterintelligence] activities via cyberspace, and such operations are governed by long-standing and well-established considerations[318], including the possibility that those operations could be interpreted as a hostile."[319] Underlining – in a War Manual, that, for nature, delimits also the domestic policies upon the use of countermeasures – that a cyber intelligence operation aimed against the US, could be interpreted as hostile – not regarding any additional *de minimis* effect. – Coherently for the US Position Paper "in certain circumstances, one State's non-consensual cyber operation in another State's territory, even if it falls below the threshold of a use of force or non-intervention, could also violate international law"[320]. Also China 2021 Position Paper seems to confirm this position, sustaining that "States should stand against ICT activities that […] impair or steal important data of other States' critical infrastructure"[321], heading in the direction traced by Chinese President Xi Jinping words[322] on the critical importance of cyber sovereignty to national sovereignty. Russian Position limits to sustain that "certain aspects of such [cyber] intelligence operations could violate specific rules of international law"[323], never explicitly barring cyber espionage legality. Israel Position sustains that "States undoubtedly have sovereign interests in protecting cyber infrastructure and data located in their territory [… and] outside their territory;"[324] thus, underlining that, the breach of those "sovereign interest", might be illicit.

Ad colorandum, note that in any case the choice to attribute a hostile (cyber) operation is "a national sovereign prerogative […as well as the] decision to make it public or not"[325].

Thus, considering that, on one hand, no uniform statal *opinio juris* is detectable, and that, on the other, in any case the attribution absence cannot be an appropriate factor to derive States' *opinionēs*, no customary exception from the generally accepted rule would have arguably emerged.

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[317] Nicaragua (n 13) para 207.

[318] "Generally, to the extent that cyber operations resemble traditional intelligence and counter-intelligence activities, such as unauthorized intrusions into computer networks solely to acquire information, then such cyber operations would likely be treated similarly under international law." U.S. Department of Defense, *Law of War Manual, u*pdated July 2023, p. 1057.

[319] U.S. Department of Defense, *Law of War Manual, u*pdated July 2023, p. 1057.

[320] United States contribution to UN GA Resolution, *Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States submitted by participating governmental experts in the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security established pursuant to General Assembly resolution 73/266,* 13 July 2021, p.140.

[321] Ministry of Foreign Affairs of the People's Republic of China, *China's Positions on International Rules-making in Cyberspace,* see point: *II.ii.*.

[322] See: "[n]o matter how developed a country's Internet technology is, it just cannot violate the information sovereignty of other countries Xi Jinping, *Carry Forward Traditional Friendship and Jointly Open up New Chapter of Cooperation,* speech delivered at the National Congress of Brazil, 1 September 2014; see also coherently China Daily, *Why does cyber-sovereignty matter?"*, 12 December 2015.

[323] Russian contribution to UN GA Resolution, *73/266,* 13 July 2021, (as above) p.66, note 176.

[324] Schöndorf R., *Israel's Perspective on Key Legal and Practical Issues Concerning the Application of International Law to Cyber Operations, 2020,* in INT'L L. STUD. 97, (2021), p. 402.

[325] Ministero degli affari esteri e della cooperazione internazionale*, Italian Position Paper on "International Law and Cyberspace"*, p.5.

Another disputable point is the Tallinn Group of Experts choice to consider cyber-intrusions (such as cyberespionage activities) conducted from outside the physical territory of the target State legit, while, the same cyber penetration, if carried out while being physically present on the target State territory would be unlawful[326]. In the context of the absolute absence of any spatial limit, physical presence would not appear to be a key factor to effectively breach the sovereignty of the target State, as emphasized, for example, by the 2015 Ukrainian energy grid cyberattack functioning[327].

After that the attackers harvested legitimate credentials to access the local network, the 23 December 2015, "remote human operators accessed the dispatcher workstations and remotely took control of the terminals using legitimately installed remote access tools. […] Local operators were locked out of their own workstations, disabling keyboard and mouse control. However, they could observe attacker actions on their screens"[328]. This passage - from the NCCIC Report – clearly remarks why the unauthorized physical presence on the territory has no *nexus* with the exercise of authority in cyberspace; in this context, the physical presence would (eventually) have been a further and separated violation of the target State territorial sovereignty.

Note that, this consideration can be extended to all operations that penetrate and (eventually exfiltrate information), such as, for instance, the Bundestag Hack or the Sony Hack[329] which having involved "unauthorised entry into [the German and the] US sovereign domain"[330] violated the principle *de quo.*

The latter point offers the opportunity to introduce a contiguous issue as, States, while exercising their enforcement jurisdiction conducting cyber investigations, often "encounter data stored beyond [the national] borders, particularly when investigators require access to data held by online service providers or hosting services, or need to search networks or (covertly) gain remote entry to an automated system."[331]
"The rules of customary international law on jurisdiction are, with some exceptions, strongly territorially oriented, or location focused."[332] Generally, authors tend to discuss on one hand legislative and adjudicative jurisdictions "as a court that decides to go ahead with a criminal prosecution always applies local, and never foreign, law to the case"[333] and on the other the enforcement one.

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[326] Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 19.

[327] The attack resulted in power outages for about 200,000 consumers.

[328] US Department of Homeland Security NCCIC, *ICS-CERT INCIDENT ALERT IR-ALERT-H-16-043-01AP CYBER-ATTACK AGAINST UKRAINIAN CRITICAL INFRASTRUCTURE, UPDATE A*, 7 March 2016, p. 4.

[329] Considering that as discussed "sovereign rights are not only about governmental functions". [329] (Tsagourias N., The legal status of cyberspace: sovereignty redux In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.22.).

[330] Tsagourias N., The legal status of cyberspace: sovereignty redux In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.22.

[331] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p. 2.

[332] Kohl U., *Jurisdiction in network society,* In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspac*e, Elgar, Reading, 2021, p.72.

[333] *Ibidem*.

For most of the Authors, exercise those investigative powers in a cross-border context is "a violation of a country's sovereignty unless the country in question has explicitly granted permission (by means of a treaty or other instrument)"[334] (or under the authorization of the UN Security Council)[335].

> The AU, coherently, confirmed that "by virtue of territorial sovereignty, States are entitled to exercise jurisdiction, including legislative, adjudicative, and enforcement authority, over the components of cyberspace that are located on their territory. The jurisdiction of States also applies extraterritorially to ICTs located on aircraft and ships flying the State's flag and satellites and other spacecraft in outer space registered by the State"[336] and that, under international law, "as it applies to the use of ICTs in cyberspace, does not permit a State to exercise enforcement authority on the territory of a foreign State in response to unlawful cyber activities that emanate from the territory of that foreign State. This applies even if the exercise of such enforcement authority by a State does not have harmful effects, whether virtual or physical, on the territory of a foreign State."[337]

Similarly, the Tallinn Group of Experts stated that "if one State conducts a law enforcement operation against a botnet in order to obtain evidence for criminal prosecution by taking over its command-and-control servers located in another State without that State's consent, the former has violated the latter's sovereignty because the operation usurps an inherently governmental function exclusively reserved to the territorial State under international law"[338] and that "a State's law enforcement authorities may not hack into servers in another State to extract evidence or introduce so-called white worms to disinfect bots there that are being used for criminal purposes without the territorial State's agreement."[339]

Although I tend to agree with this position, considering that "it is inherent in the nature of an intrusive transboundary activity such as [the possibility to] run into conflict with general principles of international law"[340] ; it is difficult understanding why most of the Authors choose to oppositely treat the same behaviour – unauthorized penetration and exfiltration of information – depending on if it is moved by espionage objectives or national law enforcement one. [341]

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[334] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p. 2.

[335] See art. 41 UN Charter.

[336] African Union Peace and Security Council, *Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*, 2024, para. 14. See coherently Schmitt M., *Tallinn Manual 2.0*, pp. 66,67.

[337] *Ibidem*, para. 15.

[338] Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, pp. 22-23. See also Tallinn Manual 2.0 Rule. Note that, as discussed, for instance, during the Sino-European Expert Working Group on IL - 4th Meeting -, the Chinese perspective sustain a major freedom of action for the States while executing their national security laws.

[339] Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 68.

[340]See Buchan R., *The International Legal Regulation of State-Sponsored Cyber Espionage*, in Osula A. and Rõigas H. (eds.), *International Cyber Norms: Legal, Policy & Industry Perspectives,* NATO CCD COE Publications, Tallinn, 2016, p. 68.

[341] *Ad colorandum*, note that the Group of Experts, upon the issue of extraterritorial prescriptive jurisdiction (Rule 10), stated that "the extension of jurisdiction to persons and activities that do not have a substantial connection with the State purporting to exercise such jurisdiction, or that unnecessarily infringes upon another State sovereignty or upon foreign nationals not located on the first State's territory, can not only lead to international tensions, but in some cases constitute an internationally wrongful act". Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 61.

In 2013 the US issued a search and seizure warrant against Microsoft concerning the content of all emails and related account information belonging to a suspect involved in a drug-trafficking investigation. The corporation based in Redford resisted the warrant on the basis that all the information was stored on its datacenter in Dublin, "thus outside the legitimate application of search warrants."[342] The Judge who granted the order and the first Court of Appeal considering that Microsoft could comply with the order pushing buttons from its US headquarters stated that there was no extraterritorial issue. Microsoft appealed to the US Court of Appeals for the Second Circuit and Ireland submitted an Amicus Brief declaring that accessing and transferring that information would violate its territorial sovereignty and that the US did not pursue any formal request under a Mutual Legal Assistance Treaty (MLAT).[343]

> On appeal, whilst a panel of the Court found "that requiring Microsoft to disclose the electronic communications in question would be an unauthorized extraterritorial application of the §2703 [warrant]"[344]; using positions based on the quasi-intangible nature of data and their exploitability without physically entering onto another State's territory, it also, "implicitly opened the door to more expansive legislative developments by treating the investigatory process (and the search warrants) as part of legislative/adjudicative jurisdiction to which the presumption against extraterritoriality could apply […], and could also be set aside, where desired by the legislature. In contrast, for enforcement jurisdiction, there is no presumption against extraterritoriality as all public acts on the territory of another State are illegitimate interventions, and cannot be legislated away by the interfering State. By implication, the Second Circuit Court did not, after all, assume that accessing and transferring of data from Ireland through a US intermediary (which the court rightly considered a governmental agent at the point of the warrant) involved any real interference with the territory of Ireland, and could thus be legalised through appropriate legislation in the US. Thus for the Court, governmental requests relating to foreign data lay after all outside the strict territorial limits of enforcement jurisdiction applicable to physical interferences."[345] Paving the way for the 2018 Cloud Act which unilaterally asserts US "jurisdiction over all data controlled by local platforms regardless of its location."[346] (Note that standing to the Cloud Acts, a search warrant to be challengeable (and quashed) have to be related to a non-US person (absence of domicile and citizenship) and in conflict with the laws of the State which enters into 'executive agreement' to give access to those information.[347]

This expansive adjuticative-legislative data dominance is not an isolated phenomenon as clearly marked, for instance, by the *Belgium Yahoo*, 2015, and *Belgium Skype,* 2016, cases, and, if in this context States' will to gain data to enforce their national (criminal) law is totally understandable and sensible, this does not cancel that, on one hand, the extraterritorial application of national laws may (internationally) offend States that give access to those information – as emphasized by the Irish

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[342] Kohl U., *Jurisdiction in network society*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.94.

[343] See Brief submitted on appeal to the Supreme Court (later abandoned): Brief for Ireland as *Amicus Curiae* in Support of Neither Party, n. 12-2, 9 November 2017.

[344] SUPREME COURT OF THE UNITED STATES, (Slip Opinion), 584 U. S.(2018). "The warrant was thus an unlawful extraterritorial application of the SCA." ^ Microsoft, 829 F.3d at 230–31.

[345] Kohl U., *Jurisdiction in network society*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, pp. 94-95.

[346] *Ibidem.*

[347] *Ibidem.*

declaration in support of Microsoft - and, on the other, would unacceptably mean "that every individual is or may be subject to the laws of every State[348] at all times and in all places."[349]

2.2 The non-intervention principle

The principle of non-intervention is a pivotal international legal principle, it "is an evident consequence of the liberty and independence of nations"[350] prohibiting coercive interferences in matters in which States under international law are free to choose.[351] However, "what we now call 'intervention' is by no means a recent phenomenon."[352]

2.2.1 From interference to prohibited intervention

Traditionally there was "no conception of an international community of states co-existing within a defined framework."[353] During the Middle Ages, in a Europe governed by the feudal order, existed a sort of "right to interfere with one another, which the states of Europe mutually assumed in consequence of the divisions and subdivisions into which they had fallen."[354] The Emperador, in fact, was considered, according to *Johannes Teutonicus, "super omnes reges* […] *et omnes naciones sunt sub eo*"[355], thus, in this context, "the Emperor interfered in the affairs of the Empire's polities and possessed the prerogative to wage war against the internal and external enemies of Christendom. Emperor's vassals could, [on the other side,] invoke his assistance when they felt threatened by other vassals or by popular revolts[356]. Thus "the king of England was also a vassal of the king of France in his capacity as duke of Normandy"[357] "Indeed, a principle of non-intervention in the internal affairs of others did not make much sense in the *jus commune* of the *Respublica Christiana*, a society

[348] In *Walsh v National Irish Bank*, 2013, IESC 4, the Court left open the possibility of ordering the disclosure of information from a foreign branch, even where compliance with such order would be in breach of foreign law, as acknowledged in the Ireland's Amicus Curiae, n. 141, 5. (Kohl, Handbook, p. 94, note 143.)

[349] Brierly J.L., *The Lotus' Case*, 44 LQR, 1928, p. 161.

[350] de Vattel E, *Le droit des gens ou Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains*, 1758, (tr) Kapossy B. and Whatmore R. as *The Law of Nations (or) The Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with three Early Essays on the Origin and Nature of Natural Law and on Luxury*, Liberty Fund, 2008, p. 289.

[351] See, *inter* alia, upon: Roscini M., *Non intervention*, Chapter III; Ronzitti N., *Non-ingerenza negli affari interni di un altro Stato* in Digesto delle discipline pubblicistiche, vol X, UTET, Torino, 1995, pp. 159-161; Watts S., *Low-Intensity Cyber Operations and the Principle of Non*-Intervention, in (eds,) Maldoon T. and Mälksoo L., Ziemele I., Žalimas D., Baltic YBIL 14, 2015, pp. 137-144.

[352] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 9.

[353] Shaw M. N., *International Law*, Cambridge, 2021, p.13.

[354] Ward R., *An Enquiry into the Foundation and History of the Law of Nations*, vol I, Butterworth, London, 1795, p. 367.

[355] As quoted in Post G., *Two Notes on Nationalism in the Middle Ages*, Traditio 9, 1953, 281-320, p. 299.

[356] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 11.

[357] Nussbaum A., *A Concise History Of The Law Of Nations*, Macmillan, New York, 1947, p. 22.

conceived as a unit, ruled by the Holy Roman Emperor as *dominus mundi* and by the Roman pontiff as the earthly representative of Christ, on whose behalf vicars administered their lands"[358].

"The consolidation of [the principle] national kingdoms *superiorem non recognoscentes* led to the progressive dismantling of the idea of universal monarchy and to the formation of the modern notion of State"[359]. "The emancipation process was accelerated in the 16th century by the Protestant Reformation, which broke up the Christian unity of Europe and undermined the spiritual supremacy of the Pope."[360] On the other hand, "it opened the door to confessional wars often accompanied by foreign intervention on grounds of religious solidarity."[361]

The 1648 the Peace of Westphalia represented a key moment through the elaboration of the modern intervention concept, drawing an "international order founded on the divine right of monarchs to rule and the respect for succession rules[362]"[363], consolidating the monarchs' absolute right to exclusively govern their territorial jurisdiction. "The *jus publicum europæum* formed a set of rules to regulate the co-existence of and maintain a balance of power among these sovereign entities (*principe d'équilibre*)"[364]; manifesting how "the idea of non-intervention was born as a corollary of Westphalian [sovereignty]"[365].

During the XVIII century different scholars – such as Cristian Wolff, Emer de Vattel and Jean-Jacques Burlamaqui - inspired by law of nature theories, sustained that "[b]y nature no nation has the right to any act which belongs to the exercise of the sovereignty of another nation, [as] the perfection of sovereignty consists in its exercise independently of the will of any other"[366].

Emer de Vattel is "widely considered the father of the principle of non-intervention and is arguably the first author to have employed the expression '*intervenir*'[367]."[368] The Author described "non-interference as a corollary of the independence, that is, the external sovereignty, of states"[369],

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[358] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 10.

[359] *Ivi,* p. 11.

[360] *Ivi*, p. 12.

[361] *Ibidem.*

[362] The succession set of rules was a key jus publicum europæum principle; it stands that "sovereignty might not be taken away from legitimate sovereigns without their consent" Sereni A.P., The Italian Conception of International Law, Columbia University Press, New York, 1943, p. 155.

[363] See: Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 12.

[364] *Ivi,* p. 12-13.

[365] *Ibidem*.

[366] Wolff C., *Jus gentium methodo scientifica pertractatum*, 1749, Drake J. H. tr, *The Law of Nations: Treated According to a Scientific Method* vol II, Clarendon Press/Humphrey Milford, Oxford, 1934, p.130.; see coherently: " "No foreign power has a right to interfere [*se mêler*] in [affairs being solely a national concern], nor ought to intermeddle [*intervenir*] with them otherwise than by its good offices, unless requested to do it, or induced by particular reasons", Vattel*, The Law of Nations*, p. 289.

[367] Vattel into his *Le Droit des Gens* uses this expression only twice, preferring *s'en mêler* and *s'ingérer*.

[368] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 18.

[369] *Ibidem.*

famously reaffirming State's sovereign equality bearing that "[a] dwarf is as much a man as a giant; [thus] a small republic is no less a sovereign state than the most powerful kingdom"[370].

Vattel repudiated the divine rights of successions[371] and, anticipating the Age of Revolutions theories, did not envision non-intervention as an absolute rule, identifying "an exception based on the voluntary law of nations: a foreign power can intermeddle in the internal unrest occurring in another state if it constitutes a civil war[372], mediation has proved fruitless, the assisted party has justice[373] on its side and has requested help, and there are no treaties of alliance prohibiting the interference."[374]

Immanuel Kant in his *Zum ewigen Frieden*[375], identifies positive and negative conditions for perpetual peace among nations, offering (perhaps) the first spectrum of the modern notion of non-intervention. In his Fifth Preliminary Article the Author bears that "[n]o state shall violently interfere with the constitution and government of another"[376]. (Similarly to Vattel) Kant imagined an exception to the prohibition of coercive intervention sustaining that "when 'a State […] has become split up[377] […] into two parts, each of them representing by itself an individual state which lays claim to the whole"[378] assistance to either party cannot be considered as a prohibited interference[379]. One of the positive conditions for perpetual peace identified by Kant is that the constitution of all nations should be republican, therefore Kant's non-intervention is, "only a prohibition of interfering with the government of republican states and does not rule out intervention to overthrow monarchical governments, as this would ultimately contribute to the establishment of a cosmopolitan order and to the end of all wars"[380].

Before that the XVIII century could end its run, the European balance of powers and the established *jus publicum europæum* was shaken by the American Independence and the French Revolution.[381] During the American War of Independence most of the European countries (Prussia, Sweden, Russia, and the Netherlands) stayed neutral, Portugal and Denmark refused to recognize rights of war to the

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[370] Vattel E., *The Law of Nations*, p. 75.

[371] He sustains that "'If a people, after having expelled their prince, submit to another […] they change the order of succession." Vattel , *The Law of Nations*, p. 689.

[372] To precise, Vattel develops a classification of internal unrest distinguishing between popular commotion, sedition, insurrection and civil war.

[373] Vattel sustains that the intervention may support either a King illegally deposed or a group of insurgents if they have justice on their side.

[374] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 19.

[375] First ed. 1795.

[376] Kant I., *Perpetual Peace: A Philosophical Essay* 1795, M Campbell Smith tr, George Allen & Unwin/Macmillan, London, New York, 1903, p. 131.

[377] The Interference of foreign powers must be in serious conditions, interfering in less serious situations in fact, "would be a violation of the rights of an independent nation which is only struggling with internal disease." Kant as above.

[378] Kant I., *Perpetual Peace: A Philosophical Essay* 1795, M Campbell Smith tr, George Allen & Unwin/Macmillan, London, New York, 1903, p. 112.

[379] Ivi., p. 113.

[380] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 23. See also about: Lillich R. B., *Kant and the Current Debate over Humanitarian Intervention*, 1997, p. 397, 401–2.

[381] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 24.

North American Colonies[382], while France assisted the rebels – with soldiers, army and loans – stipulating the 6 February 1778 a Treaty of Amity and Commerce[383].
The Versailles Court sustained that the British Empire had *de facto* stopped to treat the American colonies as rebels (observing law of war rules during the conflict), bearing that – at this point - the US were *de facto* independent already[384]; legitimizing the French intervention. "The British government strongly protested, arguing that disputes within an independent and sovereign state were an internal matter. […] Britain also accused France of breaching Article I of the 1763 Treaty of Paris between the two countries, which required a party not to support or protect, directly or indirectly, those who wanted to injure the other."[385] Between 1777 and 1780 The British Empire declared war to France, Spain and to the Dutch Republic alleging that they had recognized the United States and their will to conclude a trade agreement with the Star-Spangled Nation;[386] but, the 3 September 1783, The English Crown, signing the Treaty of Paris, recognized *de jure* the US independence.

In 1789 The French Revolution broke out. In 1791 with the Pillnitz Declaration "the Holy Roman Emperor Leopold II and King Frederick William II of Prussia declared that the troubles of France and of its monarch were 'an object of common interest to all sovereigns of Europe' and not a purely internal French matter, and asked all European powers to assist the imprisoned king."[387] Thus Austrian and Prussian military intervention against the Revolutionary French should not be considered as a war against France, it rather should be interpreted as the will to standing alongside the legitimate monarch (Louis XVI) and against the anarchic revolution.[388] The British Prime Minister Pitt sustained that the Empire could not interfere in the French internal affairs – not being attacked - and that the restoration of the monarchy was not an essential condition for the European peace (that would had justified the intervention).[389]

Lord Chancellor Eldon, years later, enclosing in his legal opinion on the British acceptance of the 1815 Treaty for the Perpetual Imprisonment of Napoleon the key of the British XIX century foreign policy[390], sustained that the general rule provided that States had no rights to prevent People from

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[382] Moore J. B., *A Digest of International Law* vol I, GPO, Washington. 1906, p. 169.

[383] Phillimore R., *Commentaries upon International Law*, vol I, Butterworths, London, 1879, p. 26.

[384] Wheaton H., *History of the Law of Nations in Europe and America: From the Earliest Times to the Treaty of Washington*, Gould/Banks, New York, 1845, pp. 291-293.

[269 bis] As noted by Roscini (2024, p. 25) "France also used self-preservation language by claiming that it acted together with Spain: '*pour venger leurs griefs respectifs, et pour mettre un terme à l'empire tyrannique que l'Angleterre a usurpé et prétend conserver sur toutes les mers'.* von Martens K., *Nouvelles Causes Célèbres du Droit des Gens*, vol I, Brockhaus/Avenarius, Leipzig, Paris, 1843, p. 435.

[385] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 25.

[386] Grewe W.G., *The Epochs*, (tr.) Byers M., Gruyer, Berlin, New York, 2000, p. 386.

[387] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 25.

[388] *Ivi.* See also: Bastid P., *La révolution de 1848 et le droit international*, 72 Recueil des Cours 167, Nijhoff, Hague, 1948, pp. 240-241. Note that Burlamaqui, in his *Principes du droit naturel*, anticipated one of the XIX century key-facts, distinguished between wars and measures short of war which classified between ordinary war from imperfect one, arguing "that [the latter] does not entirely interrupt the peace, but only in certain particulars, the public tranquillity being in other respects undisturbed" . Burlamaqui J., *Principes du droit naturel* (1747 and 1751), (tr). by Thomas Nugent as *The Principles of Natural and Political Law*, Liberty Fund, Indianapolis, 2006, p. 475.

[389] Wheaton H, *History of the Law of Nations in Europe and America: From the Earliest Times to the Treaty of Washington*, Gould/Banks, New York, 1845, pp. 365-369.

[390] See: *British and Foreign State Papers* 1820–1821, pp. 1162 and following.

choose their Government, but that the return of Napoleon was a risk for the peace again, representing an exception based on the absolute necessity.[391]

On September 1815 Austria, Prussia and Russia signed in Paris[392] a treaty, "the three powers formed an 'Holy Alliance' founded on the divine right of sovereigns to rule, on the solidarity among them, and on the total rejection of liberal ideas and revolutionary changes of government"[393]. And, for the following decades, many examples of "intervention on invitation"[394] can be reported such as, *inter alia*, the Austrian interventions in Naples and in Piedmont solicited by King Ferdinand I of the Two Sicilie, the France's 1823 expedition in Spain - the 'Hundred Thousand Sons of Saint Louis' - the Hungarian War of Independence and the 1840 Oriental Crisis. "The absence of consent, however, did not necessarily preclude an intervention[395]": in 1822 Metternich instructed his generals to militarily intervene in the Italic Peninsula at the request of the Italian States or on their own initiative.[396] This was the direct consequence of the Holy Alliance mission: the self-preservation against revolutionary ideas and the survival of the divine monarchic regimes; in this context, in fact, "the intervening powers did not need to be directly endangered by the internal situation in other states: [the title to] intervene [was] to enforce a collective interest (the maintenance of the tranquillity of Europe)" [397], justifying their measures with the self-preservation principle.

The principle of nationalities (*principio di nazionalità*) took centre stage during the "European Springtime of Peoples", playing an important role in the Italian and German independence[398]. In 1851, Pasquale Stanislao Mancini "identified the principle of nationalities as the foundation of the law of nations"[399], sustaining that "when a People becames a Nation it acquired the right to independence"[400]. For Terenzio Mamiani the military support in favour of a people under foreign tyranny (like the "Christian" interference for the Greek People under the Turkish monarch) would not amount to an intervention, as it would support a nation against its oppressor.[401] For Carnazza Amari, in any cases, only those who would be helped should be assisted, thus, also here, the invitation would represent the title for the intervention[402], emphasizing how, "all in all, the principle was a political

[391] Hall Stewart J., *The Imprisonment of Napoleon: A Legal Opinion by Lord Eldon,* in AJIL 45, 1951, 571-577, p.575.

[392] See also The Congress of Aix-la-Chapelle (1818), Laybach (1821) and Verona (1822).

[393] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 41.

[394] The art 4, Protocol of Aix-la-Chapelle provided that the intervention could only "take place in pursuance of a formal invitation."

[395] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 43.

[396] Tanoviceano J., *Droit international: de l'intervention*, La rose et Forcel, Paris, 1884, p. 105.

[397] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 43.

[398] *Ivi*, p. 51.

[399] *Ibidem.*

[400] Mancini P. S., *Della nazionalità come fondamento del diritto delle genti prelezione al corso di diritto internazionale e marittimo*, R. Università di Torino, 1851, p. 45. Tr. Roscini 2024, p.51.

[401] Mamiani T., *D'un nuovo diritto europeo* (4th edn,), Tipografia Scolastica—Seb Franco e Figli Torino, 1861 p. 159.

[402] Carnazza Amari G., *Nuova esposizione del principio del non intervento*, Caronda, Catania, 1873, p. 109.

and not a juridical one and expressed only an aspiration and a political program: that humanity should be organized in national states"[403]

The principle of nationalities, "beyond the Italian peninsula, was generally not received well"[404]. This is not surprising considering that (apart from the British Empire), the European States did not distinguish the different levels of internal unrests. This tendency changed during the second half of the XIX century[405]. The 1863 Lieber Code was adopted to instruct the Union forces during the American Civil War, "it [was] the first official document that identifies and defines discrete situations of internal unrest. In particular, the Code distinguishes between insurrection, […] rebellion, […] and civil war:"[406] characterizing the unrest on scale and purpose. At the 1900 Session of Neuchâtel, the *Institut de droit international* adopted a Resolution on the *Droits et devoirs des Puissances étrangères* confermed that "the third states could continue to support incumbent governments facing civil strife at least until the insurgents had been recognized as belligerents."[407] (This seemed like the academic response to an half century of wars - on ground and on paper[408]-). "Hence, third states can remain neutral, intervene on the side of either belligerent, or offer their mediation, the only criteria to guide their decision being justice and their own interests."[409]. "The trend towards negative equality, which started in the Age of Revolutions [… and] continued during the 19th century [… was the] consequence of the decline of dynastic legitimacy and its replacement with popular sovereignty"[410], flowering after the WWI. The Great War "shattered what remained of the Vienna settlement [… and] the 'well-ordered police state'"[411]. The period between the two Wars was characterized by the development of three legal intervention's corollaries: the first tendency was the conventional limitation to the resort to the armed force and (armed) intervention. *Inter alia*, the provisions of the Arts. 12 - 15 of the Covenant of the League of Nations imposed specific procedure to can legally conduct an armed intervention[412] (representing the *extrema ratio*). The second development was the limitation of the States' right of self-preservation, a tendency that would have begun with the *Carolina*

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[403] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 54.

[404] *Ivi*, p. 53.

[405] *Ivi*, p. 54.

[406] *Ivi*, p. 55.

[407] *Ivi,* p. 56.

[408] For instance, *inter alia*, during the Third Carlist War (1872–6), the British position sustained that coals "could continue to be provided to the Spanish government's ships until the insurgents had been recognized as belligerents either by the Madrid authorities or by Her Majesty's Government" (Roscini 2024, 68).

[409] *Roscini M., International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles, Oxford, 2024, p. 58.*

[410] *Ivi*, p. 73.

[411] Bhuta N., *The Antinomies of Transformative Occupation*, in EJIL 16:4, 2005, 721-740, p. 733.

[412] It is not clear which measures would have been prohibited by the Arts. 12 – 15, Cavaglieri and Brierly offered a broader position, generally condemning the resort to armed force; For Lauterpacht, however, considering that during the Draft the Art. 12 expression 'resort to armed force' left the place to 'resort to war', a narrower interpretation would be preferrable. In 1923, after the the killing of the General Tellini and the Italian armed reprisal, a special Commission set up by the League offered a case-by-case approach: "coercive measures which are not intended to constitute acts of war may or may not be consistent with the provisions of Articles 12 to 15 of the Covenant". (*Report of the Special Commission of Jurists*, 24 January 1924, 5 LNOJ, , 1924, para. IV, pp. 523-524). Similar considerations may regard the Art. 2 of the Kellogg–Briand Pact, it provided that States should settle all their disputes and conflicts by pacific means. It would appear sustainable that all measures not amouning to war must necessarily qualify as pacific being any intermediate between war and peace. See in notes: Brierly, *'International Law'*, p. 314; and Roscini, *Non-Intervention*, pp. 71-72.

case[413] and that, with the adoption of the UN Charter, culminated allowing the use of force as self-preservation only in case of natural self-defence.[414] The third was the tendency to abstain from supporting any of the sides during civil wars. For instance, in 1919 during the Russian Revolution, the Italian Prime Minister, Francesco Saverio Nitti, declared that Italy would not support any faction during any civil war, considering all *de facto* government equal; instructing to do not sell any arms (neither to the Zarist nor to the Bolsheviks). If "the two pillars of the laws of neutrality are non-participation and non-discrimination"[415], the intervention was delineating as the discriminative coercive participation in favour of another free Nation. *Ad colorandum*, when the dynastic legitimacy was replaced by popular sovereignty, the ruler was chosen "'by the will of the Nation' and not 'by the grace of God', [thus] the nation could have always revoked their mandate and no states could have interfered with this decision"[416]. States, as individual are born equal[417].

2.2.2 A reconstruction of prohibited intervention post Dumbarton Oaks

The UN Charter articles never explicitly employ the term 'intervention' or 'to intervene' anywhere apart from Article 2.7[418]. It provides that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter".

The traditional position of western States is that "Article 2.7 is not a codification of the customary principle of non-intervention applicable between states, as it operates exclusively in the relations between UN organs and member states."[419]

"A better candidate for an implicit recognition of the principle of non-intervention in the Charter is Article 78, which [requires relations] 'based on respect for the principle of sovereign equality'"[420].

Be that as it may, both the 1965 General Assembly's Declaration on the Inadmissibility of Intervention and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (the latter being an interpretation of the Charter by the General Assembly) proclaim that "any form of intervention […] violates the spirit and letter of the Charter'"[421].

The ICJ, in any case, confirmed that "it was never intended that the Charter should embody written confirmation of every essential principle of international law in force. The existence in the *opinio*

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[413] See Jennings R. Y., '*The Caroline and McLeod Cases'*, in AJIL 32:1, 1938, 82-99, p. 82.

[414] See upon: Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 72.

[415] Dinstein Y., *War, Aggression and Self-Defence*, Cambridge, 2017, p. 27.

[416] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 73.

[417] Vincent R. J*., Nonintervention and International Order*, Princeton, 1974, p. 39.

[418] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 100.

[419] *Ibidem*, p. 100.

[420] *Ivi*, p. 101.

[421] *Ibidem*.

juris of States of the principle of non-intervention is backed by established and substantial practice."[422]

After the WWII, European countries lost their centrality *in lieu* of "a global order of two domains and a series of proxy"[423], where the US and the Soviet Union often intervened (with mixed results) – mostly - into their respective sphere of influence[424]. The URSS (as well as other members of the communist block), in fact, often offered their intervention during different National Liberation Wars fought in Asia and Africa. Western Countries also, on the other hand - after the independence of their former colonies -, regularly continued intervening, as the various French intervention in the Françafrique.[425] Also "international humanitarian law treaties[426] applicable to non-international armed conflicts (NIACs) have reaffirmed the principle of non-intervention in order to avoid that they might be invoked to legitimize armed opposition groups"[427].

European treaties, classically, used to treat non-intervention as "coterminous with the prohibition of the use of force"[428], in fact, European post-war regional treaties never explicitly reference the non-intervention principle. And it is not a case that the only exception were two socialist bloc treaties the Warsaw Pact and the Art. 1.2 of the 1959 COMECON[429]. It was with the Helsinki Act, during a "détente between the two blocs, that the European states from both East and West adopted a non-binding document that expressly[430] includes non-intervention"[431].

Both the Act of Chapultepec[432] and the Art. 3 of the Declaration of Mexico (1945) condemn the intervention. It was also explicitly content by the Art. 19 (originally Art. 15) of the 1948 Charter of

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[422] I.C.J. Reports 1986, *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America). Merits, Judgment, para. 202.

[423] Bhuta N., *The Antinomies of Transformative Occupation*, in EJIL 16:4, 2005, 721-740, p. 734.

[424] See *inter alia* the US interventions in Guatemala (1954), Cuba (1961), Dominican Republic (1965), Nicaragua (1981–9), Grenada (1983), and Panama (1989–90), and the Soviet interventions in East Germany (1953), Hungary (1956), and Czechoslovakia (1968). See generally: Roscini, Non-Intervention, pp. 98-99.

[425] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 98.

[426] The Art. 3 of the *1977 Additional Protocol to the 1949 Geneva Conventions on the Protection of Victims of War* provides that: "1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the nationalinity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs".

[427] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 111.

[428] *Ivi*, p. 108.

[429] *Ibidem*.

[430] See: Principle VI of the *Final Act of the Conference on Security and Co-operation in Europe* (CSCE), Helsinki, 1 August 1975.

[431] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 108-109.

[432] It was later ushered by the Rio Treaty which did not explicitly metioned non-intervention. With the Protocol of Amendment, San Josè de Costa Rica, 26 July 1975, was added a new Art. 12: '[n]othing stipulated in [the Rio Treaty] shall be interpreted as limiting or impairing in any way the principle of nonintervention and the right of all states to choose freely their political, economic and social organization'.

the Organization of American States (OAS).[433] The 1985 Protocol of Cartagena de Indias broadens the scope of the principle in the OAS Charter.

> "It has amended Article 2 (originally Article 4) so as to include the promotion and consolidation of '*representative democracy, with due respect for the principle of non-intervention'* among the purposes of the Organization, and has added another principle among those reaffirmed in Article 3 (formerly Article 5), according to which '[e]very State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State'."[434]

The colonial history and the many external interventions make clear why, since the 60's, the non-intervention principle was (as) popular in African Academics and Treaties. The Art. III of the (now terminated) 1963 Charter of the Organization of African Unity identified 'non-interference' as one of the foundational principles of the Organization.[435] The norm (later embedded by African Union (AU)'s Constitutive Act) - which provides "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity" [436] and "the right of Member States to request intervention from the Union in order to restore peace and security"[437]- emphasizes, after tremendous "struggles waged by [African peoples and] Countries for political independence, human dignity and economic emancipation"[438], Pan-Africanists' consciousness of the need "to take all necessary measures to strengthen [their] common [and internal] institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates effectively."[439]

"The Art. 3 of the 2019 Protocol Relating to the Peace and Security Council of Central Africa (COPAX), […] also contains the principle of non-interference and the obligation of the states parties not to tolerate or favour the creation or operation on their territory of mercenary, terrorist, subversive, or rebel groups directed against another state"[440].

Generally, the Asian countries prefer to employ the expression "non-interference" instead of 'non-intervention.[441] The Art. 2 of the 1976 Treaty of Amity and Cooperation in Southeast Asia provides *inter alia* that non-interference must guide the parties, as well as the Art. 2.2e of the 2007 Charter of

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[433] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 102.

[435 bis] "The formulation contained in the OAS Charter would later be used as a model by the UN General Assembly in its [Non-Intervention] resolutions". Roscini, *Non-Intervention*, p. 104.

[434] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 105.

[435] *Ibidem.*

[436] *AU Constitutive Act*, 2000, Art. 4. h.

[437] *AU Constitutive Act*, 2000, Art. 4. j.

[438] *AU Constitutive Act*, 2000, p, 2.

[439] *Ibidem*.

[440] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 106.

[441] *Ivi*, p. 107.

the Association of Southeast Asian Nations (ASEAN) which reaffirms the principle, albeit limited to its members.[442]

> "After the fall of the Berlin Wall and the dismantlement of the communist bloc, reaffirmations of the principle of non-intervention have continued, most prominently in the UN Millennium Declaration and in the 2005 World Summit Outcome Document, which both use the 'non-interference' language. In the 2016 Declaration on the Promotion of International Law, Russia and China also stressed that they 'fully support the principle of non-intervention in the internal or external affairs of States'. The 2018 Qingdao Declaration of the Council of Heads of State of the SCO affirms the commitment of the member states."[443]

This various and "extensive pattern of treaties in the same terms"[444], emphasized also by numerous GA Resolutions[445], are not only a reiteration or elucidation[446]; in *Nicaragua case* words "[e]xpressions of an *opinio juris* regarding the existence of the principle of non-intervention in customary international law are numerous and not difficult to find [… and this *opinio juris*] is backed by established and substantial practice"[447]. " – this was also explicitly confirmed in *DRC v. Uganda*[448] cases and in *Chagos*[449] and in *Legality of the Threat or Use of Nuclear Weapons*[450] *Advisory Opinions* - And confirmed, *inter alia*, by the European Court of Justice.[451]

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[442] See: Corthay, E., *The ASEAN Doctrine of Non-Interference in Light of the Fundamental Principle of Non-Intervention,* Asian-Pacific L & PJ 17:2, 2016, 1-44, p. 1.

[443] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 114.

[444] Crawford J., *Brownlie's Principles of Public International Law*, OUP 2019, p. 22.

[445] In Roscini words: "Their sheer number makes their enumeration pointless. The most significant ones include Resolution 290 (IV) of 1 December 1949 (Essentials of Peace); Resolution 380 (V) of 17 November 1950 (Peace Through Deeds); Resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples; Resolution 2131 (XX) of 21 December 1965 adopting the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty; Resolution 2160 (XXI) of 30 November 1966 on the Strict Observance of the Prohibition of the Threat or Use of Force in International Relations and of the Right of Peoples to Self-Determination; Resolution 2225 (XXI) of 19 December 1966 on the Status of the Implementation of the Declaration on the Intervention in the Domestic Affairs of States; Resolution 2625 (XXV) of 24 October 1970 containing the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations; Resolution 2734 (XXV) of 16 December 1970 on the Strengthening of International Security; Resolution 3171 (XXVII) of 17 December 1973 on Permanent Sovereignty over Natural Resources; Resolution 31/91 of 14 December 1976 on Non-interference in the Internal Affairs of States; Resolution 34/103 of 14 December 1979 on the Inadmissibility of the Policy of Hegemonism in International Relations; Resolution 36/103 of 9 December 1981 adopting the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States; and Resolution 42/22 of 18 November 1987 containing the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations." Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 116-118.

[446] ICJ Reports 1986, *Military and Paramilitary Activities in and against Nicaragua,* Nicaragua v. United States of America, Merits, Judgment, para. 69.

[447]ICJ Reports 1986, *Military and Paramilitary Activities in and against Nicaragua,* Nicaragua v. United States of America, Merits, Judgment, para. 202.

[448] ICJ Reports 2005, *DRC v Uganda*, Merits, Judgement, 2005, paras. 162-163.

[449] Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) [2019] ICJ Rep 95, paras. 152-153.

[450] Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226, para 70.

[451] See: Liberation Tigers of Tamil Eelam (LTTE) v Council of the European Union, Joined Cases T-208/11 and T-508/11, Judgment of 16 October 2014, ECLI:EU:T:2014:885, para 69.

To precise, the rule customary status was yet implicitly recognized in *Corfu Channel*. The United Kingdom sustained the legality of an intervention which aims at secure evidence to submit to a Tribunal, however, the latter (as well as any self-preservation thesis) were refused by the ICJ bearing that the "alleged [intervention] has, in the past, given rise to the most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law"[452] , ruling out the behaviour.

2.2.3 The content of the principle and the issue of coercion

Given the customary status of non-intervention, most of the scholars classically referred to it as a principle, not as a norm, leaving as a *velata quaestio* the exact identification of a prohibited intervention and how it differentiates from a mere interference. Cassese noted that, generally, when States cannot agree because of their conflicting views upon key matters of crucial situation that, in any case, need some guidelines, lead to the formulation of principles. Thus, given to the principle its undeniable vagueness, "nothing prevents it from being construed in terms of the Hohfeldian dichotomy right/duty: in other words, it encompasses the right of every state to conduct its domestic affairs without external intervention and the corresponding duty of other states to refrain from such intervention"[453].

In *Corfu Channel* the ICJ described intervention as a manifestation of a policy of force[454]- not really expanding on the point. – It was in Nicaragua that the Court really described its definition and, indeed, its essence, finding that " the principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference[455]" using methods of coercion in regard to "matters in which each State is permitted, by the principle of State sovereignty, to decide freely [including] the choice of a political, economic, social and cultural system, and the formulation of foreign policy"[456]. Of course, non-intervention protects the states domestic jurisdiction[457] within the limits of international law[458] and, thus, "when coercion is not exercised in regard to a matter in which the target state can decide freely, therefore, it escapes the prohibitive scope of the [...] non-intervention principle;"[459] thus, it protects States' decisional sovereignty from third States coercion.

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[452] I.C.J. Reports 1949, *Corfu Channel* (*United Kingdom of Great Britain and Northern Ireland v Albania*). Merits, Judgement, Rep. 35.

[453] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 121.

[454] I.C.J. Reports 1949, Corfu Channel (*United Kingdom of Great Britain and Northern Ireland v Albania*). Merits, Judgement, Rep. 4 and 35.

[455] I.C.J. Reports 1986, *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America). Merits, Judgment, para. 202.

[456] *Ibidem*.

[457] The expression is coterminous as "domaine (d'activités) réservé"; see Salmon J. *Dictionnaire de droit international public*, Bruylant, Bruxelles. 2001.

[458] This is what, substantially, characterize the legality between a countermeasure and a prohibited intervention.

[459] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 164.

[459 bis] This does not automatically mean that other states can resort to coercion in regard, having to comply with the whole international rules; furthermore, it is possible to resort to armed coercion only as provided by the VII Chapter of the UN Charter.

But, if coercion is the intervention's essence, how did international law define it? Given that "the term coercion is not defined in either treaty law[460] or customary international law"[461], a good starting point may be the *Helsinki Act* which states that "coercion [is] designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind"[462]. "The ICJ has referred [to its notion] on a couple of occasions, but without shedding much light on it"[463]; in *Nicaragua* case, though the identification of coercion as the very essence of intervention, the Court limited to sustain that a "particularly obvious"[464] example of coercion is an intervention carried out using - "either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State"[465] – force. While in the *Tehran Hostages* case the ICJ defined the detention of the US diplomats as "a means of coercing"[466]- do not defining its key aspects.

Lassa Oppenheim defines intervention as a "(forcible or[467]) dictatorial interference by a state in the affairs of another state, calculated to deprive that state of control of the matter in question" [468]

For Myres McDougal and Florentino Feliciano coercion is not an act, being a continuously accelerating and decelerating process characterized by "methods which include the employment of [diplomatic[469] ideological[470], economic[471] and military[472]] instruments of policy and under all the continually changing conditions of a world arena."[473] Confirming, as famously stated, that "coercion is present if intervention cannot be terminated at the pleasure of the state that is subject to intervention"[474], impairing its decisional capacity. Thus, starting from this, it may be pointed out[475]

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[460] The term coercion is used also in the context of Law of Treaties and Law of State Responsibility – such as *The Commentary on Art. 18 of ARSIWA* or the *VCLT*) – providing an higher threshold of coercion – which will be briefly analysed about economic coercion – than the one provided by the rule of non-intervention in general international law.

[461] Government of Denmark, *Denmark's Position Paper on the Application of International Law in Cyberspace*, 2023, para. 3 *Non-intervention*.

[462] Helsinki Final Act, VI. *Non-intervention in internal affairs*, 1975.

[463] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 148.

[464] ICJ Reports 1986, *Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, para. 205.

[465] *Ibidem*.

[466] *United States Diplomatic and Consular Staff in Tehran*, (*United States of America v. Iran*), Judgment, I.C.J. Reports 1980, para. 87.

[467] As noted by Roscini (Non-intervention, 2024, p.152), interestingly, Oppenheim's originally only referred to "dictatorial coercion" (Oppenheim L., *International Law: A Treatise, vol I: Peace*, Longmans/Green and Co, London, New York, New Delhi, 1905, p. 181), while in different late editions (such as (eds) Sir Jennings R. Y. and Sir Watts A., *Oppenheim's International Law, vol 1: Peace*, 9th edn, Longman, London, New York, 1992, p. 432) intervention is defined as a "forcible or dictatorial coercion".

[468] Marston G. (ed), *Is Intervention Ever Justified?*, in United Kingdom Materials on International Law 1986, BYBIL 57:1, 1986, p. 615.

[469] McDougal M. S. and Feliciano F. P., *International Coercion and World Public Order: The General Principles of the Law of War*, 1958, Yale Law Journal 67:5, 771-845, p. 792.

[470] *Ivi*, p. 793.

[471] *Ivi*, p. 794.

[472] *Ivi*, p. 795.

[473] *Ivi*, pp. 771 and 779.

[474] DeWitt Dickinson E., *The Equality of States in International Law*, Harvard University Press, Cambridge, 1920, p. 260.

[475] See upon, *inter alia*, Bianchi A., *Le recenti sanzioni unilaterali adottate dagli stati uniti nei confronti di Cuba e la loro liceità internazionale,* Rivista di diritto internazionale 81:2, Giuffrè, Milano, 1998, p. 335; White N., *The Cuban Embargo under International Law: El Bloqueo*, Routledge/Francis, London, New York, 2015, p. 142; Roscini M., *International*

that the US unilateral sanctions against Cuba[476] "taken separately do not breach the principle of non-intervention, they do if considered as a whole because of their cumulative effects on the island's economy"[477].

Most of states' approaches to evaluate methods of coercion[478] seem essentially based on "the impact that they can have on the target state's agency"[479]; the Canada position, for instance, states that coercion means to "deprive, compel, or impose an outcome on the affected State"[480]. "Denmark takes the view that an act may be considered of a coercive nature when the act of interference has a potential for compelling the target State to engage in an action that it would otherwise not take"[481]. For Costa Rica coercion can be exercised "in a multitude of ways where one State […] deprives another State of the capacity to make free and informed choices pertaining to its internal or external affairs"[482]. For Germany "coercion implies that a State's internal processes regarding aspects pertaining to its *domaine réservé* are significantly influenced or thwarted and that its will is manifestly bent by the foreign State's conduct". For the Netherlands "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"[483].

> For the African Union, coercion is "a policy that is designed to impose restraints on the will of a [third] State; [the conduct to be coercive] must [not necessarily] completely [deprive a target] State of its freedom of choice or to compel that State to either act or refrain from acting involuntarily. Coercion may also occur through threats of intervention.[484] Furthermore, there is no requirement that, [to violate] the prohibition on intervention, an act of coercion must actually succeed in compelling the State subjected to such acts to change its conduct. An unsuccessful attempt of intervention is unlawful under international law"[485].

Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles, Oxford, 2024, p. 150.

[476] Similar considerations may regard the sanctions adopted by several Gulf States in 2017 against Qatar.

[477] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 150.

[478] Charpentier J., *Les effets du consentement sur l'intervention*, in Mélanges Seferiades vol II, De Ange Ath Klissounis, 1961, pp. 489–90; de Jong H.G., *Coercion in the Conclusion of Treaties: A Consideration of Articles 51 and 52 of the Convention on the Law of Treaties*, 1984, 15 in Netherlands Yearbook of International Law 15, 1984, 209-247, pp. 209, 220–4; Corn G. P., *Covert Deception, Strategic Fraud, and the Rule of Prohibited Intervention*, Hoover Working Group on National Security, Technology, and Law, Aegis Series Paper No 2005, 18 September 2020; Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 148.

[479] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 148.

[480] Government of Canada, *International Law Applicable in Cyberspace*, 2022, para. 22.

[481] Government of Denmark, *Denmark's Position Paper on the Application of International Law in Cyberspace*, 2023, p. 3.

[482] Ministerio de Relaciones Exteriores y Culto, *Costa Rica's position on the application of international law in cyberspace*, 2023, para 24.

[483] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p.3.

[484] The General Assembly Resolutions 2131 and 2625, condemn the "attempted threat" GA Res 2131 (XX), para 1; GA Res 2625 (XXV), Annex, third principle, para 1; furthermore, "nothing in the [Nicaragua] judgment or international law more broadly requires that an intervention be [only] effected by threat of consequences, lawful or otherwise." (in Corn G.P., *Covert Deception, Strategic Fraud, and the Rule of Prohibited Intervention*, Hoover Working Group on National Security, Technology, and Law, Aegis Series Paper No 2005, 18 September 2020, p.12).

[485] African Union Peace and Security Council, *Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*, 2024, paras. 31-32.

Thus, what differentiate a mere interference from a prohibited intervention is, on one hand, the inference "over matters in which [the State, under international law,] can decide freely"[486] and, on the other, the coercive process[487]. This means that, for instance, a cyber operation which aims at delaying another State's election[488] or "at undermining a State's ability to safeguard public health during a pandemic"[489] "certainly are forms of coercion. But […] coercion can be broader than this"[490]. In fact, "not all forms of coercion […] aim at compelling the victim state to do or not to do something"[491], considering that the intervention's object can be "*soit de se substituer à l'Etat victime dans l'exercice de ses droits souverains, soit de le forcer à suivre une certaine ligne de conduite, tant dans les affaires intérieures que dans les rapports avec d'autres Etats*"[492].

In essence, the inference in the internal or external affairs of another State will be unlawful if it is[493] a dictatorial or forcible[494] compression of the State's decisional capacity in matters in which, under international law, states are free to choose. In this context, 'dictatorial or forcible' are characterization of the coercive process' object as, for Roscini, the former "can consist in compelling another state to do or not to do something"[495], while, the latter "in taking control of a certain matter and forcibly imposing a condition of things"[496].

This means that the essence of dictatorial coercion basically is reflection of the General Assembly Resolutions 2131 and 2625 wording, namely "to obtain from [the victim state] the subordination of the exercise of its sovereign rights […] to secure advantages of any kind"[497]. "The threatened harm, whatever its nature, […] does not necessarily need to be explicit, but it must be clear, specific, […]

[486] Attorney General's Office and Braverman S, *International Law in Future Frontiers*, Speech at Chatham House, 19 May 2022.

[487] See, *inter* alia, upon: Roscini M., *Non-intervention*, Chapter III; Ronzitti N., *Non-ingerenza negli affari interni di un altro Stato* in Digesto delle discipline pubblicistiche, vol X, UTET 1995, pp. 159-161; Watts S., *Low-Intensity Cyber Operations and the Principle of Non*-Intervention, in (eds.) Ohlin J. D. Govern K. Finkelstein C., *Cyber War: Law and Ethics for Virtual Conflicts*, Oxford, 2015, pp. 137-144.

[488] Attorney General's Office and Braverman S, *International Law in Future Frontiers*, Speech at Chatham House, 19 May 2022.

[489] Ministero degli affari esteri e della cooperazione internazionale*, Italian Position Paper on "International Law and Cyberspace"*, p.5.

[490] Attorney General's Office and Braverman S, *International Law in Future Frontiers*, Speech at Chatham House, 19 May 2022.

[491] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 155.

[492] Komarnicki T., *L'intervention en droit international modern,* 60 RGDIP, 521-568, 1956, pp. 521, 523–4.

[493] Attorney General's Office and Braverman S, *International Law in Future Frontiers*, Speech at Chatham House, 19 May 2022.

[494] Using Roscini wording; for Henri Rolin this same distinction corresponds to that between direct and indirect coercion in Rolin H., *Projet de règlement sur le régime des représailles en temps de paix* and *Observations de Henri Rolin*, AIDI 38:7, 1934, p. 126.

[495] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 152.

[496] *Ibidem.*

[497] GA Resolutions 2131 (XX), paras. 1–2, and 2625 (XX), Annex, third principle, paras. 1–2.

credible enough […] and sufficiently serious to genuinely reduce"[498] "the range of choices otherwise available to [the target] states"[499].

"Note, [once again,] that it is not essential that the threat reaches its objective for the principle of non-intervention to be breached: it is sufficient that unlawful coercion is exercised, whether or not the victim state actually submits to it or decides to resist and stoically endure the harm"[500].

The essence of forcible coercion, instead, is not to compel a State "to act differently from how it otherwise would"[501], but it is to substitute the target State exercising rights exclusively reserved to its domestic jurisdiction.

"In this context ['forcible'] does not refer exclusively to the use of armed force but to the fact that a certain condition of things has been imposed on the victim state against its will, whatever the means employed to achieve this result"[502].

A practical example of forcible coercion is, *inter alia*, the *Asylum case*, where the Colombian behaviour to grant diplomatic asylum to a Peruvian dissident in Its Ambassy in Lima was considered by the ICJ as an "intervention in its least acceptable form, one which implies foreign interference in the administration of domestic justice"[503].

The point is that sovereignty is "independence. It is external independence with regard to the liberty of action outside its borders. It is internal independence with regard to the liberty of action of a state inside its borders"[504]. "'Liberty of action' means 'decisional capacity' which is "what the principle of non-intervention ultimately protects[505]" from coercion.

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[498] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 153.

[499] Sadurska R., *Threats of Force*, AJIL 82:2, 1988, 239-268, p. 242.

[500] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 154; see also, coherently, about: Van Wynen Thomas A. and Thomas A.J. Jr, *Non-Intervention: The Law and Its Import in the Americas,* Southern Methodist University Press, Dallas, 1956, p. 72; Sapienza R., *Il principio del non intervento negli affair interni. Contributo allo studio della tutela giuridica internazionale della potestà di governo*, Giuffrè, Milano, 1990, pp. 83–4; As noted by the Argentinian delegate on the Special Committee on Friendly Relations: "[e]ven if that State refused to be coerced or intimidated by threats, there might be an intention on the part of the intervening State to coerce the sovereign will of the other State" (UN Doc A/AC.119/SR.28, 23 October 1964, p. 5, emphasis omitted – adapted by Roscini).

[501] Attorney General's Office and Braverman S, *International Law in Future Frontiers*, Speech at Chatham House, 19 May 2022.

[502] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 155.

[503] *Asylum Case,* (*Colombia v. Peru*), Judgment, 1950, I.C.J. Reports 1950, pp. 266, 285.

[504] Oppenheim, S(eds) Sir Jennings R. Y. and Sir Watts A., *Oppenheim's International Law, vol 1*: *Peace*, 9th edn, Longman, London, New York, 1992, p. 382 (emphasis in the original).

[505] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 165-166.

After the UN Charter adoption many prominent Authors like Hans Kelsen[506], James Brierly[507] or Wolfgang Friedmann[508] discussed upon non-intervention extension.

Armed compulsion, as an instrument to coerce another state's decisional capacity, constitutes the most obvious[509] *species* of the broader *genus* of intervention[510]; while "armed coercion to enforce compliance with international law obligations, therefore, is beyond the prohibitive reach of the principle of non-intervention, but it remains unlawful under the *jus contra bellum* codified in the UN Charter"[511].

Note that the principle of non-intervention "only prohibits coercion, that is non-consensual acts: the presence and operation of foreign troops on the territory of a state with the valid consent of its government is entirely permissible"[512]. Contrarily, the art. 2.4 UN Charter prohibits also the consensual uses of armed force which are inconsistent with the Charter's purposes[513].

During the Cold War it was hotly debated whether other forms of coercion also fall under the prohibitive scope of the principle, taking a particularly centre stage during the drafting of the Vienna Convention on the Law of Treaties (VCLT) and of the General Assembly Resolutions 2131 and 2625.[514] Most of Western States – particularly the US, the UK and the Netherlands – opposed to the incorporation of economic and political coercion in the VLCT as a ground to invalidate treaties[515] as, for them "political and economic pressures are part of the normal working of the relations between States and international law does not yet seem to contain the criteria necessary for formulating distinctions between the legitimate and illegitimate uses of such forms of pressure as a means of securing consent to treaties"[516]. Coherently the art. 49 of the 1966 version of the Vienna Conference only referred to the (armed) force, used or threatened, in violation of the UN Charter principles; while, economic and political coercion were condemned separately, in a declaration annexed to the 1968-9 Convention[517].

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[506] See upon: Kelsen H., *The Draft Declaration on Right and Duties of States*, in AJIL 44:2, 1950, 259–276, p. 268.

[507] See upon: Brierly J.L., *The Law of Nations*, Clarendon Press, Oxford, 1955, p. 308 "[intervention] must either be forcible or backed by the threat of force".

[508] Friedmann W., *The Changing Structure of International Law*, Stevens & Sons, London, 1964, pp. 270–2.

[509] See ICJ Reports 1986, *Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, para. 205.

[510] During the debates on the Declaration on Friendly Relations, for instance, some representatives observed that "military intervention was only one of the possible forms of intervention", UN Doc A/6955, 11 December 1967, para. 92.

[511] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 170.

[512] *Ibidem*, p. 171; see generally upon: Chapter IV, Section 3.

[513] Butchard P.M., *Territorial Integrity, Political Independence, and Consent: The Limitations of Military Assistance on Request under the Prohibition of the Use of Force*m, 2020, in JUFIL 7:35, p. 72.

[514] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 170.

[515] *Ivi*, p. 171.

[516] Sir Waldock H., *Second Report on the Law of Treaties, Second report on the law of treaties / by Sir Humphrey Waldock, special rapporteur, Volume 2*, 1963 Yearbook International Law Commission, vol II, p. 52.

[517] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 171.

In any case, this higher threshold of coercion, which requires the inability to resist the pressures, remains limited only to the context of the law of treaties and the law of state responsibility[518]; it does not therefore extend to coercion as an element of the primary rule of non-intervention[519], as clearly manifested, *inter alia*, by the 2131 and 2625 Resolutions; the *1994 Memorandum on Security Assurances* in Connection with *Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons* signed by Ukraine, the Russian Federation, the United Kingdom, and the United States which borrowing the wording from the two Resolutions bears their commitment "to refrain from economic coercion designed to subordinate to their own interest the exercise by Ukraine of the rights inherent in its sovereignty and thus to secure advantages of any kind"[520]; the PRC, India, and Russia 2016 jointly condemnation of the use of "unilateral coercive measures not based on international law"[521] as a violation of the principle of non-intervention; and various African Union resolutions[522].

The broader extension of intervention's coercion is particularly manifest, for example, considering the difference between economic coercion and coercion for economic purposes[523]. As, the former consists in using economic means of pressure to coerce another state to secure advantages of any nature or, using the UE wording, "by applying or threatening to apply measures affecting trade or investment […] to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State"[524].

Four main forms of economic coercion seem enviable: through public financial relations, through private financial relations and through trade relations[525] - all characterized by putting a direct pressure on the target state – and through economic aid – which poses indirect pressure on the target state -.

"In economic intervention through public financial relations, a state could refuse to grant loans to another, freeze its public assets, manipulate the control of exchange, or devaluate or inflate its currency in relation to the currency of the other state"[526].

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[518] The Commentary on Art. 18 of ARSIWA states that *"[c]oercion for the purpose of article 18 has the same essential character as force majeure under article 23. Nothing less than conduct which forces the will of the coerced State will suffice, giving it no effective choice but to comply with the wishes of the coercing State*" , 2001, YB ILC, vol II, part two, p. 69, emphasis added.

[519] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 154-155.

[520] UN Doc A/49/765-S/1994/1399, 19 December 1994, Annex I, para. 3.

[521] *Joint Communiqué of the 14th Meeting of the Foreign Ministers of the Russian Federation, the Republic of India and the PRC*, Moscow, 19 April 2016, para. 6; *People's Republic of China and the Russian Federation on the Promotion of International Law*, Beijing, 25 June 2016, para. 6.

[522] *Resolution on the Impact of Sanctions and Unilateral Coercive Measures on African Union Member States*, Assembly/AU/Res.1 (XXXV), 5–6 February 2022; *Resolution on the Lifting of the Economic, Commercial and Financial Blockade Imposed on the Republic of Cuba by the United States*, Assembly/AU/ Res.2 (XXXV), 5–6 February 2022.

[523] Van Wynen Thomas A. and Thomas A.J. Jr*., Non-Intervention: The Law and Its Import in the Americas*, Southern Methodist University Press, Dallas, 1956. p. 410.

[524] European Commission, *Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries*, Brussels, 8 December 2021, Art. 2.1.

[525] Van Wynen Thomas A. and Thomas A.J. Jr*., Non-Intervention: The Law and Its Import in the Americas*, Southern Methodist University Press, Dallas, 1956. p. 410.

[526] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 176; see also, coherently: Van Wynen Thomas A. Thomas A.J. Jr*., Non-Intervention: The Law and Its Import in the Americas*, Dallas: Southern Methodist University Press, 1956. p. 411.

Examples of economic intervention through private financial relations includes when a state prohibits to "all private banking and lending institutions from granting credits to another nation or its citizens; when it prohibits the sale of stocks or bonds of that nation or of its corporate citizens within its territory; and when it suspends all existing clearing or payment agreements between its citizens and the citizens or government of the other state"[527].

While, economic intervention through trade relations may include, for instance, manipulating the tariffs and imposing an embargo or a boycott[528].

As the coerciveness stands on the capacity of the measure to have a magnitude sufficient to impair the target state decisional capacity. "[C]learly, it is appropriate to distinguish between a boycott in bananas and one on petroleum or wheat"[529], considering that, as noted by Roscini, it is necessarily a contextual assessment to characterize whether "an economic measure is of magnitude sufficient to have a coercive effect: a state where the economy entirely depends on the export of one good (including bananas) might be severely affected by an embargo on that good, while countries with a more diversified economic system would not"[530].

Finally, examples of economic coercion through aid may consist in the subordination of the supply of economic aid to vexatious conditions "like the acceptance of military bases on the territory of the receiving state, the adoption of domestic legislation favouring foreign private investments, or the waiver of the right of nationalizing and expropriating foreign property"[531] or, standing to the socialist and developing countries positions in the *travaux préparatoires*[532] of the 2131 resolution, in suspending or drastically reducing economic aid on which another state depends[533].

Despite Resolution 2131 *travaux préparatoires*, in *Nicaragua case,* the ICJ stated that '[a] State is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligation"[534], being "unable to find that the US discontinuation of economic aid to Nicaragua, the drastic reduction (ninety per cent) of sugar imports from Nicaragua, and the trade embargo adopted against the Central American country by the United States constituted a breach of the customary principle of non-intervention, as argued by counsel for Nicaragua"[535]. Coherently, in a 1993 Report, the UN Secretary-General Boutros-Ghali beared that

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[527] *Ibidem.*

[528]As noted by Thomas and Thomas, although generally a boycott is an act of individuals, it may fall under the principle of non-intervention if it is instructed by a government. Thomas and Thomas, *Non-Intervention*, 1956, pp. 410-11. See also coherently, the 1905 Chinese boycott of US goods supported by Qing govenment in Joyner C.C., *Boycott,* in (ed.) Wolfrum R., MPEPIL, 2009, para. 3.

[529] Dapray Muir J., *The Boycott in International Law*, JILE 9:2, 1974, 187–204, p. 203; see also, coherently: Seidl-Hohenveldern I., *The United Nations and Economic Coercion,* RBDI 18, 1984-1985, p. 12.

[530] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 177.

[531] *Ivi*, p. 176.

[532] See, *inter alia*: Soviet Union, UN Doc A/C.1/SR.1395, 3 December 1965, para. 18; Ghana, Un Doc A/C.1/SR.1402, 8 December 1965, para. 13; Bulgaria, Un Doc A/C.1/SR.1405, 9 December 1965, para 16); and Sudan Un Doc A/C.1/SR.1405, para. 23.

[533] Gaeta P, Viñuales J.E., and Zappalà S, *Cassese's International Law*, Oxford, 2020, p. 55.

[534] Nicaragua v. Usa, para. 276.

[535] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 182.

"[t]here is no clear consensus in international law as to when coercive economic measures are improper, despite relevant treaties, declarations and resolutions adopted in international organizations which try to develop norms limiting the use of such measures"[536].

Unsurprisingly, the two UN resolutions on *Human rights and unilateral coercive measures* and on *Unilateral economic measures as a means of political and economic coercion against developing countries* were adopted with the contrary vote of Western States and various and powerful argumentations against the inclusion of economic intervention in the customary version of the principle were spent[537].

Looking at states' practice, the widespread of export control and economic coercion might suggest being "faced with elements (or fragmentary expressions) of *opinio juris* unattended by corresponding State practice"[538]. But, analysing closely the wording used by states adopting unilateral economic coercive measures, it is notable the choice of a condemnatory and justificatory countermeasure language[539] which emphasizes how the adoption of economic coercive measures represents itself an exception from the generally accepted international rules, strengthening the prohibition. As, for example, the US embargo on all exports to Cuba was justified on the lack of adequate compensation received for the expropriation of US property between 1959–60 and to its violations of human rights[540]. The same argumentation was also used to justify the US choice to cut lines of credit to Chile in response to the expropriation of American property without adequate compensation[541]. Coherently, in the 1950s, the UK justified its boycott of Iranian oil in response of the oil industry nationalization[542]. "When OAPEC reduced oil supplies to Europe and Japan and cut them off entirely from the United States and the Netherlands as a consequence of Western support for Israel during the Yom Kippur War (1973), the Arab countries justified it as an exercise of the right of self-defence, as a lawful belligerent measure, and as a reaction to a previous violation of international law"[543]. Similarly, US President Carter justified the economic sanctions against URSS after the invasion of

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[536] *Economic Measures as a Means of Political and Economic Coercion against Developing Countries*: *Note by the Secretary-General*, UN Doc A/48/535, 25 October 1993, para. 2(a).

[537] "There is no consensus in scholarship on whether economic coercion is lawful or not under customary international law". (Roscini, *Non-Intervention*, 2024, p.181); however, it has been observed that "[t]he use of export controls for political purposes is so widespread that no general rule of international custom could have developed to the contrary" (Shihata I.F., *Arab Oil Policies and the New International Economic Order,* 1975, Vancouver Journal Intl L 16, p. 267). For White "[t]he sovereign freedom of a state must always be balanced against the infringement of the sovereignty of other states" (White N., *The Cuban Embargo under International Law: El Bloqueo*, Routledge, 2015, p. 96). See also: Friedmann W., *Intervention, Civil War and the Role of International Law*, ASIL Proceedings 59, 1965, 67-75, p. 69; Elagab O.Y., *The Legality of Non-Forcible Counter-Measures in International Law*, Clarendon Press, Oxford, 1988, p. 208; Benneh E.Y., *Economic Coercion, the Non-Intervention Principle and the Nicaragua Case*, Afr. J. Int'l & Comp. L. 6, 1994, pp. 249–52; Tzanakopoulos A., *The Right to Be Free from Economic Coercion*, Cambridge J Int'l & Comp L 4, 2015, 616-633, pp. 630–33; Pomson O., *The Prohibition on Intervention Under International Law and Cyber Operations,* , ILS 99, 2022, 180-218, p. 210).

[538] In another context, Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, 1995, p. 309.

[539] See upon: Lattanzi F., *Garanzie dei diritti dell'uomo nel diritto internazionale generale*, Giuffrè, Milano, 1983, p. 284.

[540] Bianchi A., *Le recenti sanzioni unilaterali adottate dagli stati uniti nei confronti di Cuba e la loro liceità internazionale,* Rivista di diritto internazionale 81:2, Giuffrè, Milano, 1998, pp. 355-60.

[541] Speech at the UN General Assembly, quoted in Brosche H., *The Arab Oil Embargo*, Case Western Reserve JIL 7:1, 1974, 3-35, pp. 11-12.

[542] Dapray Muir J., *The Boycott in International Law,* JILE 9:2, 1974, 187-204, p. 189.

[543] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 180.

Afghanistan in response to a "gross interference in the internal affairs of Afghanistan […] in blatant violation of accepted international rules of behaviour"[544]. In 2017 the UAE, Bahrain, Egypt and Saudi Arabia[545], closed their airspace to Qatari aircraft, as a "last-resort reaction"[546] against Qatar's "unlawful support for terrorism, its interference in the affairs of its neighbours, and its dissemination of hate speech"[547]. In 2018 the US resumed their sanctions against Iran in response of the Islamic Republic "unlawful and threatening conduct"[548]. In 2020 the Western State motivated their sanctions against PRC in response to the Chinese human rights violations in Hong Kong[549]. The measures adopted by a large variety of States – such as the US and the UE members, but also by historically neutral states such as Swiss[550] and Singapore[551] - after the 2022 invasion of Ukraine were justified by the violations of general international law and international humanitarian law perpetrated by the Russian forces.

In this context, factors to differentiate normal economic interaction and prohibited coercive economic measure may be borrowed – on the side of the *corpus* of the principle - from the treatment of economic duress in contract law[552] and may include, *inter alia*, the impact on the finances of the target state, whether the target state protested at the time or how it tried to avoid or minimalize the vessatory consequences of the economic interference and whether the target State's decisional ability was as compressed as no realistic alternative different than submission were available.

And – on the *animus* side, or the intent to coerce[553] the target state – looking, *inter alia*, at factors asthe manners and the good faith of the State before engaging in those economic coercive measures

[544] W.J. (Bill) Clinton, Speech of 28 December 1979.

[545] Saudia Arabia closed Qatar's only land border.

[546] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 180.

[547] Qatar v UAE, Oral proceedings, CR 2018/13, 28 June 2018, pp.11–12.

[548] Iran v USA, Oral Proceedings, CR 2018/19, 30 August 2018, p. 19.

[549] Saluzzo S., *The Principle of Non-Intervention and the Battle over Hong Kong,* Quest Intl L 79, 2021, 27-51, p. 32; for the PRC view, see: Guide J., *New China and International Law: Practice and Contribution in 70 Years*, CJIL 18:4, 2019, 727-750, pp. 735–7.

[550] *Ordonnance du 4 mars 2022 instituant des mesures en lien avec la situation en Ukraine* (RS 946.231.176.72), these measures were implemented the 16.10.2024 coherently with the *14th EU sanctions package*.

[551] Singapore Ministry of Foreign Affairs, *Sanctions and Restrictions Against Russia in Response to its Invasion of Ukraine, 5 March 2022.*

[552] O'Sullivan J., *O'Sullivan & Hilliard's The Law of Contract*, Oxford, 2018, pp. 264–5.

[553] See upon: Nicaragua v USA, ICJ Pleadings, vol V, p. 216. See coherently: Article 20 OAS Charter, OAS Juridical Committee (OAS, Draft Instrument of Instances of Violation, p. 6); and Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 158-161.

Note that for Roscini "When the coercing state directly engages in unauthorized conduct on foreign territory, [the] intent to coerce is presumed and no demonstration of its existence is required to establish the commission of the wrongful act" (thus, in forcible coercion); but it "must be demonstrated in the case of dictatorial coercion, that is, when a state does not carry out the unauthorized act itself but compels the victim state into doing something it would have not done or into not doing something it would have done". (Roscini, p.159).

– including whether it seriously attempted to friendly dispute the matters[554] –, the nexus[555] between the engaging parties and the expected economic impact of the measures on both economies[556].

Coherently, the UE suggested to determine the coerciveness of economic measure factors as:

> "(a) the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure and the pressure arising from it;
>
> (b) whether the third country is engaging in a pattern of interference seeking to obtain from the Union or from Member States or other countries particular acts;
>
> (c) the extent to which the third-country measure encroaches upon an area of the Union's or Member States' sovereignty;
>
> (d) whether the third country is acting based on a legitimate concern that is internationally recognised;
>
> (e) whether and in what manner the third country, before the imposition of its measures, has made serious attempts, in good faith, to settle the matter by way of international coordination or adjudication, either bilaterally or within an international forum"[557].

In the end, "when it comes to extending the customary principle of non-intervention to economic coercion"[558], as famously stated, there may be a risk to indulge in either apology or utopia[559]; but, although the reluctance of (some) Western States to accept limitations to economic interactions, as non-intervention protects States' "freedom to act instead of freedom from the acts of others", it is undeniable the existence of a "naked prohibition"[560] of economic coercion under international law[561].

A connected issue is political (or diplomatic) coercion. It can consist in using "political means of pressure [- often threats communicated through diplomatic channels[562] -] to coerce another state into doing or not doing something, […] but also in the premature recognition of belligerency, government, and statehood […] to the extent that it is aimed to assist, foment, or incite subversive, terrorist, or armed activities or at interfering in civil strife in another state" [563]. *Ad colorandum*, do not recognize

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[554] European Commission, *Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries*, Brussels, 8 December 2021, art. 2.2.

[555] Ruys T. Rodriguez Silvestre F., L'Union contre-attaque—La proposition d'instrument anti-coercition (IAC) vue sous l'angle du droit international, AFDI 67, 2021, 143-171, pp. 143, 155.

[556] Economic pressures are a prohibited intervention if their "predominant purpose" (Bowett, *Economic Coercion and Reprisals by States*, Va. J. Int'l L. 13:1, 1972, p. 5) "is to dictate the policy of another state by injuring its economic interests rather than to protect one's own" (Roscini, *Non-Intervention*, p. 159). A state, for instance, may reduce the imports on certain goods to protect its intern economy supporting domestic production or to harm another state.

[557] European Commission, *Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries*, Brussels, 8 December 2021, art. 2.2.

[558] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 182.

[559] Koskenniemi M., *From Apology to Utopia: The Structure of International Legal Argument,* Cambridge, 2006 p. 17.

[560] Judge Ferrari Bravo's *Declaration appended to the ICJ's Nuclear Weapons Advisory Opinion* (Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep. 226, Declaration of Judge Ferrari Bravo, p. 286).

[561] For Farer, "under some conceivable conditions, economic coercion can be a violation of international law even where the means employed do not themselves violate any treaty." (Farer T.J., *Political and Economic Coercion in Contemporary International Law*, AJIL 79, 1985, 405-413, p. 411).

[562] The "threatening diplomatic representations" is mentioned in Article 11 of the 1933 Montevideo Convention on the Rights and Duties of States; see about Sapienza, *Il principio*, p. 85; Quadri R., *Diritto internazionale pubblico,* 5th edn, Liguori, 1968, p. 275.

[563] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 184-5. See upon, *inter alia,* Art 2(f) of the *Resolution of the Institut de droit international*

a situation that *de facto* exists is as coercive as a premature recognitions[564]. That said, "public criticism of its policies, expressions of support for an opposition party, or the threat to break off diplomatic relations would arguably not […] be credible, specific and serious enough […] to be able to impair the agency of the target state"[565].

2.2.4 The intent to coerce

Alain Pellet, counsel for Nicaragua, in his oral Statement[566] argued that intervention is constituted by a *corpus* – the coercive process – and an *animus* – "the intent of bending the victim state's will."[567] Similarly, during the debate on the Friendly Relations Declarations, it was noted that "the legal concept of non-intervention related largely to the intention of one State to coerce another State to change its internal order."[568]

Said this, Roscini analysing whether the intent of coerce is a necessary element of the principle, distinguished between dictatorial and forcible coercion.[569]

When dealing with the latter, namely "when the coercing state directly engages in unauthorized conduct on foreign territory, intent to coerce is presumed and no demonstration of its existence is required to establish the commission of the wrongful act:"[570] "one who does an act wilfully intends the natural and proximate consequences of the act."[571] Note that in this case "not only intent but also motive is irrelevant"[572]. This applies *mutatis mutandis* also whether the conduct is moved by "strictly humanitarian prospective" and/or self-preservation position. [573]

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on "Le principe de non-intervention dans les guerres civiles", Session of Wiesbaden, 13 August 1975, 56 AIDI 544 1975; Sir Lauterpacht H., *Recognition in International Law*, Cambridge, 1947, pp. 94–5; Verhoeven J., *La reconnaissance internationale: déclin ou renouveau?,* AFDI 39, 1993, 7-40, p. 25; Dinstein Y., *Non-international Armed Conflicts in International Law*, Cambridge, 2021, p. 132. Southern African Development Community (SADC) Solidarity Statement with the Bolivarian Republic of Venezuela, 10 February 2019.

564 Annoni A., *Il riconoscimento come atto unilaterale dello Stato,* Jovene, Ferrara, 2023, 61–64.

565 Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 184. Talmon noted that diplomats criticism expressed through social media may breach the Art 4(1) of *the Vienna Convention on Diplomatic Relations provisions* as "[w]hile a small group of Western States […] may consider Twitter, blogs, and other social media as just another means of communicating their foreign policy objectives, the majority of States still prefers the traditional, more discreet means of diplomacy" (Talmon S., *Iran Condemns German Ambassador's Tweets as Interference in Internal Affairs*, German Practice in International Law, 13 July 2021).

566 Nicaragua v USA, ICJ Pleadings, vol V, 216. (As noted by Roscini) The same point has been made by the OAS Juridical Committee (OAS, Draft Instrument of Instances of Violation, 6).

567 Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 158.

568 UN Doc A/6230, 27 June 1966, para 309.

569 Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 158.

570 *Ibidem*.

571 Van Wynen Thomas A. and Thomas A.J. Jr, *Non-Intervention: The Law and Its Import in the Americas,* Southern Methodist University Press, 1956, p. 73.

572 Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 158.

573 Nicaragua v USA, para 268. *Corfu Channel*, Judgment, paras. 34–5.

"The intent to coerce, on the other hand, must be demonstrated in the case of dictatorial coercion, that is, when a state does not carry out the unauthorized act itself but compels the victim state into doing something it would have not done or into not doing something it would have done."[574] Therefore, considering that, "no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind,"[575] evidence of a will of coerce is a key factor when distinguishing, for instance, "normal economic interactions between states from economic coercion."[576] Coherently, the ICJ, in *Corfu Channel,* noted that a mere display of force would not be *per se* unlawful, whether it is not aimed at exercising political pressure.[577] Similarly, a Canadian Legal Bureau's memorandum provides that 'both the treaties and the Friendly Relations Declaration condemn the use of economic pressure, not *per se*, but only when used to achieve a particular objective;"[578] or using Nicaragua words, whether an operation is moved "in order to coerce the Government (of Nicaragua) into the acceptance of (United States) policies and political demands."[579]

The issue of "providing evidence of intent is often a diabolical task when it comes to immaterial entities like states. The coercive intent, however, is self-evident when a state makes explicit demands"[580], such as in the cases of the US embargo on Cuba[581] and Nicaragua[582]; the OAPEC embargo against the US[583] (and the reduction of oil supplies to Europe and Japan); "the Gulf countries' embargo"[584] on Qatar[585] and the US reimposition of sanctions against Iran.[586] While, in the

[574] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 158.

[575] GA Res. 2131 (XX), p.3.

[576] Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 160.

[577] *Corfu Channel,* para. 35. See also Roscini p. 159.

[578] Text in [1974] 12 CYBIL, p. 296.

[579] Nicaragua v USA, Nicaragua's Memorial (Merits), 30 April 1985, ICJ Pleadings, vol IV, para 465.

[580] Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 159-160.

[581] The *Cuban Democracy Act* (the *Torricelli Act*) emanated in September 1992, provides that whether Cuba would conduct "free, fair and internationally supervised elections" the US would lift the sanctions.(quoted in White N.D., *The Cuban Embargo under International Law: El Bloqueo*, Routledge, 2015, p.105.)

[582] [1985] 85 Dept St Bull, pp. 74–7.

[583] OPAEC countries stated that the embargo would last "until such a time as the international community compels Israel to relinquish our occupied territories" (reproduced in Shihata I.F.I., *Destination Embargo of Arab Oil: Its Legality under International Law,* 68 AJIL, 1974,p. 593).

[584] Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 160.

[585] Saudi Arabia, UAE, Bahrain, and Egypt submitted a list of thirteen demands and six principles that Qatar had to accept in order for the measures to be revoked (Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v UAE), Application instituting proceedings, 11 June 2018, paras. 26–28.

[586] President D. J. Trump stated that "[their] objective is to force the [Iranian] regime into a clear choice: either abandon its destructive behaviour or continue down the path toward economic disaster' (*Statement by the President Regarding the Reimposition of Nuclear-Related Sanctions on Iran*, 2 November 2018.)

absence of explicit claims it can be inferred, "from a State's actions, including their gravity, as well as statements made by the State and the relevant context"[587].

2.2.5 Cyber-intervention

In the previous paragraphs it was traced non-intervention evolution and reconstructed the principle in Hohfeldian terms encompassing the (negative) right of every "State to conduct its domestic affairs without external intervention and the corresponding [positive] duty of other states to refrain from such [coercive] intervention"[588] As discussed, what differentiate a mere interference from a prohibited intervention is, on one hand, the inference which targets matters in which under international law States are free to choose[589] and, on the other, the coercive process. It was also analysed the essence of (dictatorial and forcible) coercion and tried to scientifically determine and characterize it and the issues of economic and diplomatic coercion.

"The development of advanced digital technologies has given states more opportunities to exert influence outside their own borders and to interfere in the affairs of other"[590] and "the prohibition on intervention is especially pertinent in the context of cyberspace"[591] considering that "States do not need coercive tools to unduly and substantially influence [the reserved jurisdiction] of another State."[592]

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[587] *Certain Activities Carried Out by Nicaragua in the Border Area*, Costa Rica v Nicaragua, Merits, 2015 ICJ Rep, 665, Separate Opinion of Judge Robinson, para 54.

[588] Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 121.

[589] Note that "if the principle of non-intervention protected the 'liberty of action' of states without further qualifications, however, it would result in prohibiting all enforcement measures aimed to secure compliance with international law". Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 162. Coherently, for the Tallinn Group of Experts "a State may commit to the international legal system a matter previously regarded as within its *domaine réservé* by means of a treaty. It could become, for example, a Party to a multilateral treaty that standardises network maintenance and security. However the fact that a State is Party to a bilateral or multilateral agreement does not in itself necessarily signal a surrender of the matter." Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 316. Note also that when an act violates international law, "the matter would not qualify as an essentially domestic one" Gill Gill T. D., *Non-intervention in the Cyber Context*, in Ziolkowski K. (ed), Peacetime Regime for State Activities in Cyberspace, NATO CCD COE, Tallinn, 2013.

[590] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p. 3.

[591] African Union Peace and Security Council, *Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*, 2024, para. 29.

[592] Kilovaty I., *The international law of cyber intervention*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, pp.102-103.

It is traceable a wide tendency that the customary international law rule prohibiting intervention also applies to cyber activities;"[593] "That said, the precise contours and application of the prohibition"[594] "have not yet fully crystallised"[595].

"From a textual perspective, the formulation of the principle of non-intervention contained in the Charter of the Organization of American States (OAS)[596], in General Assembly Resolutions 2131 and 2625, and in the Helsinki Final Act is broad enough to allow its application in cyberspace by means of evolutionary interpretation."[597] Therefore, in cyber context too, the two factor that distinguish between a permissible interference and a prohibited intervention are the coercive process and the matters in which a State, under international law, is permitted to freely choose. On the hand of the first one, what discussed with respect to forcible and dictatorial coercion applies *mutatis mutandis* in cyber domain. While, the concept of 'matters in which a State, under international law, is free to choose' is coterminous of its domestic jurisdiction[598], namely matters in which States are not limited by customary law; and matters in which a State did not self-limited its jurisdiction by treaty law.[599] Consequently, "a violation of the principle of non-intervention might not occur even if coercion is applied with regard to the exercise of an inherently governmental function of the target state, if that function no longer falls within its domestic jurisdiction.[600]

2.2.5.1 Operations designed to cause physical damage and/or injury or death of persons.

A first example of prohibited intervention conducted by cyber means are operations designed to cause physical damage and/or injury or death of persons. As discussed, 'armed force' is nothing other than an extreme form of intervention, therefore it is manifest why these operations not only violate the prohibition of the use of force codified in Article 2(4) of the UN Charter, breaching also the general principle of non-intervention.[601]

Thus, for instance, with respect of *Stuxnet*, (regardless of its qualification as a prohibited use of force), admitting that it was aimed at slowing down Iran nuclear program - little by little but inexorably

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[593] Austrian Position on Cyber Activities and International Law, April 2024, p. 5. See coherently, *inter alia*, UN GGE 2015 Report, paras. 26, 28(b); Tallinn Manual 2.0. pp. 312-316; Position Paper of African Union paras. 26 – 32; European Union p.5; Australia p.3; Brazil pp. 18-19; Canada paras. 22-25; China paras. 7-14; France pp. 6-7; Germany pp. 4-6; Israel p. 403 (Schöndorfin R., in *International Law Studies*); Italy pp.4-5; Japan pp. 2-3; Netherlands p.3; Pakistan para. 6; Russia p. 79; Singapore p. 83; Switzerland p.3; United Kingdom; United States pp. 139-140 (2021).

[594] Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 12.

[595] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p.3.

[596] Art 19 OAS Charter, for instance, "'prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements."

[597] Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 378.

[598] ICJ Reports 1986, *Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, para. 205.

[599] See coherently, pp. 48-49; Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 381.

[600] *Ibidem*.

[601] *Ivi*, p. 386.

damaging the centrifuges -[602], the operation would clearly fulfil both the factors of domestic jurisdiction and (forcible) coercion.

Note that cyberoperations causing or designed to cause material damage "to physical objects could also amount to a dictatorial interference when the threat of the infliction or of the continuation of damage is used as leverage to obtain concessions from the victim."[603]

Ad colorandum, note that the principle of non-intervention "only prohibits coercion, that is non-consensual acts"[604]. Contrarily, the art. 2.4 UN Charter prohibits also the consensual uses of armed force which are inconsistent with the Charter's purposes[605]. Therefore, since the attack would not rise to the threshold of a prohibited use of force, the consent of the target State would render the conduct permissible under international law.

2.2.5.2 Operations that cause loss of functionality or disruption

Another very obvious[606] example of cyber-intervention is represented by operations aimed against the reserved jurisdiction of a State that causes loss of functionality of infrastructures[607], such as, for instance, cyberattacks that cause "hospital computer systems to cease functioning; disruption of supply chains for [healthcare;] essential medicines and vaccines; education […]; causing the energy supply chain to stop functioning;"[608] affecting the operation of the Parliament;[609] causing the loss of

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[602] ISIS Report, December 22, 2010.

[603] Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 385.

[604] *Ivi*, 2024, p. 171; see generally upon: Chapter IV, Section 3.

[605] Butchard P.M., *Territorial Integrity, Political Independence, and Consent: The Limitations of Military Assistance on Request under the Prohibition of the Use of Force*m, 2020, 7 JUFIL 35, p. 72.

[606] See, for instance, "Italy believes that cyber operations constitutes a violation of the customary principle of nonintervention in the internal affairs of other States when a State employs coercive means to compel another State to undertake or desist from a specific action, in matters falling under its *domain réservé*. […] That is particularly the case with regard to influence activities aimed, for instance, at undermining a State's ability to safeguard public health during a pandemic." Ministero degli affari esteri e della cooperazione internazionale*, Italian Position Paper on "International Law and Cyberspace"*, pp. 4-5. See also, coherently, National Position Paper of Costarica (para. 36); France (p. 7); Ireland (18); Israel; New Zeland (para. 7).

[607] See, *inter alia*, coherently Japan position "An act of causing physical damage or loss of functionality by means of cyber operations against critical infrastructure, including medical institutions, may constitute an unlawful intervention." Ministry of Foreign Affairs of Japan, *Basic Position of the Government of Japan on International Law Applicable to Cyber Operations*, 16 June 2021, p. 2. New Zeland stated that: "Examples of malicious cyber activity that might violate the non-intervention rule include […] nd cyber activity deliberately causing significant damage to, or loss of functionality in, a state's critical infrastructure." New Zeland, *The Application of International Law to State Activity in Cyberspace*, 1 December 2020, p. 2. Note that Schmitt cautioned "that the Tallinn Manual 2.0 experts could not achieve consensus as to the precise meaning of loss of functionality. For some, the notion implies an irreversible loss of function. For others, it extends to situations in which physical repair, as in replacement of a hard drive, is necessary. A number of Tallinn Manual 2.0 experts would treat the need to replace the operating system or bespoke data upon which the functioning of the system relies as a loss of functionality." Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, p. 44. For instance, the 2007 Cyberattack against Estonia caused the disruption of many routers.

[608] Attorney General's Office and The Rt Hon Braverman S, *International Law in Future Frontiers*, Speech at Chatham House, 19 May 2022.

[609] (Australia) UN Doc A/76/136, p. 5; Poland's position paper, p. 4.

functionality of the national bank or federal reserve[610]; that would prevent the filing of tax returns online;[611] paralysing a "systemically relevant"[612] company; controlling/shutting down another State transportation system. Given that in the presented cases the condition of coercion appears self-explicative, to precise, the examples proposed essentially aim at usurping the "political independence"[613] of the target State, embodying the essence of Resolutions 2131 and 2625.

Buchan analysing the 2007 DDoS campaign against Estonia pointed out similar considerations. The Author firstly discussed whether it was "committed with the intention of forcing the Estonian government into a policy change"[614] analysing factors such as its severity and extension [615] –

> "In the Estonian case, the botnets resulted in approximately 85 000 high jacked computers sending requests for information from Estonian Internet web pages. […] In 2007 Estonia was the 'most wired country in Europe' […] For example, in 2007 approximately 95% of all banking operations were carried out electronically. Consequently, by causing the websites of many of Estonia's largest banks to crash, the DDoS attacks had a profound disruptive effect on economic activity. Media stations also came under attack". This is significant because access to media in Estonia is principally achieved through the Internet. […] The impact of the DDoS attacks was just as severe in the public sector, with key government websites being targeted, [such as], websites run by: the office of the Prime Minister and his political party, the office of the President, the Parliament and the State Audit Office, […] the Police Board and government ministries. Indeed, such was the intensity of these attacks that these websites ceased to function, thereby preventing government officials and citizens from updating or accessing information on these websites and maintaining email contact. – the duration[616] - "these cyber attacks against the public and private sector lasted for a period of three weeks."[617] – the pressure arising against Estonia[618] - "the DDoS attacks had a profound disruptive effect on economic activity. […] When it was discovered that the DDoS attacks were emanating from abroad, in order to mitigate the attacks new editors disconnected their external networks, thereby blocking all international web traffic. In essence, Estonia was cut off from the rest of the world."[619] – submitting that – "these attacks crossed the threshold of exerting influence and amounted to the intentional application of [dictatorial] coercion against the Estonian government."[620]

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[610] Moynihan H., *The Application of International Law to State Cyberattacks Sovereignty and Non-intervention*, Research Paper, Chatham House, 2019, p. 39.

[611] Ministry of Foreign Affairs of Poland, *The Republic of Poland's position on the application of international law in cyberspace*, 29 December 2022, p. 4.

[612] UN Doc A/76/136, p. 88.

[613] Used in Article 2(4) of the UN Charter and described by Blay as "the autonomy in the affairs of the State with respect to its institutions, freedom of political decisions, policy making, and in matters pertaining to its domestic and foreign affairs," Blay S.K.N., *Territorial Integrity and Political Independence* in Wolfrum R. (ed)., MPEPIL, 2010, para 1. Note that in *Nicaragua* (para 202) the Court used "political integrity" described as "liberty of action" Sir Jennings R. Y. and Sir Watts A. (eds), *Oppenheim's International Law, vol 1: Peace*, p. 382.

[614] Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In Journal *of Conflict and Security Law* 17, no. 2, 2012, p. 225.

[615] *Ivi*, 225-226.

[616] European Commission, Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries, Brussels, 8 December 2021.

[617] Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In Journal *of Conflict and Security Law* 17, no. 2, 2012, p. 226.

[618] European Commission, Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries, Brussels, 8 December 2021.

[619] Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In Journal *of Conflict and Security Law* 17, no. 2, 2012, p. 225.

[620] *Ivi*, p. 226.

Secondly, Buchan discussed whether did this coercion was related "to a matter that the government was entitled to freely decide itself"[621]; stating that "clearly, decisions relating to the location (or relocation) of memorials remains the free choice of any government. In other words, this is a decision within the sovereign domain of national governments and is protected by the principle of non-intervention" [622]. Remarking that the cyberattack "constituted a violation of Estonia's sovereignty and thus an unlawful intervention."[623]

Coherently, the Tallinn "Group of Experts agreed that to be coercive for the purposes of this Rule, the acts concerned need not be physical in nature. Consider the case of State A that launches targeted and highly disruptive DDoS operations against State B in an attempt to compel State B to withdraw recognition of State C. The fact that the cyber operations result in no physical consequences does not detract from their characterisation as a prohibited intervention."[624]

Consequently, emphasizing, even a doxing operation that 'limits' to exfiltrate reserved data and publish them, without any loss of functionality, if aimed at compelling a modification of the target State policy on matters reserved by international law to the freedom of a State, may reach a level of (dictatorial) coerciveness inconsistent with the prohibition *de quo*. Note that, in contrast, "public criticism of its policies [for instance, …] would arguably not […] be credible, specific and serious enough […] to be able to impair the agency of the target state]."[625] Thus, for instance, a campaign on social media to exhort other Nations to join a particular treaty[626] would not appear inconsistent with the prohibition on intervention; while, a campaign based on the publishing of reserved information which aims at forcing another State adhesion to an International Treaty protecting human rights may reach a level of (dictatorial) coercive pressure inconsistent with the provisions of the principle of non-intervention.[627]

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[621] *Ibidem*.

[622] *Ibidem*.

[623] *Ibidem*.

[624] Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 318.

[625] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 184; See similarly, Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 318. Talmon offered different considerations, noting that diplomats criticism expressed through social media may breach the Art 4(1) of *the Vienna Convention on Diplomatic Relations provisions* as "[w]hile a small group of Western States […] may consider Twitter, blogs, and other social media as just another means of communicating their foreign policy objectives, the majority of States still prefers the traditional, more discreet means of diplomacy" (Talmon S., *Iran Condemns German Ambassador's Tweets as Interference in Internal Affairs*, German Practice in International Law, 13 July 2021.).

[626] "Furthermore, coercion must be distinguished from persuasion, criticism, public diplomacy, propaganda (see also discussion in Rule 4), retribution, mere maliciousness, and the like in the sense that, unlike coercion, such activities merely involve either influencing (as distinct from factually compelling) the voluntary actions of the target State." Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 318; It is equally clear that merely engaging in election propaganda does not amount to interference, at least as a matter of law. Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, Chicago Journal of International Law, Volume 19 Number 1, 2018, p.46.

[627] The Tallinn Group was divided, but the majority of Experts followed a different approach stating that: "if a State's Ministry of Foreign Affairs publishes content on social media that is highly critical of another State's internal and external policies, the activity is not coercive in nature and therefore does not constitute prohibited intervention. The key is that the coercive act must have the potential for compelling the target State to engage in an action that it would otherwise not take (or refrain from taking an action it would otherwise take). A few Experts, however, argued that it is impossible to prejudge whether an act constitutes intervention without knowing its specific context and consequences. For them, the context and

A peculiar example of operation causing loss of functionality is represented by GPS spoofing "i.e., tricking ships' receivers with counterfeit satellite automatic identification signals generated to gain control of a maritime navigation system."[628]

On the condition of the domestic jurisdiction, given that navigation is subject to some international regulation and, as noted by Itlos Judge Ida Caracciolo, even in the high seas nobody is free at all[629], "States retain considerable freedom to pursue their own policies concerned with shipping"[630], and since "these did not otherwise violate international law"[631], they would likely fall within the umbrella of domestic jurisdiction.[632] On the second condition of intervention, spoofing operations forcefully impair the functionality of the targeted vessels' navigation system impairing their Agency; and eventually compelling them "to engage in an action that [they] would otherwise not take".[633]

2.2.5.3 Cyber-interferences aimed at manipulating the vote

A popular[634] issue that needs to be discussed with particular caution regards cyber interference that aim at "manipulating voting behaviour."[635] A useful approach to the issue may consist in distinguishing between two main types of operations: *Cyber-influence operations* i.e. operations to cast the voters/dissuade the vote; and *cyberattacks against the electoral infrastructure* i.e. operations that tamper with the election machinery/alter the vote count.

Starting from the latter, the essence of these attacks is to undermine the capacity of a State to freely conduct genuine elections, thus its independence.[636] "Obvious example[s] [of cyberattacks aimed against the electoral institutions] would be using cyber means to […] tamper with the vote count,

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consequences of a particular act that would not normally qualify as coercive could raise it to that level." Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 319.

[628]The Cyber Law Toolkit, *Cyber interference against vessels in the Persian Gulf and Gulf of Oman (2019)*, <https://cyberlaw.ccdcoe.org/wiki/Cyber_interference_against_vessels_in_the_Persian_Gulf_and_Gulf_of_Oman_(2019) >, last accessed January 2025.

[629] Caracciolo I., during a Round Table *Underwater borders and State Domains*, Rome at Confitarma, 21 October 2024.

[630] The Cyber Law Toolkit, *Scenario 16: Cyber attacks against ships on the high seas*.

[631] Gill T. D., *Non-intervention in the Cyber Context*, Ziolkowski K. (ed), in *Peacetime Regime for State Activities in Cyberspace*, NATO CCD COE, 2013.

[632] The Cyber Law Toolkit, *Scenario 16: Cyber attacks against ships on the high seas*.

[633] Government of Denmark, *Denmark's Position Paper on the Application of International Law in Cyberspace*, 2023, 3. Non-intervention.

[634] See, for instance, among States National Positions: Australia p.3; Brazil p. 19; Canada (at 24); Germany pp. 4-6: Italy p.5; Israel; Netherlands p.3; Poland p.4; UK; US p.140. See also, *inter alia*, Schmitt M. Tallinn Manual 2.0, p. 313; Tsagourias N., *Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace*; Schmitt M., *Virtual Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*; Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

; Kilovaty I., *The international law of cyber intervention*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021; Egan B.J., *International Law and Stability in Cyberspace*, Berkeley JIL 35:1, 2017, 167-180. Stiano A., *Attacchi informatici e la responsabilità internazionale dello Stato*, Cacucci, Bari, 2023, pp 158 – 165.

[635] Ministero degli affari esteri e della cooperazione internazionale*, Italian Position Paper on "International Law and Cyberspace"*, p.5.

[636] "Every state [enjoys the right] to independence and hence to exercise freely, without dictation by any other state […] the choice of its own form of government" International Law Commission, 1949 YB ILC, pp. 286- 287, emphasis added.

disabling election machinery or causing it to malfunction, blocking e-voting, ";[637] render impossible for voters in a particular district to cast their votes";[638] "changing the status of voters on the roll so that their vote is listed only as provisional; deleting voters' names from the electoral roll; and the like."[639] The Global Commission on the Stability of Cyberspace (GCSC) proposed to adopt a specific norm protecting the electoral infrastructures "(essential to elections, referenda or plebiscites)"[640]; and, more in general, it seems detectable a wide tendency[641] among international lawyers that "a cyber operation by a State that interferes with another State's ability to hold an election or that manipulates a State's election results would be a clear violation of the rule of non-intervention"[642]; as, on the first constitutive element of non-intervention, the electoral matter clearly falls under the jurisdiction reserved by international law to each State; while, the element of (forcible) coercion would be satisfied considering that "they [forcibly] make it objectively impossible or substantially more difficult for the state to pursue a particular policy or activity."[643]

As largely discussed, "there is no requirement that, in order to constitute a violation of the prohibition on intervention, an act of coercion must actually succeed in compelling the State subjected to such acts to change its conduct. An unsuccessful attempt of intervention is unlawful under international law."[644]

Obvious Examples of cyber-influence electoral operations may be represented, *inter alia,* by State sponsored campaigns that use "political bots to sway public opinion on the eve of a presidential election"[645]; publishing leaked message, e-mail (and more in general 'data') of a candidate to undercut

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[637] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

[638] Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, Chicago Journal of International Law, p.46.

[639] Moynihan H., *The Application of International Law to State Cyberattacks Sovereignty and Non-intervention*, Research Paper, Chatham House, 2019, p. 40.

[640] Global Commission on the Stability of Cyberspace, *Presentation of the Initiative*, 2018, p.4.

[641] See, *inter alia*, "The [prohibition on internvention] addresses situations in which a State intervenes by cyber means in the 'internal or external affairs' (as discussed below) of another State, for example, by using cyber operations to remotely alter electronic ballots and thereby manipulate an election." Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 313; "the use by a hostile state of cyber operations to manipulate the electoral system to alter the results of an election in another state … must surely be a breach of the prohibition on intervention in the domestic affairs of states." Attorney General's Office and The Rt Hon Braverman S, *International Law in Future Frontiers*, Speech at Chatham House, 19 May 2022; see also, Italian Position Paper on "International Law and Cyberspace", pp. 5-6; "The obvious example would be using cyber means to cause a miscount, which would be coercive because the real choice of the state, as reflected in the vote, is being repressed. This could be done by directly tampering with the vote count, disabling election machinery or causing it to malfunction, blocking e-voting, and the like." Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020; "A cyber operation by a State that interferes with another State's ability to hold an election or that manipulates a State's election results would be a clear violation of the rule of non-intervention", Egan B.J., International Law and Stability in Cyberspace, Berkeley JIL, 2017, p.175; Moynihan H., *The Application of International Law to State Cyberattacks Sovereignty and Non-intervention*, Research Paper, Chatham House, 2019, pp. 40-41.

[642] Egan B.J., International Law and Stability in Cyberspace, Berkeley JIL, 2017, p. 175.

[643] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

[644] African Union Peace and Security Council, *Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*, 29 January 2024, at 32.

[645] Kilovaty I., *The international law of cyber intervention*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.98.

his credibility; "and operations that deprive the electorate, or a substantial number of individual voters, of information bearing on the election."[646]

Their object is to affect the electoral process other than the infrastructure and they have been classified in '*doxing* operations', i.e. the hack and realise of non-publically available information, and '*information* operations' – "further divided into *malinformation operations* (the unsolicited delivery of factually correct confidential information) and *disinformation*[647] *operations* (the dissemination of fake or inaccurate news)." - [648]

Various Prominent Authors such as Schmitt, Tsagourias and Kilovaty referred to the interference into the 2016 US election to discuss the issue of doxing and disinformation campaign, thus - given the layout of the work which discusses real-life case studies in the third chapter -, to fully analyse (and comprehend the context of) Their Positions, it seems opportune to proceed examining 2016 Us elections interference and start our discussion from the points offered by the Authors.

"In the aftermath of the 2016 presidential election, outgoing administration officials, including President Barack Obama and senior leaders of the intelligence community, accused the Russian government of meddling in U.S. elections."[649]

> According to a summary of a classified report on the campaign prepared by CIA, FBI and NSA under the auspices of the Office of the Director of National Intelligence (ODNI) "Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the U.S. presidential election. Russia's goals were to undermine public faith in the U.S. democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect."[650] They also assessed that "Putin and the Russian Government aspired to help President-elect Trump's election chances when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to him"[651]
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> According to the report, the Russian cyber influence campaign, which was approved at the highest levels of the Russian government, was multifaceted. In terms of Russian legal responsibility, the most significant

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[646] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

[647] For the UE disinformation is "the fabrication or deliberate distortion of news content aimed at deceiving an audience, polluting the information space to obscure fact-based reality, and manufacturing misleading narratives about key events or issues to manipulate public opinion. Disinformation is the most persistent and widespread form of the Kremlin's interference efforts. Importantly, it is not limited only to election cycles, but has now become a viral feature of our information ecosystem' and is objective is 'To paralyse the democratic process by fuelling social fragmentation and polarisation, sowing confusion and uncertainty about fact-based reality, and undermining trust in the integrity of democratic politics and institutions." European Commission, A Multi-Dimensional Approach to Disinformation, Report of the Independent High Level Group on Fake News and Online Disinformation, March 2018, p. 10.

[648] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 396-397.

[649] Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, Chicago Journal of International Law, Volume 19 Number 1, 2018, p.32. See upon, for instance, Press Release, White House*, Statement by the President on Actions in Response to Russian Malicious Cyber Activity and Harassment*, 29, December, 2016.

[650] ODNI*, Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution*, 6 January 2017, p. ii. (thereinafter ODNI Report)

[651][651] *Ivi*. Note that standing to the same Report (p. ii) "All three agencies agree with this judgment. CIA and FBI have high confidence in this judgment; NSA has moderate confidence." "High confidence generally indicates that judgments are based on high-quality information from multiple sources. High confidence does not imply that the assessment is a fact or a certainty; such judgments may be wrong.", ODNI Report, p. 13.

> operations were mounted by Russian military intelligence, the General Staff Main Intelligence Directorate or GRU. The GRU hacked into personal email accounts of Democratic Party officials and other political figures and exfiltrated a great deal of data from the Democratic National Committee (DNC) in March 2016. It then utilized the Guccifer 2.0 persona, DCLeaks.com, and WikiLeaks to distribute the material, including through various exclusive releases to the media. […] During this period, an active Russian propaganda campaign involving numerous media outlets, including RT and Sputnik, was also underway. More legally significant than this classic form of political propaganda were the social media activities of quasi-government trolls who amplified stories of scandals about Secretary Clinton and the role of WikiLeaks in the election campaign." […] [The "Troll-Farm consisted] of over ninety trolls, [… purchasing] anti-Clinton and pro-Trump advertising on social media platforms such as Twitter, Facebook, and Instagram. Using more than 120 groups and social media accounts, the objective was not only to convince individuals how to vote, but also to keep certain voters from the polls." [652]

"One can plausibly say that Russia's actions satisfied the first condition of unlawful intervention by targeting the conduct of election"[653]; while, on the point of coercion, the authors proposed different views, all united by the common point that affecting the decisional capacity of the voters means subordinate the will of the (popular) sovereignty, compressing target State's political integrity.

> For Michael Schmitt, "at its core, a coercive action is intended to cause the State to do something, such as take a decision that it would otherwise not take, or not to engage in an activity in which it would otherwise engage. […] Arguably, the covert nature of the troll operation deprived the American electorate of its freedom of choice by creating a situation in which it could not fairly evaluate the information it was being provided. As the voters were unaware that they were being manipulated by a foreign power, their decision making, and thus their ability to control their governance, was weakened and distorted. The deceptive nature of the trolling is what distinguishes it from a mere influence operation. And it can be argued that the hacking and release tainted the electoral process by introducing information that, albeit genuine, was acquired by means that are expressly prohibited under U.S. domestic law, as well as the law of most other States namely, the unlawful penetration and exfiltration of private data. In this sense, the electorate's freedom of choice was being thwarted. […] In the case of elections, this might manifest in the election of a candidate who otherwise would not win."[654]

> Schmitt also added that "it might be possible to agree on certain non-exhaustive factors that likely would influence the characterization of a foreign information operation during an election as coercive or not. An operation's scale and effects would seem to be highly relevant. […] Scale and effects would consider factors such as how widespread the impact of the election interference is, how serious its effect on the election is, and perhaps even the nature and significance of the election in question (e.g., municipal versus national). Another factor that might bear on the determination of whether an information campaign is coercive is the veracity of the information in question. […] [Therefore, for the Author,] it would seem easier to describe disinformation campaigns as coercive."[655]

A first consideration that arises from the Schmitt view is that given that "every state [enjoys the right] to independence and hence to exercise freely, without dictation by any other state […]

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[652] Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, Chicago Journal of International Law, Volume 19 Number 1, 2018, p.34. For instance some accounts spread messages like "Hillary Clinton doesn't deserve the black vote!" Lee D., *The Tactics of a Russian Troll Farm*, BBC, 16 February 2018.

[653] Tsagourias N., *Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace*, in Broeders D. van den Berg B. (eds.), *Governing Cyberspace Behavior, Power and Diplomacy*, Rowman/Littlefield, Lanham, Boulder, New York, London, 2020, p. 49.

[654] Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, Chicago Journal of International Law, p.51.

[655] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

the choice"[656] reserved to its own "political integrity"[657] (that means liberty of action[658]); non-intervention protects States' choice that fall within its domestic jurisdiction. "[States'] traditional reading of intervention focuses on the internal and/or external manifestation of authority and will by the state represented by the government […] does not tak[ing] into account how this authority and will are formed and how intervention can impact on the process of their formation"[659].

As, for instance, the prohibited coerciveness of an operation that would render inaccessible the websites and the social network account of a candidate (and its party) for the whole year preceding the elections; and that would systematically tamper with the transmission of its speeches and interviews on television would not be based on the compression of "the access to reliable information about candidates or issues [that] would seem essential to ensuring the election is meaningful would have been compressed"[660]; it would eventually qualify as a prohibited intervention because it would forcefully undermine the target state right to freely conduct elections.

Secondly, also admitting this broader object protected by the principle, the (presumed) Russian interferences, in my opinion, would in any case lack of coerciveness being merely influential and persuasive[661]. Coercion means dictatorially compel or forcibly usurp. The mere fact that the voters' will was "weakened and distorted"[662] would not reach a level of pression, severity; and magnitude[663] sufficient to qualify as coercive.

Tsagourias, coherently, analysing the Interferences in the 2016 US Elections, found that there are problems with the condition of coercion.[664] Therefore the Author considered

> "[necessary] revisit[ing] the phenomenon of intervention in order to contextualise and reconceptualise the principle of non-intervention as applied in cyberspace; [… as,] what intervention signified in the 19th century is not the same today, neither is the meaning of military, diplomatic, political or legal intervention the same. […] [For the Author, it is undeniable] that intervention [traditionally] acquires meaning within a configuration of sovereign relations by protecting the

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[656] International Law Commission, 1949 YB ILC, pp. 286- 287, emphasis added.

[657] *Ivi*, para. 202.

[658] Sir Jennings R. Y. and Sir Watts A. (eds), *Oppenheim's International Law, vol 1: Peace*, 1992, p. 382.

[659] Tsagourias N., *Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace*, in Broeders D. van den Berg B. (eds.), *Governing Cyberspace Behavior, Power and Diplomacy*, Rowman/Littlefield, Lanham, Boulder, New York, London, 2020, p. 51.

[660] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

[661] The Tallinn Group of Experts, coherently, noted that "coercion must be distinguished from persuasion, criticism, public diplomacy, propaganda (see also discussion in Rule 4), retribution, mere maliciousness, and the like in the sense that, unlike coercion, such activities merely involve either influencing (as distinct from factually compelling) the voluntary actions of the target State." Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 318

[662] Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, Chicago Journal of International Law, Volume 19 Number 1, 2018, p.51.

[663] See Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 147-157; European Commission, *Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries*, Brussels, 8 December 2021.

[664] Tsagourias N., *Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace*, in Broeders D. van den Berg B. (eds.), *Governing Cyberspace Behavior, Power and Diplomacy*, Rowman/Littlefield, Lanham, Boulder, New York, London, 2020, p. 49.

> integrity and autonomy of a state's authority and will against external interference; […] [therefore, focusing] on the internal and/or external manifestation of authority and will by the state represented by the government. [In other words, it vests] all sovereign authority and will in the government which is then protected from intervention but does not take into account how this authority and will are formed and how intervention can impact on the process of their formation. However, that process of authority and will formation is connected with the internal and external manifestations of such authority and will by the government. To explain, a government's authority and will remains free only when its sourcing is also free. This immediately brings to light the relationship between non-intervention and self-determination , another principle that derives from and protects the principle of state sovereignty. Self-determination refers to the right of peoples to determine freely and without external interference their political status and to pursue freely their economic, social and cultural development.
>
> From this definition it transpires that the scope of the right to self-determination is broader and is not exclusively linked to the right of peoples to form their own state. Moreover it does not cease once a state has been created but thereafter self-determination refers to the 'right to authentic self-government, that is, the right of a people really and freely to choose its own political and economic regime'. It follows from this that the principle of non-intervention protects against external interference the expression of authority and will by the people and also protects the conditions that enable the people to form authority and will freely and make free choices. External interference for example through disinformation combined with identity falsification distorts, undermines or inverses this process and nullifies the genuine expression of authority and will by the people. […] For this reason, in the words of Crawford 'the principle of self-determination is represented by the rule against intervention in the internal affairs of that state.'
>
> By aligning the principles of non-intervention and self-determination, the normative and operational scope of the principle of non-intervention shifts. More specifically, the domain and object of intervention shifts from the power holder, the government, to the people and to the process of forming authority and will, for example, the electoral process, through which the goal of free choice is attained. The government as the depository of such authority and will and its carrier is protected by the principle of non-intervention but it is not the primary object of protection as the traditional reading hold but a derivative one; the primary is the people and the process."[665]

Tsagourias correctly pointed out that International Law protects the right of the People of a 'Nation' to Choose, namely the right to self-determination – which will be analysed in the next paragraph -. However, as discussed, non-intervention evolved as an instrument to protect both the "territorial and decisional"[666] sovereignty dimension; thus its territorial inviolability and its political independence.[667] "Political independence includes the right to 'internal' self-determination, that is, to determine one's own political, economic, social, and cultural system without external interferences."[668] So, a first "difference between the principle of non-intervention and that of internal self-determination is that the former prohibits coercive acts in the domestic affairs of another state while the latter proscribes all interferences, although only in the choice of the political, economic,

[665] *Ivi*, p. 52.

[666] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 247.

[667] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 247.

[668] *Ivi*; coherently, the ILC sustains coherently that "[e]very State has the right to independence and hence to exercise freely, without dictation by any other state, all its legal powers, including the choice of its own form of government", 1949 YB ILC, pp. 286- 287, emphasis added).

social, and cultural systems"[669]. Thus, "the principle of internal self-determination, therefore, is broader than that of non-intervention with regard to the prohibited conduct, but narrower in respect of the protected object."[670] As highlighted by the UN Committee on Human Rights the two principles are closely interrelated and a prohibited intervention in the political, economic, social, and cultural affairs of other states will likely also compress the right to self-determination.[671] Therefore, given international law mutability, and put aside the element of coercion, non-intervention and self-determination are not only protecting different subjects, "the two sets of rules address different matters."[672] It is clearly always a legitimate question the issue of whether the government of a sovereign State is representation of the Sovereign People's Will, "with reference to any State, at any point in time"[673]; however it is not the point of a prohibited intervention. To precise, self-determination evolved flowing (as a political postulate) from the principle of nationalities (*principio di nazionalità*). Internal self-determination is (also) the Right of the People to "choose their legislators and political leaders free from any manipulation or undue influence [also] from the domestic authorities themselves"[674] who, standing to the Author, should – in an Hobbesian way - also be depository of such authority. "Arguably, it makes little sense to assert that an aggregate of individuals has a substantive legal right if the group has no means of enforcing that right and no legal redress when the right is violated."[675]

> "Peoples are more than beneficiaries of rights and duties accruing to Contracting States, and indeed are among the direct addressees of Article 1 [ICCPR and ICESCR]. Contend that ultimately peoples do not hold any right under Article 1 would-be contrary to the actual wording of that provision ('*All peoples have the right to self-determination. By virtue of the right they freely determine their political status . . . The States Parties to the present Covenant . . . shall promote the realization of the right of self-determination, and shall respect that right'*). This wording was carefully chosen and no doubt is meant to convey the idea that on the strength of Article 1 peoples become 'partners' with the Contracting States, in that they are put on the same footing as those States. It would indeed be contradictory or even illogical to refer, in an international treaty, to a 'right' of peoples and then actually to mean that what is granted is not a legal entitlement proper but simply an indirect benefit accruing to peoples because of the interplay of rights and obligations between Contracting States."[676]

Ad colorandum, note that "Tsagourias introduced democratic values in the content of the principle of non-intervention and turns it into a vehicle for democracy promotion."[677] However, to be realist, self-determination, as conceived, *ìnter* alia, through the Arts. 19, 21, 22 and 25 of the UN Covenant on Economic, Social and Cultural Rights, provides an extremely generic democratic process.[678] This was

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[669] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 247.

[670] *Ibidem*.

[671] UN Doc A/39/40, *Question of Western Sahara*, 20 September 1984, p. 143.

[672] *Jurisdictional Immunities of the State* (*Germany v. Italy: Greece intervening*), Judgment, I.C.J. Reports 2012, p.140.

[891] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge, 1995, p. 55.

[674] *Ivi,* p. 53.

[675] *Ivi*, p. 142.

[676] *Ivi*, pp. 143-144.

[677] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 397.

[678] See Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, 1995, p. 54. For Senaratne coherently "[self-determination] only captures the bare essentials of a democratic system. It ignores the need to consider the depth of a democratic system. For example, whether the system concerned provides for a deepened form of democracy – where people, at the peripheral units of the state, are involved in political and economic decision-making – is not a

the direct consequence of international law political neutrality which implies (also) the legitimation of the People's choices between the different national political systems, "[as] a predictable and protected consequence of the autonomy enjoyed by each sovereign [and equal] State."[679] For instance, the Art. 25, provides the obligation to conduct the public affairs through 'genuine periodic elections'. The issue is that the provision "is so sweeping and vague that it can easily permit single-party systems (formally providing periodic ritualistic elections), thus denying in actual facts a genuine exercise of the right to self-determination."[680] Note also, as observed by Roscini, that "the problem with this view is [also] that distinguishing between governments on the basis of their internal characteristics (in this case, on whether they are the result of free and fair elections) is, in Gerry Simpson's words, a liberal anti-pluralist argument that risks becoming a Trojan horse to legitimize (cyber) intervention aimed at overthrowing non-democratic regimes."[681]

Similarly, UNESCO with respect to the object protected by self-determination and connected human rights stated that "Although each is an aspect of the international 'rights' debate, and each Ultimately impinges on individual human beings, the two concepts should not be confused."[682]

Kilovaty offered an interesting point of view, sustaining that:

> "traditionally, international law's norm of non-intervention applies only to acts that are coercive in nature, leaving disruptive acts outside the scope of prohibited intervention." […] Although the constitutive coercion element is seemingly absent [in information operations], international law should adapt to the digital era [of information weaponization] - as violations of the norm."[683] "Not until the twentieth century did the scope of nonintervention expand to protect political independence"[684]; [therefore, the Author] calls for a reevaluation of nonintervention's application to technically non-coercive but highly disruptive cyberattacks. " and "One method of determining coercion is "consequentiality," which considers three factors: "the importance and number of values affected, the extent to which such values are affected, and the number of participants whose values are so affected." "[Thus,] in the context of cyber-attacks, submit[ting] that the norm against nonintervention is violated when the attack causes 'disruption' rather than outdated notion of 'coercion.'" [685]

The Author motivated his position on the view that "indeed, there is only a quantitative, and not qualitative, difference between locking someone in a room (forcible interference), threatening them with violence if they leave the room (dictatorial interference), and falsely claiming that there is a terrorist outside with a suicide vest (coercive manipulation), as in all cases the individual in question will remain in the room without being able to make a meaningful

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concern for a definition that is focused primarily on giving importance to the holding of elections." (Senaratne K., *Internal Self-Determination in International Law: History, Theory, and Practice*, Cambridge, 2021, p. 60.)

[679] Fox G. H., *Democracy, Right to, International Protection*, in Wolfrum R. (ed), MPEPIL, 2008, 7.

[680] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge, 1995, p. 54.

[681] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 397.

[682] UNESCO, SHS-89/CONF.602/7 – p. 5.

[683] Kilovaty I., *Politically Motivated Leaks and the Future of the Norm on Non-Intervention in the Era of Weaponized Information*, Harvard National Security Journal 9, 2018, 146-179, p. 147.

[684] *Ivi*, p. 170. See upon: Woltag JC., *Cyber Warfare: Military Cross-Border Computer Network Operations under International Law*, Intersentia, Cambridge, Antwerp, Portland, 2014, p. 113.

[685] Kilovaty I., *Politically Motivated Leaks and the Future of the Norm on Non-Intervention in the Era of Weaponized Information*, Harvard National Security Journal 9, 2018, p. 169.

choice."[686] And, "from this perspective, lying about facts so as to make someone do or not do something can be seen as 'the functional equivalent of coercion' when it leads to exercising control over the victim's behaviour."[687]

Kilovaty thesis appears supported, for instance, by Costa Rica view that sustained that coercion can occur if "one State […] deprives another State of the capacity to make free and informed choices pertaining to its internal or external affairs [including through] the dissemination of false news"; and by the German position which coherently noted that "in the context of wrongful intervention, […] for example, it is conceivable that a State, by spreading disinformation via the internet, may deliberately incite violent political upheaval, riots and/or civil strife in a foreign country, thereby significantly impeding the orderly conduct of an election and the casting of ballots. Such activities may be comparable in scale and effect to the support of insurgents and may hence be akin to coercion in the above-mentioned sense."[688]

"But so far, there is no sufficiently uniform practice suggesting the gradual crystallization of such an expansive rule as derived from the principle of sovereignty." [689] As, for instance, highlighted by the Finland View, standing to which:

> "a hostile interference by cyber means may also breach the customary prohibition of intervention in the internal affairs of another State, provided that it is done with the purpose of compelling or coercing that State in relation to affairs regarding which it has free choice (so-called *domaine réservé*). The requirement of coercion leaves out lesser forms of influence and persuasion that are commonplace in international relations there is no corresponding obligation derived from sovereignty for other states to refrain from disseminating information to these countries, or allowing their citizens to do so. […] For a cyber operation to amount to a prohibited intervention, both above-mentioned elements must be present. Most open questions relate to the element of coercion and to how it manifests itself in cyber operations. For instance, while the conduct of elections belongs undisputedly to the internal affairs of each State, all methods of electoral interference do not display the element of coercion. Hacking of voter databases or manipulation of vote counts in order to alter the election results has nevertheless been recognized as a fairly clear case."[690]

Ad colorandum, as noted by Roscini, "this reluctance is understandable if one considers that the notion of coercive manipulation might be used by authoritarian states to curb individual freedoms: in March 2022, for instance, Russia blocked Google News from internet users for disseminating 'inauthentic information' on the invasion of Ukraine."[691]

Therefore, analysing separately the malicious conducts; with respect of the doxing operation - that essentially consisted in concluding a Cyber Espionage Campaign against the Democratic National Committee (including various Senators communications, files regarding political strategies and the

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[686] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 398.

[687] *Ibidem*.

[688] German Federal Government, *Position Paper On the Application of International Law in Cyberspace*, March 2021, p. 5.

[689] Lahmann H, On the Politics and Ideologies of the Sovereignty discourse in cyberspace, Duke Journal of Comparative & International Law 32:6, 2021, 61-107 p. 106.

[690] Finland's national positions, *International law and cyberspace*, p. 3.

[691] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 398.

funding of the Republican Party[692]); and releasing that information through Guccifer 2.0 persona, DCLeaks.com, and WikiLeaks"[693] – one could for first sustain that it violated the US territorial sovereignty, non-consensually penetrating their cyber-borders and collecting sensible data. And, secondly, one could arguably sustain that the leak of that confidential information reached a duration, frequency, extension, magnitude and level of pression able to potentially impair the US Government agency in matters free by international obligations.[694]

Regarding information operations - therefore, in the context of US 2016 elections, the misinformation and disinformation campaign (mainly) on Facebook, Twitter and Instagram - waiting to understand the position preferred by the Westphalian Actors; and accepted that, as largely discussed, these operations lack of coerciveness; and that, traditionally, non-intervention protects the freedom to choose of a State, not the formation of the will, which is protected by the principle of self-determination – I would generally endorse the Finnish view, do not qualifying information operations meddling in electoral matters as a prohibited intervention, considering that it would appear legally more rigorous to consider the issue under the lens of the Right of the People of a Nation to choose.[695]

2.3 The right to (internal) self-determination

During the former paragraph it was discussed that the non-intervention principle evolved as an instrument to protect both the "territorial and decisional"[696] sovereignty dimension; thus its territorial inviolability and its political independence.[697] "Political independence includes the right to 'internal' self-determination, that is, to determine one's own political, economic, social, and cultural system without external interferences."[698]

So, a first "difference between the principle of non-intervention and that of internal self-determination is that the former prohibits coercive acts in the domestic affairs of another state while the latter proscribes all interferences, although only in the choice of the political, economic, social, and cultural systems"[699]. Thus, "the principle of internal self-determination, therefore, is broader than that of non-intervention with regard to the prohibited conduct, but narrower in respect of the protected object."[700]

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[692] See, for instance, The Hill, Uchill J., *New Guccifer 2.0 dump highlights 'wobbly Dems' on Iran deal*, 18 July 2016.

[693] ODNI Report, p. 2.

[694] For Kilovaty coherently "if the exfiltrated information is used in a coercive manner that would most likely trigger the norm on non-intervention." Kilovaty I., *Politically Motivated Leaks and the Future of the Norm on Non-Intervention in the Era of Weaponized Information*, Harvard National Security Journal, Vol. 9, 2018, p. 169; see also, coherently, Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 390-398.

[695] Namely the Right to Self-determination.

[696] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 247.

[697] See: *Ibidem*.

[698] *Ivi*; the ILC sustains coherently that "[e]very State has the right to independence and hence to exercise freely, without dictation by any other state, all its legal powers, including the choice of its own form of government", 1949 YB ILC, pp. 286-287, emphasis added).

[699] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 247.

[700] *Ibidem*.

As highlighted by the UN Committee on Human Rights, the two principles are closely interrelated and a prohibited intervention in the political, economic, social, and cultural affairs of other states will likely also compress the right to self-determination.[701]

2.3.1 The meaning of (internal) self-determination

The other main difference between non-intervention and (internal) self-determination is that the latter do not protect states, protecting its People.[702] Coherently, the Art. 1 of the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights defines self-determination as the Peoples' Right to "freely determine their political status and freely pursue their economic, social and cultural development". In this context, "freely" has a double meaning, on one side, bearing that "the people choose their legislators and political leaders free from any manipulation or undue influence [also] from the domestic authorities themselves."[703] And, on the other, that "political institutions must be free from outside interference"[704].

Therefore internal Self-determination, refers both "to what may be termed the political or the participatory aspects of self-determination; that no group within a state should be"[705] "denied meaningful access to government to pursue their political, economic, social and cultural development"[706] – defined 'democratic' idea of self-determination[707] or 'inward-facing aspect'[708] of internal self-determination -; and protects States sovereign equality, namely "that the form and functioning of their government is a matter for the people of the polity alone, that no power or people can impose its will upon the polity, and that interference by a foreign power or people is thus illegitimate;"[709] – defined the 'statist' idea[710] or outward-facing aspect[711] of internal Self-determination -.

To be clear, what counts "is not the purpose of the intervention, as argued by some commentators, but its impact: even assuming that the intervening state did not intend to influence the internal political

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[701] UN Doc A/39/40, 20 September 1984, p. 143.

[702] See coherently, *inter alia*: Reference Re Secession of Québec, 1998, 2 SCR 217, para. 113 and following; Report of the Independent; see also: Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, September 2009, vol II, 277, fn. 180. For Pustorino, at least in theory, its invocation by individuals belonging to specific national communities cannot be ruled out. Pustorino P., Human Rights Law, Springler, 2023, p. 223.

International Fact-Finding Mission on the Conflict in Georgia, September 2009, vol II, 277 (fn 180)

[703] Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge University Press, 1995, p. 53.

[704] *Ivi*, p. 55.

[705] Sparks T., *Self-Determination in the International Legal System*: *Whose Claim, to What Right*?, Hart/Bloomsbury, Oxford, London, New York, New Delhi, Sydney, 2024, p. 16.

[706] Canada Supreme Court, Judgment, *Secession of Quebec*, 1998, 2 SCR 217, para. 138.

[707] See: Patten A.*, Self-Determination for National Minorities*, in *The Theory of Self-Determination*, in Tesón F.R. (ed.), Conceptions of Self-Determination, Cambridge, 2016, p. 15; see also *contra* a Waldron J., *Two Conceptions of Self-Determination*, in Besson S. Tasioulas J. (eds), *The Philosophy of International Law*, Oxford, 2010, p. 408.

[708] Sparks T., *Self-Determination in the International Legal System*: *Whose Claim, to What Right*?, Hart/Bloomsbury, Oxford, London, New York, New Delhi, Sydney, 2024, p. 16.

[709] *Ibidem*.

[710] Patten A.*, Self-Determination for National Minorities*, in *The Theory of Self-Determination*, in Tesón F.R. (ed.), Conceptions of Self-Determination, Cambridge, 2016.

[711] Sparks T., *Self-Determination in the International Legal System*: *Whose Claim, to What Right*?, Hart/Bloomsbury, Oxford, London, New York, New Delhi, Sydney, 2024, p. 16.

struggle for power, its actual conduct might still result in advantaging one faction to the detriment of another"[712]. Coherently it is sustainable that, *inter* alia, the 1964 joint Belgian-US operation in Stanleyville (now Kisangani), the 1990 ECOWAS intervention in Liberia in 1990, the 2011 French intervention in Côte d'Ivoire in 2011 or the 2011 NATO airstrikes in Libya, "in spite of their declared purposes (evacuation of nationals, protection of civilians), their consistency with the principle of internal self-determination can be doubted"[713].

It is also worth to note that, given the object of the right and considering that "there is no single political system or single model for electoral processes equally suited to all nations and their peoples"[714], it would clearly follow that self-determination, being politically neutral, merely protects the People's right[715] to choose (thus popular sovereignty), do not regarding the model and the process of the choice.[716]

This said, internal self-determination is a recent suggestion[717]; the principle was originally envisioned focusing on external Self-determination, namely on protecting the (collective) identity of the Persons of a Nation purely founded on their identity *qua* People - comprehending the claim of a right to independence of a colonized People, of the habitants of forcibly occupied territories, of those those subject to racist or apartheid regimes, eventually seceding - defined 'identity-based'[718] or 'national'[719] (external) Self-determination -.

2.3.2 The development of an authentic right to self-government

The political origin of the right can be traced starting from late XVIII century. The American Declaration of Independence states that the governments derive "their just powers from the consent of the governed". "Self-determination devolved implicitly from the profoundly anti-despotic democratic spirit that inspired the French revolutionaries in the years 1789-92"[720] and was first propounded [in France, in Article 2 of Title XIII of the Draft Constitution presented by Condorcet to the National Convention on 15 February 1793] as a standard concerning the transfer of territory"[721].

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[712] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 251.

[713] *Ivi*, p. 252.

[714] GA Res 45/150, 18 December 1990, *Enhancing the effectiveness of the principle of periodic and genuine elections*, preamble. See also GA Res 45/151, 18 December 1990, Preamble.

[715] Some scholars sustain that 'we have not yet reached the stage when the denial of the will of the people [by their own government] is considered an infringement of the right to self-determination, even though certain standards and criteria are slowly developing which would result in reaching that stage'.

[716] See: Doswald-Beck L., *The Legal Validity of Military Intervention by Invitation of the Government*, LLB/LLM, Bristol, London, 1986, p. 207.

[717] Thürer D. Burri T., *Self-Determination*, in Wolfrum R. MPEPIL, 2008, para. 33.

[718] Waldron J., *Two Conceptions of Self-Determination*, in *The Philosophy of International Law*, Besson S. Tasioulas J. (eds.), Oxford, 2010, p. 398.

[719] See Koskenniemi M., *National Self Determination Today: Problems of Legal Theory and Practice*, ICLQ 43, 1994, 241-269, p. 241. See coherently: Morris C.W., *The Case for National Self-Determination*, in Tesón F.R. (ed.), Conceptions of Self-Determination, Cambridge, 2016.

[720] Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, 1995, p. 12.

[721] I*vi*, p. 13.

Giuseppe Mazzini, declined self-determination under the guise of the principle of nationality, writing that "God . . . divided Humanity into distinct groups upon the face of our globe, and thus planted the seeds of nations. Bad governments have disfigured the design of God;"[722] demanding self-determination in form of political postulate, thus, describing the right "in its external dimension, [as], a right of secession. (emphasizing)"[723]. In fact, "It is worth recalling that, for most of the 19th century, peripheral or semiperipheral actors like the Ottoman Empire and China were not considered to possess a full right to independence, as they were not deemed to have yet the necessary maturity to make good use of it."[724]

"Then, with the advent of the First World War and the Bolshevik Revolution, it emerged on the international scene. […] For V. I. Lenin it was a means of realizing the dream of world-wide socialism."[725] In 1916, in his *Theses on the Socialist Revolution and the Right of Nations to Self-Determination*, he offered the first compelling enunciation of the principle, envisioning it on three components[726]: "first, it could be invoked by ethnic or national groups […] deciding their own destiny freely. Second, it was a principle to be applied […] for the allocation of territories to one or another Power. Third, it was an anti-colonial postulate designed to lead to the liberation of all colonial countries."[727] Also Lenin imagined secession as the instrument of self-determining People; secession, however, was not necessarily to be carried out by forcible means, but could be the result the expression of a free and popular vote.[728]

Since this moment, self-determination mainly developed on its external side; this cannot not surprise considering that it is between the late XIX century and the first half of the XX that (most) People became Nations acquiring popular sovereignty. Coherently, for US President Wilson, popular sovereignty was the beating heart of self-determination, championing (internal) self-determination as "the consent of the governed"; of course, on the external side, Wilson also took "into account the purpose of settling colonial claims[, …but did not consider them] the paramount yardstick in this area, [having to be] reconciled with the interests of colonial Powers. [Wilson, in fact,] did not envision self-determination as giving rise to a right to wage violent revolutions. […] In other words, self-determination [had to be] realized through plebiscites and in conformity with reports issued by international commissions of experts assigned to study border disputes."[729]

Nevertheless, after the Great War also, self-determination was largely subordinated to other concerns, when it came to the making of peace treaties, substantially do not deeming People's will, when it was running counter the victors' interests. "Where the conducting of a plebiscite was considered

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[722] As quoted by Beales D. E. D., "*Mazzini and the Revolutionary Nationalism*", in Thomson D. (ed.), Political Ideas, London, 1969, p. 146.

[723] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 247.

[724] *Ivi*, p. 38; see also coherently: Koskenniemi M., *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Cambridge, 2001. p. 131; Mill J. S., *A Few Words on Non-Intervention*, in New England Review 27:3, 2006, 252-264, p. 259; and Carnazza Amari, *Nuova esposizione*, p. 77.

[725] Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, 1995, p. 13.

[726] *Ivi*, pp. 15-16.

[727] *Ivi*, p. 15.

[728] Lenin V. I., *The Socialist Revolution and the Right of Nations to Self-Determination*, Printed in Russian, Sotsial-Demokrata, Sbornik No. 1., October 1916, p. 159.

[729] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, pp. 21-22.

inappropriate, or the interests of the Allies were likely to be imperilled, the resident populations were not consulted"[730]. For Instance, *inter alia*, Austria had to allocate to Italy South Tyrol/Alto Adige without any plebiscite and Japan was given control of the Chinese territory of Kiaochow.

In a commission appointed by the Council of the League of Nations it was examined whether, under international law, the People of the Aaland Islands could freely secede from Finland and join the Kingdom of Sweden.[731] The commission delivered 2 different Reports, regarding, respectively the competence and the merits. The report stated that although the principle was "an integral part of 'modern political thought', it was not mentioned in the Covenant of the League of Nations and its recognition 'in a certain number of international treaties [could] not be considered as sufficient to put it upon the same footing as a positive rule of the Law of Nations'"[732], famously recommending that the Aaland Islands had to remain under the Finnish sovereignty, under an increased autonomy.[733]

It is worthy, in any case, to note that the Commission offered two other bodies through which analysed the relation between self-determination, minorities and territorial integrity, delineating the basis for the modern protection of minorities and the basis of general principles of law and justice[734].

"During the Second World War, as early as 1941, the US and the UK [defined] self-determination as one of the objectives to be attained and put into practice at the end of the conflict"[735]; and US President F. D. Roosevelt and British Prime Minister Winston Churchill[736] proclaimed in the Atlantic Charter "self-determination as a general standard governing territorial changes, as well as a principle concerning the free choice of rulers in every sovereign State (internal self-determination)"[737].

In 1944 US, UK, URSS and China representatives "entered into secret and informal negotiations with the aim of setting the foundations for a world organization,"[738] but although the Allied declarations, the principle never appeared neither in Dumbarton Oaks, nor in the draft of the UN Charter.

It was in San Francisco in late 1945, during the United Nations Conference on International Organization met, that the issue was reconsidered – mainly because of the URSS inflexibility. -[739] Most of the States of the 'Committee I of Commission I' positively react to the amendment (such as, *inter alia*, Philippines, Ukraine, Syria, and Yugoslavia)[740] while, some others, like Colombia, Venezuela and (mainly) Belgium, firmly opposed.

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[730] *Ivi*, pp. 25-26.

[731] On the Aaland Island case see: Brown P.M., *The Aaland Islands Question*, 15 AJIL, 1921, 268-72;

[732] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge, 1995, p. 28.

[733] See: *Official Journal of the League of Nations*, September 1921, pp. 701-2.

[734] See: See League of Nations, *Report presented to the Council of the league by the Commission of apporteurs*, Council Doc. B7/21 /68/106, 16 April 1921, p. 27.

[735] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge, 1995, p. 37.

[736] The 9 September 1941 Churchill at the House of Commons firmly stated that self-determination only aimed at restoring "the sovereignty, self-government and national life of the States and nations of Europe under the Nazi yoke" and that the principle did not apply for the colonial People.

[737]Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge, 1995, p. 37.

[738] *Ivi*, p. 38.

[739] *Ibidem*.

[740] See at the Library of the Palais des Nations, Geneva: the microfilmed minutes (unpublished) of the *debates* of *the First Committee of the First Commission of the San Francisco Conference*, 14-15 May and 1 and 11 June 1945.

States fears had to leave the place to the Will of the People (of the United Nations); and in fact, the final version of the Act did not limit itself to the League of Nations' political rhetoric, trying to achieve a formula founded on four cardinal points: first, '[self-determination] principle corresponded closely to the will and desires of peoples everywhere and should be clearly enunciated in the Chapter [of the UN Charter]"[741]. Second, "the principle conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession"[742]. Third, "[the principle], as one whole[,] extends as a general basic conception to a possible amalgamation of nationalities if they so freely choose"[743] Fourth, they agreed that "an essential element of the principle is free and genuine expression of the will of the people, which avoids cases of the alleged expression of the popular will, such as those used for their own ends by Germany and Italy in later years"[744]; and opening the Charter precepting that: "We people of the United Nations determined"[745] at developing "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace"[746]. Standing to Cassese's interpretation (contaminated by Syrian Rapporteur's report to the Commission position), it is arguably sustainable that in this context Self- determination did not mean:

"(a) the right of a minority or an ethnic or national group to secede from a sovereign country ; (b) the right of a colonial people to achieve political independence; for these peoples self- determination could only mean 'self-government'[747]. […] c) The right of the people of a sovereign State freely to choose its rulers through regular, democratic and free elections; for these peoples also self- determination only meant 'self-government'; (d) the right of two or more nations belonging either to a sovereign country or two sovereign countries to merge." [748].

It follows that the principle, as provided by the UN Chapter, only precepts "that States should grant self-government as much as possible to the communities over which they exercise jurisdiction;"[749] being primarily envisaged as a programmatic aim of the Organization[750], intending the principle as a legal standard (for the UN and the whole International Community). Although all these limitations, this was the first time that self-determination was laid down in a multilateral treaty, adding a major piece of legislation of the new world community.[751]

Into the decades which followed the Charter, the principle evolved "in a manner which those who drafted it could not have foreseen"[752]. Two main positions were carried out, on one hand, the Western

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[741] See UNCIO, vol. VI, 296.

[742] *Ibidem.* The French proposal coherently stated: "On a declare que ce principe n'etait compatible avec les buts de la Charte que dans la mesure ou il impliquait, pour les peuples, le droit de s'administrer eux-memes, mais non pas le droit de secession", ivi, 298.

[743] *Ivi*, p. 704.

[744] *Ivi*, p. 455.

[745] UN Charter, Preamble.

[746] UN Charter art. 1.2. See also the arts. 55, 56 and 76.

[747] Cassese draws this conclusion "from the clear agreement reached when drafting the provision to the effect that self-determination only meant 'self-government' and also from the fact that Article 76 of the UN Charter, laying down the basic objectives of the trusteeship system, contemplated 'their progressive development towards self-government or independence'; a systematic interpretation of the Charter would thus warrant the conclusion that, by implication, 'self-government' did not mean 'independence'". Cassese A., Self-Determination of Peoples, p. 42.

[748] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 42.

[749] *Ibidem*. See note 23.

[750] *Ivi,* p. 43.

[751] *Ibidem.*

[752] *Ivi*, p. 44.

Countries which sustained that self-determination was the synthesis of the civil and political rights and the main criterion to legitimize the rulers. On the other, the Socialists Countries which, given the immanent "right to exist as a state"[753], imagined self-determination as "the expression of will of the People to be protected"[754]. Another current popular into the Eastern Bloc, joined by many of the freshly independent Third World Countries, continuing Lenin positions, considered self-determination as a necessary postulate for decolonization and its "after-effects" (this position, in fact, was typically aimed at the final reach of the world-wide-socialism); while the main goal of the Developing Countries' positions can be summed up on three pillars: "(1) the fight against colonialism and racism; (2) the struggle against the domination of any alien oppressor illegally occupying a territory […]; (3) the struggle against all manifestations of neocolonialism and in particular the exploitation by alien Powers of the natural resources of developing countries.

In 1950 the UN Commission on Human Rights provided that the Declaration should be followed by a binding treaty dealing with civil, political social, economic, and cultural rights.[755] And, During the negotiations, the Western State sustained that the goal of the treaty was "only [to] lay down the fundamental rights and freedoms of individuals"[756]; while, the Socialist position considered self-determination "as a precondition for the respect of individual rights"[757]. During the Third Committee of the General Assembly, the Soviet Union proposed to include an article providing the principle based on the right of self-determination of colonial Peoples and the rights of minorities.[758] The General Committee rejected the Soviet proposal, omitting to address to most of the provisions on its individual merits.[759] At this point Afghanistan and Saudi Arabia invited the Commission on Human Rights to study ways and means to ensure the right of Peoples and nations to self-determination. Saudi Arabia and a number of other Third World countries focused on colonial Peoples[760], while, notably, the proponents as well as many Asian, African, and Latin American countries and a few Western Countries emphasized that the right *de quo* "should apply to other peoples as well, namely, peoples oppressed."[761] "The staunchest opponents were the United Kingdom, France, and Belgium, those

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[753] Graefrath B., *Die Vereinten Nationen und die Menschenrechte*, Berlin (B. Graefrath: Die Vereinten Nationen und die Menschenrechte, Berlin (Ost), 1956. p. 56.

[754] Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, 1995, p. 37. This same Cassese consideration upon the relation between Self-determination and intervention is, *inter alia*, shared by: Salmon J., *Le droit des peuples a disposer d'eux-memes - Aspects juridiques et politiques*, in Le Nationalisme, Bruylant, Brussels, 1972, pp. 359-62; Thiirer D., *Das Selbstbestimmungsrecht der Völker: mit einem Exkurs zur Jurafrage*, Stämpfli, Bern, 1976, p. 473; Guilhaudis J., P.U.G., Grenoble, *Le droit des peuples à disposer d'eux-mêmes et le droit international positif*, in Revue québécoise de droit international, 1985, pp. 118-26; Roscini M., International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles, Oxford, 2024, Chapter V.

[755] It was in 1954 that the Parties decided to separate the matters upon two different Covenants.

[756] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 47.

[757] *Ivi*, p. 48.

[758] UN Doc., 1950, Annexes, A/C.3/L.96, p 17.

[759] UN Doc., A/1559, p. 28. (As quoted in Cassese).

[760] UN Doc., 1951, Mexico (A/C.3/SR.310, paras. 7-11; SR.311, paras. 29-32); Syria {ibid., SR.311, paras. 7-8) Saudi Arabia (A/C.3/SR.309, paras. 56-7, SR.310, para. 3; SR.367, para. 42; SR.398, paras. 32-34; SR.403, para. 85; SR.563, para. 12); Liberia (A/C.3/SR.366, para. 25; SR.400, para. 9).

[761] UN Doc, 1951, Afghanistan (A./C.3/SR.309, para. 53; ibid. SR.362, para. 11); India (SR.399, para. 4). See also coherently: Afghanistan (A/C.3/SR.644, para. 10), El Salvador (SR.645, para. 24), Lebanon (SR.649, paras. 29-30, 34), India (SR.651, para. 4), Egypt (SR.651, para. 332), Afghanistan (SR.652, para. 3, SR.654, para. 37, SR.677, para. 27). Western Countries mentions: Statement by the US delegate in 1951 (A/C.3/SR.364, para. 19). In 1955 the same stand was taken by New Zealand (A/C.3/SR.649, para. 9), the UK (SR.652, para. 24) and Denmark (SR.677, para. 27).

most concerned about retaining control over their colonies"[762]. The Western States used various thesis to sustain their opposition to the principle, stating, *inter alia*, that it was a political principle, not a justiciable right[763]; that in any case it was too nebulous and vague to be included in a binding agreement.[764] It was also argued that being a right of the People and considering that the Covenant protects individuals, include the principle would have jeopardized the essence of the Treaty.[765] Several States sustained also, on the procedural plane, that the Third Committee of the General Assembly and the Commission on Human Rights had no jurisdiction over the matter.[766] Other, insisted that, if the right to self-determination would have been incorporated in the Covenant, it should have also applied to the Peoples oppressed by their own governments.[767]

Thus, when in 1955, was finally time to adopt the article, most of the countries had already explicitly stated that the article did not limit to the colonial countries and the national minorities. Ironically, Western States' (contrary) argumentations, more than Socialists and Third World positions, which strenuously sustained that self-determination, if part of the Covenant, had to generally Protect the People, do not limiting to the colonial situations, did the most to broaden the concept (and the applicability) of the principle; widening its object[768]. And, in fact, the Art. 1 of both the UN Covenant on Economic, Social and Cultural Rights and the UN Covenant on Civil and Political Rights precept:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law, in no case may a people be deprived of its own means of subsistence."

Thus, the Art. 1 Article "requires that the people choose their legislators and political leaders free from any manipulation or undue influence [also] from the domestic authorities themselves"[769]; meaning that the People's self-determination presupposes the expression of the rights embodied into the Covenant[770], such as the right to freely express (Art. 19), assembly (Art. 21), associate (Article 22); the right to vote (Article 25 b); and, more generally, "the right to take part in the conduct of public affairs, directly or through freely chosen representatives" (Article 25 a). To be clear, this does not mean that self-determination is coterminous with the right to democratically elect governments,

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[762] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, pp. 49.

[763] See, *inter alia*, the British statement of 2 July 1955, UN Doc., A/2910/Add. 1, Xth Session, 1955, Annexes, 5, as well as the statement made by the UK represen¬ tative in the Third Committee (A/C.3/SR.642, para. 11); see also the Australian statement of 20July 1955 and The Netherlands statement of 29 August 1955 (ibid.,11 and 14).

[764] See: Belgium (UN Doc., A/C.3/SR.361, para. 10, SR.643, para. 9); Sweden (ibid., A/C.3/SR.641, paras. 13, 18); Denmark (ibid., SR.644, para. 2); Australia (ibid., SR.647, para. 17).

[765] See, e.g., Sweden, UN Doc. A/C.3/SR.641, para. 13.

[766] See, e.g., UK, UN Doc. A/C.3/SR.309, para. 58; France, ibid., paras. 62-3; SR.399, paras. 27 and 29; US, SR.310, para. 28; Canada, ibid., para. 32; Turkey, ibid., para. 49;

Nicaragua, SR.312, para. 5; Peru, ibid., para. 7.

[767] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 51.

[768] *Ivi,* pp. 50.

[769] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 53.

[770] *Ibidem*.

merely involving an obligation to abstain from interfering in the choice of another country's political, economic, social, and cultural system[771]; *plutôt,* self-determination and individual rights are strictly linked, as "the key to assessing a People's enjoyment of internal self-determination lies in its ability to exercise the political and civil rights enumerated in the Covenant"[772]. *Ad colorandum*, considering that political independence is not an act, being a process; when the People of a Nation participate without interference to the life public affairs, directly or through freely chosen representatives (Art. 25.a) , they are joining their continuing right to internal self-determination[773]. Self-determination shall be intended as a precondition to democracy.

Coherently, the draft of the Article 1 precepted that "all peoples shall have the right to self-determination", while, the final version states that "all peoples have the right to self- determination"; the modification was intended "to emphasize the fact that the right referred to is a permanent one"[774]; remarking how People's right to external self-determination is not only the right to be Nation – eventually - secessioning. As described, the principle was born to bear the Seed of Nations and, about a century after Mazzini writings, during the "Year of Africa", two important declarations reflected the general acceptance of self-determination: the 1960 Resolution 1514 (XV) [775], the so-called "Declaration on Granting Independence to Colonial Countries and Peoples"[776] and the Resolution 1541 (XV)[777]. Of course, colonized People, the habitants of forcibly occupied territories and those subject to racist or apartheid regimes have the "reserved" right of self-determination gaining independence or removing the regime.[778] But being a continuing right, it cannot end with the independence.[779] Thus, the legitimate[780] representatives, exercising their jurisdiction, must determine freely and without external interferences their own political, economic, social, and cultural development.

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[771] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 249.

[772] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 53.

[773] As the exploitation of the territorial natural resources is a sovereign prerogative; standing to the Art. 1.2., the exploitation should be as to benefit the People. This of course would not render sovereignty and self-determination coterminous.

[774] Comment made by the Chairman of the Working Party of the Third Committee when presenting the draft to the Third Committee (UN Doc., A/C.3/SR.668, 1955, para. 3). Note, for instance, that the 1975 Helsinki Final Act states, 'all peoples ***always*** have the right' to determine their internal and external political status without interference.

[775] It was approved the 14 December 1960 by a vote of 89 to 0 (and 9 abstentions Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, UK, US).

[776] Standing to the 2019 Advisory opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965; the resolution No. 1514 (XV) "represents a defining moment in the consolidation of State practice on decolonization"; thus (at least on regard of the external) self-determination, since this moment, it would establish as a customary rule. In this context, the temporal factor, appears to be particularly important considering that the right is not retroactive.

[777] It was approved the 15 December 1960 by a vote of 69 to 2 (Portugal, Union of South Africa; and 21 variegate abstentions).

[778] See: ICJ Reports 2010, *Advisory opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, p. 436, para 79.

[779] See coherently: Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 55.

[780] By the People.

As discussed, "the idea of self-determination [evolved since] the French and American Revolutions reflect[ing] notions of popular sovereignty"[781]; and evolving as the "right to authentic self-government, that is, the right of a people really and freely to choose its own political and economic regime."[782] Or in Salmon words evolved as "an endogenous right protecting the rights of the people against [bad] government."[783]

> This human right dimension is remarked by the Netherlands Written Submission to the International Court of Justice regarding the legality of Kosovo's UDI standing to which "Nothing in the foregoing paragraphs [addressing the principle of equal rights and self-determination] shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory."[784]

Similar emphasis is also traceable in Judge Abdulqawi Yusuf separate opinion who noted that the postcolonial conception of the right to self-determination operates between States "as a right of the entire population of the State to determine its own political, economic and social destiny and to choose a representative government."[785]

"Self-determination taken beyond the context of decolonization has an explosive potential"[786]. "State[s] [were] created and exists for human beings, and not vice-versa"[787]; and "the separation of the concept of self-determination into two distinct parts – internal and external – has served an important purpose. The distinction, in teasing out an internal dimension of self-determination, allows international lawyers to emphasize the need to take the freedoms of the people within the state more seriously. In this way, the distinction could be seen as a significant challenge to the"[788] "right to insurrection against all forms of oppression."[789]

2.3.3 The meaning of 'People'

International law did not produce yet a universally accepted definition of the term 'people'; this was also used by Authors to sustain that "on the surface it seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who are the people."[790]

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[781] Senaratne K., *Internal Self-determination and the Populations of States, in Internal Self-Determination in International Law: History, Theory, and Practice*. Cambridge, 2021, p. 55.

[782] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 101.

[783] Salmon J., *Internal Aspects of the Right to Self-Determination: Towards a Democratic Legitimacy Principle?*, in Tomuschat (ed.), *Modern Law and Self-Determination*, Nijhoff, Dordrecht, Boston, London, 1993, p. 265.

[784] *Written Statement of the Kingdom of the Netherlands* ,17 April 2009, p. 9. < www.icj-cij.org/files/case-related/141/15652.pdf >, last accessed January 2025.

[785] *Separate Opinion of Judge Yusuf*, in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* p. 222, < https://www.icj-cij.org/index.php/node/204165 > last accessed January 2025.

[786] Thürer D. and Burri T., *Self-Determination*, in Wolfrum R. (ed.), MPEIL, 2008, at 35.

[787] *Separate Opinion of Judge Cançado Trindade*, n. 4, p. 194.

[788] Senaratne K., *Internal Self-determination and the Populations of States,* in *Internal Self-Determination in International Law: History, Theory, and Practice*. Cambridge: Cambridge University Press, 2021, p. 57.

[789] The 1976 Constitution of Portugal, art. 7(3).

[790] Jennings I., *The Approach to Self-Government*, Cambridge, 1956, p. 56.

"This is […] a fundamental [point] […] because, theoretically, it is difficult to apply self-determination to any group without knowing whether that group […] is a 'people' under international law. In other words, the realization of self-determination depends largely on the recognition of […] a certain [group] as a 'people'."[791]

> Said this, in UNESCO words, "Few ideas are as enduring and powerful as those of cultural, religious, linguistic, racial or other forms of group identity."[792] And a People, to be recognized by International Law, "[should present] some or all of the following common features: (a) a common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; (g) common economic life. [Precising that] the group must be of a certain number; [that the] group as a whole must have the will to be identified as a people or the consciousness of being a people [and that it must possess] institutions or other means of expressing its common characteristics and will for identity."[793]

Emphasizing, a group that possesses an enduring and powerful common identity can be regarded as a singular whole, namely as a 'people'.

2.3.4 Self-determination in cyber-context

As discussed "international law, in particular the UN Charter, international human rights law and international humanitarian law"[794] applies in cyber domain too; and "State sovereignty and international norms and principles that flow from sovereignty apply to the conduct by States of ICT"[795]; Martti Koskenniemi stated that "today, [sovereignty] stands as an obscure representative against disillusionment with global power and expert rule ... [and] points to the possibility, however limited or idealistic, that whatever comes to happen, one is not just a pawn in other people's games but, for better or for worse, the master of one's own fate"[796]; highlighting how, in cyber context, self-determination assumes an even higher potential.[797]

When dealing with the principle in cyber context a first question arising is whether a group (which inhabits but) experience cyberspace[798] – the netizens – have the potential constitute a People under international law, and, therefore, to "exercise their right to self-determination and declare the sovereignty of cyberspace."[799]

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[791] Senaratne K., *Internal Self-determination and the Populations of States, in Internal Self-Determination in International Law: History, Theory, and Practice*. Cambridge: Cambridge University Press, 2021, p. 52.

[792] UNESCO, I*nternational Meeting of Experts on further study of the concept of the rights of peoples*, 22 February 1990, p. 2.

[793] *Ivi*, pp. 7-8.

[794] Council of the European Union, *Declaration on a Common Understanding of International Law in Cyberspace*, 18 November 2024, p. 4.

[795] GGE 2015 Report, para. 27.

[796] Koskenniemi M., Conclusion: Vocabularies of Sovereignty – Powers of a Paradox' in Kalmo H. and Skinner Q. (eds), Sovereignty in Fragments, Cambridge, 2010, 242.

[797] Self-determination was, since its albeit, clearly devised on the concept of popular sovereignty. See about Woolsey T.S., *Self-Determination*, American Journal of International Law 13:2, 1919, 302-305, p. 304.

[798] Tsagourias N., *The legal status of cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.24.

[799] *Ibidem*.

Admitting the improbable conclusion that Netizens, over the time, may acquire 'the consciousness of being a people and means of expressing its common characteristics and will for identity' eventually assisted by their common economic life and by their nascent native language of the net; the Netizens "do not suddenly lose their physicality or become displaced figures; they are embodied individuals who live in real spaces which are under State sovereignty. Consequently, any decision to proclaim the sovereignty of cyberspace and any 'laws' or regulations they may promulgate will be subject to scrutiny by the laws of their own State."[800] Cyberspace is not autonomous remaining connected and governed by States authority, thus rendering virtually impossible to proclaim its political independence.

As discussed in the past paragraphs, a prohibited intervention in the political, economic, social, and cultural affairs of a State will likely also compress the right to self-determination of its People, therefore a very obvious cyber conduct that would compress (inward-facing aspect'[801] of) internal Self-determination are cyberoperations that compress the right of "the people to choose their legislators and political leaders free from any manipulation or undue influence"[802] –-; namely, cyberattacks against the electoral infrastructure and cyber-influence operations.

Starting from the former, all operations that successfully hit the electoral infrastructure clearly violate both the right of a State and the right of its People to freely determine. It must however be noted that an unsuccessful cyberattack against the infrastructure *de quo* may still be a prohibited intervention never compressing the right of Self-determination of the People of a Nation.

With respect to Cyber-influence electoral operations, regarding the doxing operations, given that when they aim at compelling the agency of the target State in a matter in which under international law is free to choose, they may qualify as a prohibited intervention; in my opinion it appears improbable that spreading true but reserved information would impair the freedom of the voters. Internal Self-determination protects from "bad Governments" [803] too.[804]

With regard of information operations, in case of malinformation the considerations offered about doxing operations seem appliable *mutatis mutandis*, limiting to deliver correct confidential information.

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[800] *Ivi*, p. 26.

[801] Sparks T., *Self-Determination in the International Legal System*: *Whose Claim, to What Right*?, Hart/Bloomsbury, Oxford, London, New York, New Delhi, Sydney, 2024, p. 16.

[802] Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, 1995, p. 53. Coherently Roscini Stated that internal self-determination "protects a state and its people (intended as the entire population living on the territory of the state) from any external interferences aimed at influencing the outcome of an endogenous process for the choice of the political system." Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 400.

[803] As quoted by D. E. D. Beales, "Mazzini and the Revolutionary Nationalism", in Thomson D. (ed.), Political Ideas, London 1969, p. 146. See Coherently, Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995.

[804] For instance, On 12 February 1946, the US government published and ensured a wide circulation of the 'Blue Book' – which detailed Argentina's links with the Nazis - with the purpose of influencing the outcome of the elections in the South American country to be held on 24 February of the same year. Arguably, this information was not compressing the Argentinians' right to freely choose. See on the 'Blue Book' Van Wynen Thomas A. and Thomas AJ. Jr., *Non-Intervention: The Law and Its Import in the Americas*, Southern Methodist University Press, Indianapolis, 1956, p. 300. **The point stands on the interpretation of the expression 'decide freely'. In my idea publishing correct-factual information would never 'restrain' the decisional capacity of a People, and their political independence.**

Different points are spendable with respect of disinformation operations as, given that "[a] democracy is only as resilient as its people"[805], their deceptive nature clearly inquinates the freedom of the voters. In this context, persuasion and influence begin a factor, considering that the Self-determination protects a free and meaningful choice, that imply to freely determine and develop its own will.

Said this, it would still appear to remain the *velata quaestio* of scientifically determining analytical tools "to measure the real impact of electoral interference on people or how their voting preferences were affected"[806] ; quantitative factors may be represented by the number of viewers[807] and the engagements of that manipulative information. While, qualitative factors – may be borrowed from social psychology[808] and – may be represented, *inter alia*, by the 'potential liking' (and susceptibility) of the matters and principles involved in the bad information – for instance "On 6 August, RT published an English language video called "*Julian Assange Special: Do WikiLeaks Have the E-mail That'll Put Clinton in Prison?" and an exclusive interview with Assange entitled "Clinton and ISIS Funded by the Same Money*."[809] - . The 'consistency', intended as the coherence and the alignment with currently real-world behaviours. The 'authority', which in this context means how much the information may be receipted as genuine and reliable – for instance "the PRC is employing new tactics, such as inviting prominent pundits and pollsters to visit and utilizing Chinese short videos in Taiwan's elections; [suggesting] a growing level of certainty and intent to alter voter decision processes as the election date approaches."[810] Social Proof' "[social proof] implies that we decide how to act or think based, in some part, on how other people are acting and thinking. This tendency is especially strong in situations in which we are very uncertain or among similar people. Consensus is an informational strategy, and, as information comes from other people, it is strongly affected by cultural differences. Logically, individuals who consider their own knowledge to be superior to that of others are not highly susceptible to influence by behaviors of a given group"[811];– thus, for instance as noted by Schmitt, "[if] American voters [would have] known that the information, even if truthful, was being disseminated by Russia as part of an influence campaign, that knowledge might have caused them to evaluate it differently.[812] – And the like.

"Whilst it is true that the content of peoples' rights is not settled and the catalogue of such rights is in the process of refinement and development, it is equally clear that peoples' rights, as such, are now represented in international law." [813] And nevertheless the hesitation of some States to fully accept the

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[805] Full Transcript and Video: *James Comey's Testimony on Capitol Hill*, N.Y.Times, 8 June 2017. < https://www.nytimes.com/2017/06/08/us/politics/senate-hearing-transcript.html >

[806] Tsagourias N., Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace, in Broeders D. van den Berg B. (eds.), *Governing Cyberspace Behavior, Power and Diplomacy*, Rowman/Littlefield, Lanham, Boulder, New York, London, 2020, p. 56.

[807] *Ibidem*.

[808] See, for instance, upon: Cialdini R.B., *Influence: Science and Practice,* Allyn and Bacon, Boston*,* 2001.

[809] ODNI Report, p. 4.

[810] Shu-Ching Yang E., Cyber Election Interference and Self-Determination - Elections in Taiwan, Digital Law Asia, 2023.

[811] Halttu K. Oinas-Kukkonen, H., Susceptibility to social influence strategies and persuasive system design: exploring the relationship', Behaviour & Information Technology, 41:12, 2021, 2705-2726, p. 2708.

[812] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

[813] UNESCO, *International Meeting of Experts on further study of the concept of the rights of peoples*, SHS-89/CONF.60Z/7, 1989, pp. 5-6.

potential of this "fundamental human right"[814] - for example "reservations about the concept of peoples' rights as discussed in the context of UNESCO were amongst the reasons given for the withdrawal of the United States of America and the United Kingdom from the Organization"[815] which was rather defined by the US as the "political right of self-determination; -"[816] the best approach to dispute this considerations is quote the first "text in which both human and peoples' rights are simultaneously proclaimed"[817] the Declaration of Independence of the United States of America which proclaims that:

> When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." [818]

[814] ICJ Reports 2019, Advisory opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Para. 144.

Note that "the incorporation of a right to self-determination as the first provision in two of the principal international instruments on human rights which have been ratified by a large number of states 'solidifies its development as a fundamental human right, and indeed, the foundation for all other human rights." (Senaratne K., *'Internal Self-determination and the Populations of States', in Internal Self-Determination in International Law: History, Theory, and Practice*. Cambridge: Cambridge University Press, 2021, p. 65.)

[815] UNESCO, *International Meeting of Experts on further study of the concept of the rights of peoples*, SHS-89/CONF.60Z/7, 1989, p. 5.

[816] *Ivi*, p. 6.

[817] *Ibidem*.

[818] United States Declaration of Independence, 1776.

Chapter 3 A practical approach to Sovereignty, Non-intervention and Self-Determination: a legal discussion on real-life cyber incidents

3.1 Bundestag Hack

Principal facts

In May 2015 "the network of the German Federal Parliament used by all MPs as well as the German chancellor"[819] was reportedly hacked. The operation maintained unauthorized access for months[820] to "internal confidential communication data (such as confidential emails of MPs), their schedules, meeting details as well as other sensitive data"[821], breaching over 20,000 accounts[822] and even managing to access a computer in the parliamentary office of the chancellor.[823] The operation resulted in over 16 GB of data stolen.[824] The German investigations[825] indicate that the Russian hacking group APT28 ("Fancy Bear"/"Sofacy") linked to GRU was responsible for the operation.[826] Following the discovery of the attack, Bundestag's "computer system was shut down for four days for maintenance works and additional safety mechanisms were installed."[827]

Legal Considerations

During the past chapter it was analysed that the sovereignty of a State is violated whenever "its power [are exercised] in any form in the territory of another State"[828] "without the latter's valid consent or a permissive rule of international law"[829]; or in Tsagourias words that "any non-consensual or not legally justified interference within a State's sovereign legal sphere will constitute violation of its sovereignty."[830] Therefore, as discussed, "any unauthorised or not legally justified cyber operation on another State's cyber infrastructure which does not reach the level of violence required by the rule on

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[819] The Cyber Law Toolkit, The Bundestag Hack.

[820] *Ibidem.*

[821] *Ibidem*.

[822] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657, p. 617.

[823] The Cyber Law Toolkit, The Bundestag Hack.

[824] Der Spiegel, Baumgartner M. Beuth P. Diehl J. Esch C., *The Breach from the East*, 18 March 2018.

[825] Despite the operation was never officially attributed to the Russian Federation, the former German Chancellor Angela Merkel stated that "such cyberattacks, or hybrid conflicts as they are known in Russian Doctrine, are now part of daily life and we must learn to cope with them." (N.Y. Times, Eddy M., *After a Cyberattack, Germany Fears Election Disruption*, 8 December 2016).

[826] BBC News, *Russia was behind German parliament hack*, 13 May 2016.

[827] The Cyber Law Toolkit, The Bundestag Hack.

[828] *The Case of the SS 'Lotus*', France v Turkey, Judgment of 7 September 1927, PCIJ Series A No 10, 2, 18, emphasis added.

[829] Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 393. Schmitt coherently noted that "Cyber operations also violate sovereignty when they interfere with or usurp another State's inherently governmental functions, irrespective of whether or where damage or injury results." (Schmitt M. Biller J, The NotPetya Cyber Operation as a Case Study of International Law, EJIL, 11 July 2017.)

[830] Tsagourias N., The legal status of cyberspace: sovereignty reduxIn Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 22.

the non-use of force or the level of coercion required by the non-intervention rule will violate the latter State's sovereignty."[831]

Based on the above it can be said that whether the operation which non-consensually penetrated German cyber-infrastructure is attributable to a State Actor - regardless of its characterization as an espionage operation - would have violated German sovereignty.

One could also ask if, considering that in the aftermath of the operation German Authorities shut down for several days the Bundestag's computer system to improve the security of the network, the operation may be qualifiable as a prohibited intervention.

Admitting that the operation effectively meddled into the German's domestic jurisdiction, fulfilling the first element of prohibited intervention, the conduct would in any case lack of coerciveness. It was a German sovereign choice interrupting the functionality of the networks to install additional safety mechanism[832]; and even if those actions were persuaded by the extension and the duration of the incident, it is different than forcefully or dictatorially compel the agency of the target State.

3.2 Mexican Ministry of Defense Doxing Operation

Principal Facts

In September 2022 it was reported that "Hackers targeted the Mexican Defense Ministry and accessed six terabytes of data, [leaking information] including internal communications, criminal data, [enforcement operations[833], health issues of the Mexican President] and data that revealed Mexico's monitoring of Ken Salazar, the U.S. Ambassador to Mexico." Mexican President Andres Manuel Lopez Obrador confirmed the authenticity of the data, including personal health[834] data released to the public."[835]

Legal Considerations

Admitting that the operation is attributable to a State, with respect of the non-consensual penetration and data hack, one could recall *mutatis mutandis* the considerations offered in *Bundestag Hack* context, therefore qualifying this first conduct as a violation of the Mexican Sovereignty.

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[831] *Ibidemi.*

[832] Germany after the attack "took several [other] measures designed to strengthen its military capacity to thwart and respond to cyberoperations, including hacks into strategic assets, and to generate greater deterrence against attackers. A new military cyber command was established to strengthen German capabilities in cyberspace, including offensive capabilities." (Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657, p. 618.)

[833] Reuters, Morland S., *Mexican government suffers major data hack, president's health issues revealed*, 30 September 2022.

[834] "Lopez Obrador was transported through a military aircraft to Mexico City due to a serious heart condition. The report states that the president was diagnosed with 'high-risk unstable angina'" (AA, Rocha J.A., *Mexico's defense ministry was target of foreign cyberattack, says president.Lopez Obrador calls out foreign intervention over 6 terabytes of stolen information*, 30 September 2022).

[835] Center for Strategic and International Studies, *Significant Cyber Incidents Since 2006* – monthly updating, September 2022.

With regard of the leak of confidential data, one could generally argue that publishing information regarding, *inter alia*, the health of the President; intelligence operations; and criminal enforcement operations; would reach a magnitude capable to forcefully usurps the political independence of a State in matters reserved – under international law - to its domestic Jurisdiction. *Ad colorandum*, as discussed, international law is technologically neutral and "when the coercing state directly engages in unauthorized conduct on foreign territory, intent to coerce is presumed and no demonstration of its existence is required to establish the commission of the wrongful act:"[836]

In the context of the cyberoperation suffered by the North American Country, it is particularly clear why a doxing operation" can be credible, specific and serious enough […] to be able to impair the agency of the target state"[837]. After the operation, President Obrador had to admit that "there was a cyberattack"[838] and "confirmed revelations about his own health problems"[839] and that "there was a risk of heart attack and they took me to hospital. And they recommended a [cardiac] catheterization. […] I'm sick. I have several ailments. […] "I take a cocktail [of medications] at night for several conditions" including high blood pressure and thyroid issues, "but I am very well, … I get a check-up every three or four months."[840] Clearly compelling the Government "[in]to engag[ing] in an action [reserved to its domestic jurisdiction] that it would otherwise not take."[841]

3.3 Sony Pictures Entertainment doxing operation

Principal facts

"'The Interview' is a Sony Pictures Entertainment (SPE) comedy film, which describes a plot to assassinate the North Korean dictator, Kim Jong-un. The movie's premier was scheduled for December 18, 2014, with wider release scheduled for Christmas Day 2014. Six months earlier, the North Korean regime tried to stop the distribution of the film by taking measures such as sending"[842] to the UN secretary-general an official communication defining the movie the most "undisguised sponsoring of terrorism, as well as an act of war"[843], threatening the adoption of "decisive and

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[836] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 158.

[837] *Ivi*, p. 184. Talmon noted that diplomats criticism expressed through social media may breach the Art 4(1) of *the Vienna Convention on Diplomatic Relations provisions* as "[w]hile a small group of Western States […] may consider Twitter, blogs, and other social media as just another means of communicating their foreign policy objectives, the majority of States still prefers the traditional, more discreet means of diplomacy" (Talmon S., *Iran Condemns German Ambassador's Tweets as Interference in Internal Affairs*, German Practice in International Law, 13 July 2021).

[838] Mexico President Obrador A.M.L. as quoted in Mexico Daily News, MND Staff, *Hackers leak thousands of Defense Ministry documents; AMLO confirms revelations of health issues*, 30 September 2022.

[839] Morland S., *Mexican government suffers major data hack, president's health issues revealed*, Reuters, 30 September 2022.

[840] Mexico President Obrador A.M.L. as quoted in Mexico Daily News, MND Staff, *Hackers leak thousands of Defense Ministry documents; AMLO confirms revelations of health issues*, 30 September 2022.

[841] Government of Denmark, *Denmark's Position Paper on the Application of International Law in Cyberspace*, 2023, 3.

[842] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657, p. 605.

[843] Leupp G., *A Chronology of the Sony Hacking Incident*, COUNTERPUNCH, 29 December 2014.

merciless countermeasure [if] the US administration tacitly approves or supports"[844] the diffusion of the movie.

Similarly, "the North Korean minister of foreign affairs further published a statement objecting to the release of the movie, using expressions such as 'terrorism,' and 'a war action' and threatening 'decisive and merciless countermeasure.'"[845]

> "On 24 November 2014 [Sony Pictures was made aware of an unauthorized penetration[846]]; a hacking group, identifying itself as the "Guardians of Peace" (GoP), exfiltrated confidential data from SPE's servers. It then gradually released stolen data, over a period of three weeks. The stolen data included, inter alia, information about new film productions that had not yet been released, and a huge quantity of personal information relating to the company's executives, including emails and confidential correspondence among themselves and with celebrities in the movie industry."[847]

The malware also rendered inoperable also "more than 70 per cent of Sony's computers […] and the company had to invest tens of millions of dollars in IT infrastructure repairs. Evidence suggests that the motive for the attack was to persuade Sony not to release a film ('The Interview') about North Korea, to which North Korea objected."[848]

"On December 16, 2014, the GoP released a written message threatening to commit terror attacks against theaters screening the movie. The message included reference to the terror attacks of 9/11: 'The world will be full of fear. Remember the 11th of September 2001. We recommend you to keep yourself distant from the places at that time (If your house is nearby, you'd better leave)'."[849]

"Following an FBI investigation, the US Government blamed the North Korean government as being the supporters of the malicious group."[850] After "consultations with government officials and private consultants, [Sony] decided to release the original version of the film as planned.[851]

Legal Considerations

A first manifest consideration is that – coherently with the case described above - "the Sony attack [involving] the hacking […] of data from a private company seated in the USA constitutes a violation of US sovereignty because it involved unauthorised entry into US sovereign domain."[852]

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[844] *Ibidem*.

[845] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657, pp. 605-606.

[846] The Cyber Law Toolkit, *Sony Pictures Entertainment attack*.

[847] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657, p. 606.

[848] Moynihan H., *The Application of International Law to State Cyberattacks Sovereignty and Non-intervention*, Research Paper, Chatham House, 2019, pp. 38-39.

[849] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, p. 606.

[850] The Cyber Law Toolkit, *Sony Pictures Entertainment attack*.

[851] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, p. 606.

[852] Tsagourias N., The legal status of cyberspace: sovereignty reduxIn Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p. 22. See coherently: Moynihan H., *The Application of International Law to State Cyberattacks Sovereignty and Non-intervention*, Research Paper, Chatham House, 2019, p. 39.

With regard of the loss of functionality suffered by the Sony networks and the Leak "of not-yet-released films and scripts"[853]; a first approach could arguably sustain that an entertainment company is not a systematically relevant one and that the loss of functionality *per se*, would not appear to have a magnitude, intensity and severity[854] to qualify as a prohibited intervention. *Ad colorandum*, one could sustain that intervention protects States from coercion do not extending to private Actors; and that neither threatening Sony to do not release the movie would qualify as a prohibited intervention.

Said this, North Korea conducts did not limit to threaten Sony; extending to the US Administration whether it would have tacitly approved or supported the release of the movie[855]; following this approach "the attack would arguably also constitute an act of intervention if the purpose was to coerce the US to force Sony from engaging in criticism of North Korea or its leader in the future."[856] *Ad colorandum*, the coercive intent is self-evident given the North Korean explicit demands[857]

Note, once again, that "there is no requirement that, in order to constitute a violation of the prohibition on intervention, an act of coercion must actually succeed in compelling the State subjected to such acts to change its conduct. An unsuccessful attempt of intervention is unlawful under international law."[858]

3.4 Cyberattack against the Ukrainian Power Grid (*Black-Energy 1*)

Principal facts

"On December 23, 2015, Ukrainian power companies (*Oblenergos*) experienced an unprecedented cyber-attack causing power outages. […]. These attacks were conducted by remote cyber-attackers who, leveraging legitimate credentials obtained via unknown means, remotely operated breakers to disconnect power."[859] "The attack resulted in [several hours of] power outages for nearly 225,000 consumers in Western Ukraine."[860]

"In addition, three other organizations, some from other critical infrastructure sectors, were also intruded upon but did not experience operational impacts."[861] "All three impacted companies indicated that the actors wiped some systems by executing the KillDisk malware at the conclusion of

[853] The Cyber Law Toolkit, *Sony Pictures Entertainment attack*.

[854] European Commission, Proposal for a Regulation on the protection of the Union and its Member States from economic coercion by third countries, Brussels, 8 December 2021, art. 2.2.

[855] Leupp G., *A Chronology of the Sony Hacking Incident*, COUNTERPUNCH, 29 December 2014.

[856] Moynihan H., *The Application of International Law to State Cyberattacks Sovereignty and Non-intervention*, Research Paper, Chatham House, 2019, pp. 38-39.

[857] See upon: Roscini M., I*nternational Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 159-160.

[858] African Union Peace and Security Council, *Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*, 29 January 2024, at 32. See, coherently, note 826.

[859] US Department of Homeland Security NCCIC, *ICS-CERT INCIDENT ALERT IR-ALERT-H-16-043-01AP CYBER-ATTACK AGAINST UKRAINIAN CRITICAL INFRASTRUCTURE, UPDATE A*, 7 March 2016, p. 1.

[860] The Cyber Law Toolkit, Power grid cyberattack in Ukraine.

[861] US Department of Homeland Security NCCIC, *ICS-CERT INCIDENT ALERT IR-ALERT-H-16-043-01AP CYBER-ATTACK AGAINST UKRAINIAN CRITICAL INFRASTRUCTURE, UPDATE A*, 7 March 2016,, p.2.

the cyber-attack. The KillDisk malware erases selected files on target systems and corrupts the master boot record, rendering systems inoperable."[862]

"The Ukrainian companies did not have [a recovery] plan prepared, [but] their experience with manual operation of their distribution systems allowed them to quickly recover. [a few hour]"[863] "It took several months to bring the control centers back to full operation."[864]

"Ukrainian investigators, in conjunction with their U.S. counterparts from the FBI and DHS, concluded that the *Black-Energy 1* operation […] originated from a state or a state-sponsored group, and was primarily designed to send a warning, not to cause destruction on a large scale."[865]

Legal Considerations

Given that, coherently with above, a non-consensual penetration of cyber-infrastructure located within Ukrainian territory would *per se* violate Its sovereignty; it must be discussed whether the cyberattack causing the power outrage may amount to a prohibited intervention (and, eventually) to a use of force inconsistent with the Art. 2(4).

Meddling with the energy grid of a State clearly falls within its reserved jurisdiction, fulfilling the first element of intervention; and, causing power outages is a vibrant example of forcible coercion, substituting the target State exercising rights part of its domestic jurisdiction.

Said this, with respect of the use of force, it is clear that the national grid of a State is "vital for national security, including individual, societal, and governmental security"[866] – and when an operation compromise its functionality it may have the potential to qualify as a breach of the art. 2(4).[867] However, recalling that the prohibition on intervention is not an effects-based one[868],

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[862] US Department of Homeland Security NCCIC, *ICS-CERT INCIDENT ALERT IR-ALERT-H-16-043-01AP CYBER-ATTACK AGAINST UKRAINIAN CRITICAL INFRASTRUCTURE, UPDATE A*, 7 March 2016, p. 3.

[863] *Ivi,* p.6.

[864] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657, p. 624.

[865] *Ibidem*, p. 625.

[866] Roscini M., *Cyber Operations and the Use of Force in International Law,* 2014, Oxford: Oxford University Press, p. 58.

[867] See coherently: Roscini M., *Cyber Operations and the Use of Force in International Law,* 2014, Oxford: Oxford University Press, p. 63; Antolin-Jenkins V.M., *Defining the Parameters of Cyberwar Operations: Looking for Law in All the Wrong Places?*, Naval Law Review 51, 2005, 132-174, p 172; Ziolkowski K., *Computer Network Operations and the Law of Armed Conflict*, Military Law and Law of War Review 49, 2010, 47-94, pp 74–5.

[868] "It is not essential that the threat reaches its objective for the principle of non-intervention to be breached: it is sufficient that unlawful coercion is exercised, whether or not the victim state actually submits to it or decides to resist and stoically endure the harm." Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 154; see also, coherently, *inter alia*: Van Wynen Thomas A. and Thomas A.J. Jr, *Non-Intervention: The Law and Its Import in the Americas,* Southern Methodist University Press, Indianapolis, 1956, p. 72; Sapienza R., *Il principio del non intervento negli affair interni. Contributo allo studio della tutela giuridica internazionale della potestà di governo*, Giuffrè, 1990, pp. 83–4; As noted by the Argentinian delegate on the Special Committee on Friendly Relations: "[e]ven if that State refused to be coerced or intimidated by threats, there might be an intention on the part of the intervening State to coerce the sovereign will of the other State" (UN Doc A/AC.119/SR.28, 23 October 1964, p. 5, emphasis omitted – adapted by Roscini). "By way of contrast, a cyber operation that does not seek any change of conduct lacks the requisite coercive element." Schmitt M. N., ed, Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations, 2017, p. 318.

differently than Art. 2(4) [869] provisions, in this context what would differentiate between a mere intervention and a use of force are the scale and effects of the attack; the reparatory efforts; and its destructive potential, namely the payload of the cyberattack.[870]

Starting from the effects suffered by Ukraine, it is true that "it took several months to bring the control centers back to full operation"[871], which may appear a consequence comparable to a kinetic attack, but it must be noted that the actual loss of functionality was limited to a few hours, not only because of the Ukrainians "experience with manual operation of their distribution systems [which] allowed them to quickly recover"[872], but also and mainly because, as established by the investigation, "the attackers chose not to exhaust their destructive capabilities. Thus, the damage was deliberately limited in scope."[873] Therefore, considering all these factors, I would not sustain that *Black Energy 1* "cause[d] or [wa]s reasonably likely to cause the damaging consequences normally produced by kinetic weapons"[874].

3.5 The Cyberattack against Saudi Aramco (*Shamoon1*)

Principal facts

"On 15 August 2012, the computer network of Saudi Aramco was struck by a self-replicating virus"[875].

> "Shamoon was designed to carry out two steps: it erased the data on the hard drives and replaced them with an image of a burning American flag; and it reported the addresses of infected computers back to a computer inside the company's network. It also reported back on the number of files and the list of files that it destroyed. During that process, the erased files were overwritten with corrupted files so they could not be recovered. Shamoon was able to spread from an infected machine to other computers on the network, so that over 30.000 computers of Aramco were infected […] and rendered useless[,] ha[ving] to be replaced. […] The responsibility for the attack was claimed by a group called 'Cutting Sword of Justice' […] U.S. intelligence officials considered that the attack's real perpetrator was Iran, although they offered no specific evidence to support that claim."[876]

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[869] See Buchan R., *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?* In *Journal of Conflict and Security Law* 17, no. 2, 2012, p. 220.

[870] From the payload it is essentially inferable the will to destroy/disrupt, beside of the effects suffered.

[871] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657, p. 624.

[872] US Department of Homeland Security NCCIC, *ICS-CERT INCIDENT ALERT IR-ALERT-H-16-043-01AP CYBER-ATTACK AGAINST UKRAINIAN CRITICAL INFRASTRUCTURE, UPDATE A*, 7 March 2016, p. 5. At the same page the Report notes that "US infrastructure is generally more reliant on automation, a comprehensive plan is needed to ensure safe operation or shutdown of processes under this condition."

[873] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657, p. 625.

[874] Roscini M., *Cyber Operations and the Use of Force in International Law*, Oxford: Oxford University Press, 2014, p. 48.

[875] Bronk C. Tikk-Ringas E, *The Cyber Attack on Saudi Aramco, Survival*, 55:2, 2013, 81-96, p. 81.

[876] The Cyber Law Toolkit, Shamoon.

"Aramco was forced to shut down the company's internal corporate network, disabling employees' e-mail and Internet access, to stop the virus from spreading. According to Aramco, the core business of oil production and exploration was not affected by the attack, as they depend on isolated network systems unaffected by the attack."[877]

Legal Considerations

A first (and constant) point is that non-consensually penetrating Aramco Infrastructure located on Saudi Arabia territory violated the latter's sovereignty.

During the work it was discussed that – coherently with the Swiss view - paralysing a "systemically relevant"[878] company may qualify as a prohibited intervention. This seems coherent with the 'classic' notion of intervention offered by the ICJ in *Nicaragia* standing to which "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."[879]

The Government of the Kingdom of Saudi Arabia owns approximately 97% of the company shares[880]- Government of Saudi Arabia 81.48 %; Public Investment Fund (PIF) 16 % -. To precise, standing to the Wall Street Journal, Aramco net income in 2023 corresponded to nearly 453 billion of dollar[881]; in the same year, standing to the World Bank Group, Saudi Arabia GDP was 1,067 billion of dollar.[882] This data clearly emphasizes how 'systematically relevant' Aramco is for the Saudi economic (and indirectly, social and political) system.

Accepted that in the peculiar context of not a particularly diversified economy meddle with a State-owned company which represents the pillar of Saudi economy and has revenues equivalent to those of various countries may have the potential to trigger the political independence of Saudi government; the logic consequence is that, with regard of the issue of the qualification of *Shamoon 1* – whether attributable to a State – as a prohibited intervention, Aramco 'systematically relevance' would appear to satisfy the first element – namely the matter reserved to the domestic jurisdiction of a State. With respect to the second element, given that nor Saudi neither US authorities shed lights on the purpose behind the attack, I would sustain that *Shamoon 1* – rendering unusable over 30000 Aramco computer (which represented the 75% of the company's workstations and needed six months to be fully replaced[883]); and produced the destruction of a huge quantity of data; - represented a prohibited form

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[877] *Ivi*.

[878] UN Doc A/76/136, p. 88.

[879] ICJ Reports 1986, *Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, para. 205.

[880] Saudi Aramco official website < https://www.aramco.com/en/news-media/news/2024/saudi-aramco-announces-breakdown-of-shareholding-post-allocation > last accessed January 2025.

[881] Precisely 452,753 million dollars. 2012 data are not publicly available. < https://www.wsj.com/market-data/quotes/SA/XSAU/2222/financials/annual/income-statement >. last accessed January 2025.

[882] < https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=SA >.

[883] Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, p. 621.

of forcible intervention against Saudi economic system. To precise, in this context the harm is not the damage against Aramco itself, it is the harm against Saudi Government's right to freely determine Its economic system; and Aramco was used as a mean to usurp those freedom. The point is not the economic damage suffered by Aramco, but the forcible usurpation of matters – the economic system – in which a State, under international law, is free to choose. In any case, It must be remarked that Aramco, as analysed, is a very peculiar example (considering Its pivotal relevance in Saudi economy); for instance, a few years after *Shamoon 1*, a variant of the malware crippled (and rendered unusable) hundreds of computer of an Italian oil services firm (Saipem), this type of operation, beside issues regarding non-consensual penetration and, therefore, the principle of Sovereignty, would more likely seem to fall under the umbrella of national criminal law.

Another point regards whether *Shamoon 1* qualified as a prohibited use of force too; "indeed, 'armed force' is nothing other than an extreme form of intervention"[884], having in common with the latter the trait of coercion that, but having also to produce violent consequences against the personality of a State. Therefore, starting from this, one could sustain that an action specifically intended to disrupt, deny, degrade, manipulate, and/or destroy adversary computer systems or data may meet use-of-force level.[885] This would also appear coherent with the Ago view, who noted that Art 2(4) prohibits "any kind of conduct involving any assault whatsoever on the territorial sovereignty of another State, irrespective of its magnitude, duration or purposes."[886] Said this, as discussed and cautioned by Schmitt "the Tallinn Manual 2.0 experts could not achieve consensus as to the precise meaning of loss of functionality. For some, the notion implies an irreversible loss of function. For others, it extends to situations in which physical repair, as in replacement of a hard drive, is necessary. A number of Tallinn Manual 2.0 experts would treat the need to replace the operating system or bespoke data upon which the functioning of the system relies as a loss of functionality."[887] For instance, in the 2007 Cyberattack against Estonia – the disruption of many routers which had to be replaced - was prevalently discussed (by Prominent Authors) in terms of a prohibited intervention rather than a use of force. Equalizing the necessity to substitute the hardware and repair it to non-physical disruption and loss of functionality.

Said this, considering the scope and the object of the work, I will limit to sustain (beside the precise notion of loss of functionality and the issue of permanently disabling infrastructure) that in any case if the loss of functionality is significant enough to affect State security, or, to use the words of the 2012 US Presidential Policy Directive"[888] "national security, public safety, national economic security, the safe and reliable functioning of 'critical infrastructure', and the availability of 'key resources'"[889]; the conduct may be inconsistent with an evolutionary interpretation of the art. 2(4).

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[884] Roscini M., *Cyber Operations and the Use of Force in International Law*, Oxford: Oxford University Press, 2014, p. 46.

[885] *Ivi*, p. 15. See also coherently 'Computer Network Attack' in *Joint Terminology for Cyberspace Operations*, p 6.

[886] Ago, Addendum, p 41; see coherently: Roscini M. ., *Cyber Operations and the Use of Force in International Law*, Oxford, 2014, pp. 44-45; Melzer similarly argues that Art 2(4) prohibits all uses of force, regardless of their magnitude and duration (Nils Melzer, Cyberwarfare and International Law, UNIDIR, 2011, p 8.)

[887] Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law, p. 44.*

[888] Roscini M., Cyber operations as a use of force, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p ., p. 308.

[889] *U.S. Presidential Policy Directive/PPD–20* October 2012, p. 3.

This was not the case of the *Shamoon 1* attack; but one could, for instance, sustain that if the attack would have extended - affecting the oil production and exploration, halving the oil production of Aramco for six months – would clearly have had the potential to distress the "national security, public safety, national economic security, the safe and reliable functioning of 'critical infrastructure', and the availability of 'key resources'."[890]

3.6 Cyber interference against vessels in the Persian Gulf and Gulf of Oman

Principal Facts

Between May and July 2019, the Maritime navigation systems; Automatic Identification Systems (AIS); and bridge-to-bridge communications systems[891] of US and UK commercial vessels and Coast Guard ships sailing the Persian Gulf, Strait of Hormuz, and Gulf of Oman[892] were affect/disrupt with the purpose of "sent vessels off their course into Iranian waters" [893] and seize them.

> The British-flagged oil Tanker *Stena Impero*, for instance, "was heading to Saudi Arabia's port of Al-Jubail from the UAE port of Fujairah when it [GPS was spoofed and] was [subsequently] seized by the IRGC. The semi-official Fars news agency reported citing a statement from the IRGC […] that the ship was making an entry from the exit point of the Strait of Hormuz in the south, "disregarding the established procedures that require all entries be made through the northern pass. […] The *Stena Impero* was first 'approached by unidentified small crafts and a helicopter during transit of the Strait of Hormuz while the vessel was in international waters' at approximately 4 p.m. local time (12 p.m. ET), the company said."[894]

Legal Considerations

The considerations will (of course) take the assumption that the malicious conducts are attributable to a State.

As discussed navigation is subject to some international regulation[895] but, given this, considering that "States retain considerable freedom to pursue their own policies concerned with shipping"[896], and since "these did not otherwise violate international law"[897], they would likely fall within the umbrella of domestic jurisdiction.[898] On the second condition of intervention, a spoofing operations which targets a vessel's navigation system and forcefully compels it "to engage in an action that [they] would otherwise not take"[899] is a vibrant manifestation of forcible coercion. Therefore, cyberoperations

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[890] *US Presidential Policy Directive/PPD–20* October 2012, p. 3.

[891] US Department of Transportation – Maritime Administration, *2019-012-Persian Gulf, Strait of Hormuz, Gulf of Oman, Arabian Sea, Red Sea-Threats to Commercial Vessels by Iran and its Proxies*, July 2019.

[892] The Cyber Law Toolkit, Cyber interference against vessels in the Persian Gulf and Gulf of Oman.

[893] The Cyber Law Toolkit, Cyber interference against vessels in the Persian Gulf and Gulf of Oman.

[894] CNN, Starr B. Browne R. Fox K., *Iran announces capture of British-flagged oil tanker; US officials say two ships seized*, 19 July 2019.

[895] See, for instance, UNCLOS.

[896] The Cyber Law Toolkit, *Scenario 16: Cyber attacks against ships on the high seas*.

[897] Gill T. D., *Non-intervention in the Cyber Context*, Ziolkowski K. (ed), in *Peacetime Regime for State Activities in Cyberspace*, NATO CCD COE, 2013.

[898] The Cyber Law Toolkit, *Scenario 16: Cyber attacks against ships on the high seas*.

[899] Government of Denmark, *Denmark's Position Paper on the Application of International Law in Cyberspace*, 2023, p. 3.

affecting the navigation system of a vessel – if attributable to a State actor – would clearly qualify as a prohibited intervention. To precise, note that whether *Stena Impero* spoofing was envisioned as a law enforcement operation, it must be remarked that it was not intended to defend a State against a threat to its sovereignty[900] nor it presented the prior circumstances necessaries to legally carry out a sea enforcement action[901], undermining the classification of the operation as a law enforcement one.[902]

(Given the object of the work which focuses on operations below the use of force.) Note that, considering that spoofing operations essentially "send counterfeit GPS signals that mimic the real ones"[903], standing to the Authors that sustain that incapacitation/loss of functionality without physical destruction would never have the potential to qualify as a use of force; means that a cyberattack that gains control of a maritime navigation system without any secondary or tertiary destruction, could never amount *per se* to a use of force.

3.7 Ecuador 2023 National Elections

Principal facts

In August 2023 snap general elections were held in Ecuador. The Ecuadorian electoral system offers the opportunity for the citizens living abroad to cast their preference online.

> On the election day (20 August 2023) "El Consejo Nacional Electoral (CNE) de Ecuador denunció este domingo que el sistema del voto en el exterior sufrió ciberataques desde varios países como India, Bangladesh, Pakistán, Rusia, Ucrania, Indonesia y China. La presidenta del CNE, Diana Atamaint, achacó en una rueda de prensa a esa causa los problemas que han denunciado ecuatorianos en el exterior para ejercer su derecho al voto en los comicios presidenciales y legislativos"[904]

[900] According to the San Remo Manual, the use of force is only permitted against objects that "make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage". International Institute of Humanitarian Law, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, 1994, para. 40. See coherently, Kwast P., *Maritime Law Enforcement and the Use of Force: Reflections on the Categorisation of Forcible Action at Sea in the Light of the Guyana/Suriname Award*, Journal of Conflict and Security Law 13:1, 2008, 49-91, p. 81.

[901] The San Remo Manual, for instance, specifically bears that "[m]erchant vessels flying the flag of neutral States [… can, *inter alia,* be targeted where ships] are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search or capture [or where ships] make an effective contribution to the enemy's military action." International Institute of Humanitarian Law, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*,1994, para. 67.

[902] The Cyber Law Toolkit, *Scenario 16: Cyber attacks against ships on the high seas*.

[903] McAfee. < https://www.mcafee.com/learn/what-is-gps-spoofing/ >

[904] Swissinfo, *El sistema de voto telemático en el exterior de Ecuador sufrió ciberataques desde 7 países*, 20 August 2023. < https://www.swissinfo.ch/spa/el-sistema-de-voto-telem%C3%A1tico-en-el-exterior-de-ecuador-sufri%C3%B3-ciberataques-desde-7-pa%C3%ADses/48748604 >, last accessed January 2025.

As consequence, most of the "120,000 Ecuadoreans living abroad and registered to vote in the elections […] were unable to access the voting system before polls closed."[905]

Legal Considerations

As discussed, "[s]overeignty in the relations between States signifies [internal and external] independence."[906] And cyberoperations that tamper with Ecuadorean election machinery of a State would firstly compress an inherently governmental function of the Latter, and Its political independence, breaching Its sovereignty.

Consequently, "elections represent a paradigmatic example of a matter that is encompassed in the [reserved jurisdiction of a State]; in fact, the ICJ cited the 'choice of political system' to illustrate the concept"[907], clearly fulfilling the first element of a prohibited intervention.

Regarding coercion, as discussed, attack the voting machinery "affect[s] the target State's ability to [freely] conduct an election"[908]; namely, it forcefully usurps the target State's right to freely determine on a matter reserved to Its jurisdiction[909], undoubtedly fulfilling the second element of coercion, too.

Given that the attack, coercively compelling Ecuadorean Government will on a matter reserved to Its reserved jurisdiction is inconsistent with the prohibition to intervene in the domestic affairs of a State; one could also argue that considering that most of the Ecuadoreans living abroad were cut off from participating to the social, cultural and political development of their Nation, the prohibited intervention also denied Ecuadoreans' right to freely and "meaningful[ly] access to government to pursue their political, economic, social and cultural development"[910] voting – and therefore compressing the 'inward-facing aspect' of Ecuadoreans' right to Self-determination -; confirming that a prohibited intervention in the political, economic, social, and cultural affairs of other states would likely also compress the right to self-determination of its People.[911]

3.8 Taiwan Election Interference

It is far from the object of the work to discuss issues regarding the recognition of States and, in particular, regarding Taiwan legal international capacity and recognition; said this, for the mere

[905] DigWatch, *Alleged cyberattacks mar online voting in Ecuador*, 22 Aug 2023. < https://dig.watch/updates/alleged-cyberattacks-mar-online-voting-in-ecuador >, last accessed January 2025.

[906] *Island of Palmas Case* (or *Miangas*) *United States v Netherlands*, 1928, Reports of International Arbitral Awards, p. 838. "Every state [enjoys the right] to independence and hence to exercise freely, without dictation by any other state […] the choice of its own form of government" International Law Commission, 1949 YB ILC, pp. 286- 287, emphasis added.

[907] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

[908] Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.

[909] Similarly for Schmitt "foreign cyber activities that deprive a state of its ability to act vis-à-vis its *domaine réservé* are almost always coercive. They make it objectively impossible or substantially more difficult for the state to pursue a particular policy or activity, as when a cyber operation interferes with either the actions of state authorities administering an election or with the election infrastructure itself." (Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, EJIL:Talk!, 2020.).

[910] Secession of Quebec (1998) 2 SCR 217, para. 138.

[911] UN Doc A/39/40, 20 September 1984, p. 143.

purposes of a very well-bodied case study, it will be taken the (hypothetical) assumption that Taiwan enjoys a full sovereigntyand It is a member of the UN. [912]

Principal facts

In 2019 a report delivered by the Swedish Institute Varieties of Democracy (V-Dem) found Taiwan to be the number one target country in the world for foreign government disinformation.[913] "China's efforts to influence Taiwan's democratic elections and processes are nothing new. Since Taiwan's first direct presidential election in 1996, the Chinese Communist Party (CCP) has consistently employed a dual strategy of carrot-and-stick approaches to shape public opinion in Taiwan and influence Taiwan's elections, with the overarching objective of promoting unification"[914], including military manifestations of force, economic and diplomatic measures and information campaigns; aiming at undermining the Taiwanese democratic process and the credibility of Its Allies[915], distorting the voters' perception.

The work will (obviously) focus on the latter and, in particular, on the (cyber)interferences in 2024 Taiwan election. The cyber information operation (alleged to PRC[916]) included wide and variegate strategies.

PRC employed various tactics to discrediting the credibility and the authority of the Democratic Progressive Party and of Its candidates themselves employing a mixture of genuine leaked personal information, for instance, "Zhao Tian-lin, the Kaohsiung City Legislator of Taiwan's Democratic Progressive Party […] was recently exposed [leaking] multiple intimate photos with a Chinese woman. In response, Zhao Tianlin first apologized on Tuesday (October 10) and announced his withdrawal from the 24 legislative election[s]"[917]; – and fake news – for example, rumours were spread sustaining that Lai Ching-te had an illegitimate child[918], or for instance, fabricated polls were released[919]; it was also, *inter alia*, argued that Taiwan Government was forced by the US Government to import from the North American State low quality pork meat containing ractopamine to please the

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[912] "There are now 192 members of the United Nations. In addition there are a few other political entities, most notably Taiwan, which have Westphalian/Vattelian or domestic sovereignty, but do not have international legal sovereignty." (Krasner S. D., *The durability of organized hypocrisy*, , in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* (eds.) Kalmo H. Skinner Q., Cambridge, 2010, p. 99.)

[913] Democracy Institute, *Democracy Facing Global Challenges: V-Dem Annual Democracy Report 2019*, p. 36.

[914] Kuo N. Staats J., United States Incident of Peace, *Taiwan's Democracy Prevailed Despite China's Election Interference*, 24 January 2024.

[915] See upon: Taiwan FactChecking Center, Foreign Forgeries – an analysis of disinformation tactics leveraging Taiwan's diplomatic events, 4 September 2023; Center for Strategic and International Studies, *Chinese Interference in Taiwan's 2024 Elections and Lessons Learned*, 10 April 2024; Kuo N. Staats J., United States Incident of Peace, *Taiwan's Democracy Prevailed Despite China's Election Interference*, 24 January 2024; see generally Doublethink Lab, *Full Report Launch: Deafening Whispers China's Information Operation and Taiwan's 2020 Election*.

[916] *Ibidemi*.

[917] VOCO NEWS, *Taiwan Green Camp Legislator Zhao Tianlin announced his withdrawal from the candidacy after photos of passionately kissing a Chinese woman were exposed*, 24 October 2023.

[918] VOCO NEWS, *Ace election aide Qiu Yi insinuates an illegitimate child, and President Lai Qingde decides to file a lawsuit*, 3 January 2024. < https://news.vocofm.com/en/taiwan-news/75470/ >.

[919] Politico, *China bombards Taiwan with fake news ahead of election. China uses fabricated polls and outlandish claims on social media to bolster its camp in Taiwan's election.,* 10 January 2024. < https://www.politico.eu/article/china-bombards-taiwan-with-fake-news-ahead-of-election/ >.

US Government[920]; it was published on the online open repository Zenodo a 300-page document called *The Secret History of Tsai Ing-wen* (蔡英文秘史) containing fake news and negative contents.[921]

PRC 'united front work' (統一戰線工作), a term used in relation to CCP's influence operations[922], also consisted in producing counterfeit videos and governmental documents[923]. For instance, it was "claimed to have [been] found documents, some from leaked sources and others from governments' websites"[924] posting a 'memo' in Spanish language

> "claim[ed] to [have] be[en] signed by representatives from Taiwan and Paraguay during [Taiwanese Vice President] Mr. Lai's state visit. However, [… the] 'memo' was a fake document altered from an earlier official memo on cooperation between Taiwan and Paraguay. The disinformation actors changed multiple details, such as the signing dates (from December 17, 2018 to August 15, 2023), the collaboration term (from 2018-2023 to 2023-2028), the number of funds (from 150 million to 320 million), and replaced the names of signatory parties."[925]

Similarly, a forged document - the document (in English language) presents several and banal grammatical errors and the signature placed was falsified using a signature present on a publicly available document[926] - was diffused after the Nancy Pelosi visit to Taiwan[927] sustaining that several million dollars were spent to contact and put pressure to assure the presence of the U.S. House Speaker[928]. Coherently, when the Hudson Institute assigned to Taiwanese President Tsai Ing-Wen its Global Leadership Award, it was spread a counterfeit document proving that the Taiwanese Government bought the prize.[929]

As anticipated, there was also a massive use of counterfeit videos produced by generative AI[930] – mostly diffused on Tik Tok, You Tube, Weibo and X - "regarding disinformation about government

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[920] Center for Strategic and International Studies, *Chinese Interference in Taiwan's 2024 Elections and Lessons Learned*, 10 April 2024.

[921] Taipei Times, *China is posting fake videos of president: sources*, 11 January 2024. < https://www.taipeitimes.com/News/front/archives/2024/01/11/2003811930 >.

[922] Global Taiwan Institute, Recruitment of Online Influencers Reveals a New Tactic of China's United Front Global Taiwan Brief, 10:1.

[923] Taiwan FactChecking Center, Foreign Forgeries – an analysis of disinformation tactics leveraging Taiwan's diplomatic events, 4 September 2023.

[924] *Ibidem*.

[925] *Ibidem*. See upon: Taiwan FactCheck Center, 錯誤】網傳文件「賴清德出席巴拉圭新任總統潘尼亞就職典禮，雙方簽署議事錄，台灣未來要幫助巴國建造社宅 ?; see also: Taiwan FactCheck Center, 謠言風向球】外交假公文事件簿 查核中心帶你一起洞察造謠手法.

[926] Taiwan FactCheck Center, 【錯誤】網傳「在美國司法部網站看到一份文件，看到一家政治公關公司幫助我國聯繫遊說裴洛西多達16次，共花9400萬元」？

[927] *Ibidem*.

[928] *Ibidem*.

[929] Taiwan FactCheck Center, 【錯誤】網傳搭配圖卡文件稱「哈德遜研究所頒給總統蔡英文全球領導力獎，是台灣用15萬美元的價格買下來」?

[930] Marcellino W. Beauchamp-Mustafaga N. Kerrigan A. Navarre Chao L. Smith J., *The Rise of Generative AI and the Coming Era of Social Media Manipulation 3.0 Next-Generation Chinese Astroturfing and Coping with Ubiquitous AI*, 2023.

policies related to gender, education, and social welfare"[931]and about the candidates themselves, for example "a YouTube account called 'Eat Rice, No War' put out a deepfake video alleging Lai had three mistresses"[932], or, for instance, it was spread online an AI generated video (sex-tape) featuring Democratic Progressive Party Legislator Lo Chih-cheng (羅致政).[933] Other contents also regarded Taiwan allies, for instance, it was diffused a forged a video reproducing U.S. Representative Rob Wittman sustaining that in case of election of the Democratic Progressive Party candidates, the US would have increased the furniture of weaponry to Taiwan; fabricating a factional narrative aimed at inciting worries about the tensions with PRC.[934]

PRC employed a wide variety of means to spread the manipulated information, for first, fake accounts were farmed and leveraged on social media to spread the data, it is worth noting that the accounts – exploiting social networks algorithms – were following determined accounts and pages modelled on the target (users) which would render more likely for the forged contents to be proposed to the them (target users).

A peculiar aspect of the CCP's 'united front work' also consisted in hiring journalists - for instance, "the Taichung District Court […] granted the Taichung District Prosecutors' Office's request to detain a reporter for allegedly taking a directive from the Chinese Communist Party's Fujian Provincial Committee to disseminate fake polls aimed at misleading voters ahead of the presidential and legislative elections next month"[935] -, celebrities and social media content creators (often called influencer) broadening the extension, credibility and 'authority' of the news.

> "[For example] Chung Ming-hsuan (鍾明軒), a Taiwanese YouTuber who is characterized by his non-binary gender expression, possibly illustrates one of the CCP's united front operation successes. Chung was originally regarded as a pro-Taiwanese influencer, supported democratic values, and once filmed a video with former President Tsai Ing-wen (蔡英文) before the 2020 presidential election. Starting from this year, Chung released several vlogs recording his visits to China in which he not only introduced local attractions and praised the high level of public safety in major Chinese cities, but also mentioned that 'you can talk about politics freely here.' […] Two Taiwanese singers, Ho Yi-chi (何以奇) and Hsieh Ho-hsien (謝和弦), both revealed on social media that they had received letters from a Beijing-based media company. The letters invited them to participate in establishing a political party in Taiwan that would transcend the pan-blue and pan-green camps, to be called the "Taiwan Embraces Peace Party"(台灣擁和黨). The letters outlined a plan to recruit Taiwanese entertainers and celebrities to be the founding members, and to hold a concert to promote cross-Strait peace and shared Chinese history, with the ultimate goal of securing at least one mayoral seat and ten city or county councilor seats in the 2026 election. According to the letter, entertainers and celebrities could earn more than ten million NTD (about USD $305,000) per year and benefit from performance opportunities in China as long as they joined and helped promote the new party. Although the letters seem absurd, it not only unveils the CCP's strategy of utilizing Taiwanese

[931] Taiwan FactCheck Center, 2024 Presidential Election: Combating Disinformation with Fact-Checks, Media Collaboration, and Public Empowerment.

[932] Politico, *China bombards Taiwan with fake news ahead of election. China uses fabricated polls and outlandish claims on social media to bolster its camp in Taiwan's election.,* 10 January 2024. < https://www.politico.eu/article/china-bombards-taiwan-with-fake-news-ahead-of-election/ >.

[933] Focus Taiwan, ELECTION 2024/DPP lawmaker claims to have fallen victim to deep fake porn, 3 January 2024.

[934] Center for Strategic and International Studies, *Chinese Interference in Taiwan's 2024 Elections and Lessons Learned*, 10 April 2024.

[935] Taipei Times, *Reporter detained for disseminating fake opinion polls*, 23 december 2023.

celebrities to influence political dynamics in Taiwan, but also demonstrates a trend in which the CCP is pursuing more diversified and unconventional united front tactics."[936]

Legal considerations

The analysis will start from the assumption that the malicious cyber conducts are technically attributable to PRC.

The discussion will firstly analyse the operations spreading genuine (but compromising) information, such as the Zhao Tian-lin *affaire*. Given the limited sources, it appears opportune to draw two different paths with respect of how information was acquired. If it was acquired via espionage operations non-consensually penetrating Taiwanese cyberborders, the operation would clearly have violated the Latter's sovereignty. Differently, if the operation acquired the data employing different tactics - like penetrating the smartphone of the Chinese woman while on PRC jurisdiction[937], or without any non-consensual penetration at all – the *modus operandi* employed to obtain that genuine information would not have breached Taiwanese sphere of sovereignty.

During the analysis on the prohibition on intervention it was discussed how doxing operation may qualify as a prohibited intervention whether aimed at compelling a modification of the target State policy on matters reserved by international law to the freedom of a State; or whether it forcefully leaks confidential data in matters reserved to the domestic jurisdiction of a State (as discussed with respect to the interference in 2016 US elections). Said this, the Zhao Tian-lin *affaire* did not leak any confidential information, spreading merely personal Zhao Tian-lin matters that are totally untied from Taiwanese domestic Jurisdiction. Thus, their publication would not *per se* usurp Taiwanese authority; indeed, the information operation was neither conducted with the object of forcing a policy change of the Taiwanese government (neither in the person of Zhao Tian-lin), being rather aimed at influencing the electorate and their perception of the Democratic Progressive Party independence and credibility.

As discussed, "[States'] traditional reading of intervention focuses on the internal and/or external manifestation of authority and will by the state represented by the government […] does not tak[ing] into account how this authority and will are formed and how intervention can impact on the process of their formation"[938]. Furthermore, also admitting this broader object protected by the principle, the interferences *de quo* would in any case lack of coerciveness. Coercion is different from persuasion, criticism, public diplomacy, propaganda, retribution [and] mere maliciousness"[939], qualifying as a mere interference, do not compelling nor usurping (this hypothetical) right of the Taiwanese.

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[936] Global Taiwan Institute, Recruitment of Online Influencers Reveals a New Tactic of China's United Front Global Taiwan Brief, Vol. 10, issue 1.

[937] Note that human rights issues may arise.

[938] Tsagourias N., *Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace*, in Broeders D. van den Berg B. (eds.), *Governing Cyberspace Behavior, Power and Diplomacy*, Rowman/Littlefield, Lanham, Boulder, New York, London, 2020, p. 52.

[939] Schmitt M. N., ed, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017, p. 318. "The Tallinn Group of Experts, coherently, noted that "coercion must be distinguished from persuasion, criticism, public diplomacy, propaganda (see also discussion in Rule 4), retribution, mere maliciousness, and the like in the sense that, unlike coercion, such activities merely involve either influencing (as distinct from factually compelling) the voluntary actions of the target State.

Said this, and given that the right to Self-determination protects the right of the electorate to freely determining their will, leaking true information broadens the critical capacity of the electorate to evaluate, rather than compressing their right to genuinely choose, therefore I would neither qualify the Zhao Tian-lin *affaire* as a compression of the Taiwanese People's right to self-determinate.

As discussed, one of the pivotal aspects of the 'united front work' consists in a wide employ of disinformation campaigns; these operations essentially aim at misleading and persuading the formation of the voters' will ahead of the imminent presidential and legislative elections. As pointed out, non-intervention evolved as an instrument to protect both the "territorial and decisional"[940] sovereignty dimension; thus its territorial inviolability and its political independence.[941] "Political independence includes the right to 'internal' self-determination, that is, to determine one's own political, economic, social, and cultural system without external interferences."[942] "Intervention focuses on the internal and/or external manifestation of authority and will by the state represented by the government […] does not tak[ing] into account how this authority and will are formed and how intervention can impact on the process of their formation"[943], which, as discussed, is protected by the right of the People of a Nation to self-determination. This means that an operation, to fall under the protective umbrella of the principle of non-intervention, must be aimed at compressing the political independence of the government of a State (not that of Its People), other than coercively "bearing on matters in which each State is permitted, by the principle of State sovereignty. to decide freely, [like] the choice of a political, economic, social and cultural system, and the formulation of foreign policy."[944]

PRC disinformation campaign harassing the political integrity of the People of Taiwan, eludes the protected object of the non-intervention principle and, also admitting this broader object (as proposed by Schmitt[945]) which extends to the formation of the government's will other than on the will itself, the conduct would (again) still lack of coerciveness. [946] Coercion is a complex process consisting of "compelling a state to take a course of action (whether an act or an omission) that it would not otherwise voluntarily pursue"[947], or of substituting the target State exercising rights exclusively

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[940] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 247.

[941] See: *Ibidem*.

[942] *Ibidem*; the ILC sustains coherently that "[e]very State has the right to independence and hence to exercise freely, without dictation by any other state, all its legal powers, including the choice of its own form of government", 1949 YB ILC, pp. 286- 287, emphasis added).

[943] Tsagourias N., *Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace*, in Broeders D. van den Berg B. (eds.), *Governing Cyberspace Behavior, Power and Diplomacy*, Rowman/Littlefield, Lanham, Boulder, New York, London, 2020, p. 52.

[944] ICJ Reports 1986, *Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, para. 205.

[945] See Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, Chicago Journal of International Law, Volume 19 Number 1, 2018, pp. 50-52.

[946] See coherently Tsagourias N., *Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace*, in Broeders D. van den Berg B. (eds.), *Governing Cyberspace Behavior, Power and Diplomacy*, Rowman/Littlefield, Lanham, Boulder, New York, London, 2020, p. 49.

[947] The Kingdom of Netherlands, *Appendix: International law in cyberspace*, p.

reserved to its domestic jurisdiction[948]; or using Canada words, to "deprive, compel, or impose an outcome on the affected State"[949].

Disinformation campaigns do not substitute or compel the voters. They may persuade, mislead and distort their perceptions, but this would 'merely' influence their will and its formation; or, in Schmitt words "[disinformation operations] deprived the American electorate of its freedom of choice by creating a situation in which it could not fairly evaluate the information it was being provided. [Their decision making was] manipulated by a foreign power, and thus their ability to control their \governance, was weakened and distorted"[950]; cannot qualify as a prohibited intervention.

This does not mean that PRC disinformation campaign is consistent with international law; as discussed, PRC interferences - for instance producing fake news, counterfeit documents and videos or forged polls – "deprived the [Taiwanese] electorate of its freedom of choice"[951], compressing their Political independence, and therefore, (the 'inward-facing aspect' of) Taiwanese People's right to internal self-determination, namely their "right to authentic self-government, that is, the right of a people really and freely to choose its own political and economic regime"[952].

[948] See upon: Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, pp. 154-155.

[949] Government of Canada, *International Law Applicable in Cyberspace*, 2022, para. 22.

[950] Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law*, Chicago Journal of International Law, Volume 19 Number 1, 2018, p.51.

[951] *Ibidem*.

[952] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 101.

CONCLUSIONS

International relations have always been characterized by an organized hypocrisy that during its emergencies (cyclically[953]) produced strong academic responses which, facing the challenges of digital revolution, "has, at least so far, not so much reshaped [sovereignty and its corollaries], as it has given it a renewed emphasis."[954]

"Although state practice and *opinio juris* are still limited and unsettled"[955] this work - dealing with the issue of sovereignty in cyberspace - suggests a *wrong to personality* approach[956], considering cyberoperations (attributable to a State) which non-consensually penetrate the cyber-jurisdiction of another State a violation of the Latter's territorial of sovereignty[957] "regardless of the degree of interference or damage and regardless of whether it produces physical or non-physical effects or whether the operation targets governmental services and infrastructure or not"[958]; - including cyberespionage operations and trans-boundary law enforcement operations –.

The prohibition on cyber-intervention – which was defined as a dictatorial or forcible (coercive) interference conducted by cyber means in matters in which a State is free of international obligations –; was organized on the base of the object and the scope of the intervention, rather than its means, target or destruction, and therefore discussed in terms of operations designed to cause physical damage – namely, the most extreme *species* of intervention, a coercive manifestation of force -. Operations that cause loss of functionality or disruption – that if aimed at compelling/usurping in matters embedded by the reserved jurisdiction of a State, would qualify as prohibited -. Cyberattacks against the electoral infrastructure – which are prohibited targeting the right of the government of a State to freely conduct its elections. And cyber-influence operations; ulteriorly qualified in *doxing* operations – which may represent a prohibited intervention if aimed at dictatorially coercing a State in a matter part of its domestic jurisdiction -; *malinformation operations* – the considerations regarding doxing operations are applicable *mutatis mutandis* -; and disinformation operations – which, on one hand, meddle with the formation of the will, rather than on the will of government, and, on the other, being 'merely' influencing and persuasive, would lack of coerciveness, being more likely to qualify under the lens of the 'inward-facing aspect'[959] of internal self-determination.

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[953] For instance, the *Institut de droit international* Resolution on the *Droits et devoirs des Puissances étrangères* adopted during the 1900 Session of Neuchâtel seemed the academic response to an half century of wars - on ground and on paper -. For instance, *inter alia*, during the Third Carlist War (1872–6), the British position sustained that coals "could continue to be provided to the Spanish government's ships until the insurgents had been recognized as belligerents either by the Madrid authorities or by Her Majesty's Government" (Roscini 2024, 68).

[954] Willmer L., *Does Digitalization Reshape the Principle of Non-Intervention?*, German Law Journal 24, 2023, 508–521, p. 521.

[955] Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024, p. 247.

[956] Using Buchan and Nabarrete terminology. See Buchan R. Navarrete I., *Cyber espionage and international law,* In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021, p.244.

[957] Aggiungi Roscini, Buchan, Tsagourias, Navarrete.

[958] *Ivi*, pp. 22-23.

[959] Sparks T., *Self-Determination in the International Legal System*: *Whose Claim, to What Right*?, Bloomsbury, 2024, p. 16.

Disinformation campaigns, in fact, mislead and persuade the formation of the voters' will, denying a meaningful access to their "right to authentic self-government"[960], pursuing their political, economic, social and cultural development.[961]

[960] Cassese A., Self-Determination of Peoples: A Legal Reappraisal, Cambridge University Press, 1995, p. 101.
[961] Secession of Quebec (1998) 2 SCR 217, para. 138.

BIBLIOGRAFY

Books

Agamben G., *Homo sacer: il potere sovrano e la nuda vita*, Einaudi, Torino, 2005.

Annoni A., *Il riconoscimento come atto unilaterale dello Stato,* Jovene, Ferrara, 2023.

Arangio Ruiz G., *Autodeterminazione (diritto dei popoli alla)* in Enciclopedia giuridica, vol- IV Treccani, Roma, 1988.

Barile G., *I diritti assoluti nell'Ordinamento internazionale*, Giuffrè, Milano, 1951.

Bartelson J., *A Geneology of Sovereignty*, Cambridge, 1993.

Bastid P., *La révolution de 1848 et le droit international*, 72 Recueil des Cours 167, Nijhoff, Hague, 1948.

Beales D. E. D., "*Mazzini and the Revolutionary Nationalism*", in Thomson D. (ed.), Political Ideas, London, 1969.

Bergbohm, K. *Jurisprudenz und Rechtsphilosophie. Kritische Abhandlungen*, Erster Band, Glashütten im Taunus, Detlev Auvermann, 1973.

Bodin J., *Les six livres de la République*, (eds.) Fremont C., Couzinetand M.D. Rochais H., Paris,

1986.

Brierly J.L., *The Law of Nations*, Clarendon, Oxford, 1955.

Brownlie I., *International Law and the Use of Force by States*, Clarendon, Oxford, 1963.

Buchan R., *Cyber Espionage and International Law*, Hart, Oxford, 2019.

Buchan R., *International Law and the Construction of the Liberal Peace*, Hart, Oxford, Portland (Oregon), 2013.

Buchan R., *The International Legal Regulation of State-Sponsored Cyber Espionage*, in Osula A. and Rõigas H. (eds.), *International Cyber Norms: Legal, Policy & Industry Perspectives,* NATO CCD COE Publications, Tallinn, 2016.

Buck S. J., *The Global Common: an introduction*, Island Press, Washington, 1998.

Burlamaqui J., *Principes du droit naturel* (1747 and 1751), (tr). by Nugent T. as *The Principles of Natural and Political Law*, Liberty Fund, Indianapolis, 2006.

Calasso F., *I glossatori e la teoria della sovranità*, Giuffrè, Milano, 1957.

Caracciolo I. Leanza U., *Il diritto internazionale: diritto per gli Stati e diritto per gli individui Parte speciale,* Giappichelli, Torino, 2020.

Carotti B., *Il sistema di governo di internet*, Giuffrè, Milano, 2016.

Carnazza Amari G., *Nuova esposizione del principio del non intervento*, Caronda, Catania, 1873.

Carr E. H., *The Twenty Years' Crisis: 1919-1939*, MacMillan, London, 1939.

Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, 1995.

Charpentier J., *Les effets du consentement sur l'intervention*, in *Mélanges Seferiades* vol II, Ange Ath Klissounis, 1961.

Cheng B., *Studies in International Space Law,* Clarendon, Oxford,1997.

Cheng B. *The Extraterrestrial Application of International Law', Studies in International Space Law*, Oxford, 2012.

Churchill R.R., Lowe A. V., *The Law of the Sea,* rev. ed., St. Martin's, Manchester, New York, 1988.

Cialdini R.B., *Influence: Science and Practice,* Allyn and Bacon, Boston*,* 2001.

Conforti B., *Diritto internazionale*, Napoli, 2013.

Cook J. L., *'Is There Anything Morally Special about Cyberwar?'*, in Ohlin J. D. Govern K. Finkelstein C. (eds), *Cyber War: Law and Ethics for Virtual Conflicts,* Oxford, 2015

Crawford J. Brownlie, I., *Brownlie's principles of public international law*, Oxford, 2019.

Danilenko G.M., *Law-Making in the International Community*, Nijhoff, Dordrecht, 1993.

David M., *La souveraineté et les limites juridiques du pouvoir monarchique du IXe au XVe siècle*, Dalloz, Paris, 1954.

Demchak C.C., *Economic and Political Coercion and a Rising Cyber Westphalia* in K Ziolkowski (ed.), *Peacetime Regime for State Activities in Cyberspace: International Law, International Relations and Diplomacy*, CCDCoE, Tallinn, 2013.

Dennert J., *Ursprung und Begriff der Souveränität*, Fischer, Stuttgart, 1964.

DeWitt Dickinson E., *The Equality of States in International Law*, Harvard University Press, Cambridge, 1920.

Dinstein Y., *Non-international Armed Conflicts in International Law*, Cambridge, 2021.

Dinstein Y., *War, Aggression and Self-Defence*, Cambridge, 2017.

Doswald-Beck L., *The Legal Validity of Military Intervention by Invitation of the Government*, LLB/LLM, Bristol, London, 1986,

Ducheine P.A.L. Pijpers P.B.M.J., *The notion of cyber operations*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021.

Elagab O.Y., *The Legality of Non-Forcible Counter-Measures in International Law*, Clarendon, Oxford, 1988.

Friedmann W., *The Changing Structure of International Law*, Stevens & Sons, London, 1964.

Gaeta P, Viñuales J.E., and Zappalà S, *Cassese's International Law*, Oxford, 2020.

Gibson W., Neuromancer, Penguin Press, 2018.

Giddens A., *The Nation-state and Violence* (V. 2), University of California Press, 1985.

Gill T. D., *Non-intervention in the Cyber Context*, in Ziolkowski K. (ed), Peacetime Regime for State Activities in Cyberspace, NATO CCD COE, Tallinn, 2013.

Graefrath B., *Die Vereinten Nationen und die Menschenrechte*, Berlin (Ost), 1956.

Gray C., *The International Court of Justice*, (eds) Tams C.J., and Sloan J., *The Development of International Law by the International Court of Justice*, Oxford, 2013.

Grewe W.G., *The Epochs*, (tr.) Byers M., Gruyer, Berlin, New York, 2000.

Grotius H., *The Freedom of the Seas, or, the Rights which Belongs to the Dutch to take part in the East Indian Trade*, (ed.) J. B Scott, Oxford, 1916

Guilhaudis J., P.U.G., Grenoble, *Le droit des peuples à disposer d'eux-mêmes et le droit international positif*, in Revue québécoise de droit international, 1985.

Hastedt G., *Espionage: A Reference Handbook*, ABC-CLIO, Santa Barbara, 2003.

Hobbes T., *Leviathan*, (ed.) Tuck R., Cambridge, 1996

Innocenzo IV (Sinibaldo Fieschi), *Commentaria Super Libros Quinque Decretalium*, Frankfurt, 1570.

Jennings I., *The Approach to Self-Government*, Cambridge, 1956.

Kant I., *Perpetual Peace: A Philosophical Essay* (first published 1795), M Campbell Smith tr, George Allen & Unwin/Macmillan, London, New York, 1903.

Kantorowicz E., *The King's Two Bodies: A Study in Medieval Political Theology*, Princeton, 1957.

Kelsen H., *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zueiner reinen Rechtslehre, 2*, *Neudruck der 2,* Scientia, Tübingen, Aalen, 1928.

Kilovaty I., *The international law of cyber intervention*, In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021.

Kohen M.G., *Self-Determination*, in Viñuales J.E. (ed), *The UN Friendly Relations Declaration at 50: An Assessment of the Fundamental Principles of International Law*, Cambridge, 2020, 133.

Kohl U., *Jurisdiction in network society,* In Tsagourias N. Buchan R. (eds.), Research Handbook on International Law and Cyberspace, Elgar, Reading, 2021.

Koskenniemi M., *From Apology to Utopia: The Structure of International Legal Argument,* Cambridge, 2006.

Koskenniemi M., *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, Cambridge, 2001.

Koskenniemi M., Vocabularies of Sovereignty – Powers of a Paradox' in Kalmo H. and Skinner Q. (eds), *Sovereignty in Fragments*, Cambridge, 2010

Krasner S. D., The durability of organized hypocrisy, in Kalmo H. Skinner Q. (eds.), Sovereignty in Fragments: The Past, Present and Future of a Contested Concept, Cambridge, 2010.

Lattanzi F., *Garanzie dei diritti dell'uomo nel diritto internazionale generale*, Giuffrè, Milano, 1983.

Lauterpacht H., *Recognition in International Law*, Cambridge, 1947.

Lee D., *The Lex Regia: The Theory of Popular Sovereignty in the Roman Law Tradition', Popular Sovereignty in Early Modern Constitutional Thought*, Oxford, 2016.

Lee D., *The Right of Sovereignty: Jean Bodin on the Sovereign State and the Law of Nations, The History and Theory of International Law*, Oxford, 2021.

Lehto M., The rise of cyber norms, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021.

Liberali B. Del Corona L., *Diritto e valutazioni scientifiche*, Giappichelli, Torino, 2022.

Locke J., *Two Treatises of Government*, (ed.) Laslett P., Cambridge, 1988.

Mancini P. S., *Della nazionalità come fondamento del diritto delle genti prelezione al corso di diritto internazionale e marittimo*, Università di Torino, 1851.

Mamiani T., *D'un nuovo diritto europeo* (4th edn,), Tipografia Scolastica—Seb Franco e Figli Torino, 1861.

Marossi A.Z., Bassett M.R. (eds)., *Economic Sanctions under International Law Unilateralism, Multilateralism, Legitimacy, and Consequences*, Springler, 2015, The Hague.

(von) Martens K., *Nouvelles Causes Célèbres du Droit des Gens*, vol I, Brockhaus/Avenarius, Leipzig, Paris. 1843.

Martinich A.P., *'The Laws of Nature Are the Laws of God in Leviathan', Hobbes's Political Philosophy: Interpretation and Interpretations,* Oxford Academic, New York, 2021.

McDougal M.S. and Feliciano, F.P., *Law and Minimum World Public Order,* Yale University Press, New Haven, 1961.

Milanovic, M, *The Spatial Dimension: Treaties and Territory* in Tams C.J., Tzanakopoulos, A. Zimmermann, A (eds), *Research Handbook on the Law of Treaties*, Edward Elgar, Cheltenham, 2016.

Montesquieu, *De l'esprit des lois*, 1848. (Biblioteca Nazionale di Napoli collection).

Moore J. B., *A Digest of International Law* vol I, GPO, Washington. 1906.

Morris C.W., *The Case for National Self-Determination*, in Tesón F.R. (ed.), Conceptions of Self-Determination, Cambridge, 2016.

Nussbaum A., *A Concise History Of The Law Of Nations*, Macmillan, New York, 1947.

Oppenheim L., *International Law: A Treatise, vol I*: *Peace*, Longmans/Green and Co, London, New York, New Delhi, 1905.

Oppenheim L., (eds.) Sir Jennings R. Y. and Sir Watts A., *Oppenheim's International Law, vol 1*: *Peace*, 9th edn, Longman, London, New York, 1992.

O'Sullivan J., *O'Sullivan & Hilliard's The Law of Contract*, Oxford, 2018.

Paddeu F., *Justification and Excuse in International Law: Concept and Theory of General Defences*, Cambridge, 2018.

Patten A.*, Self-Determination for National Minorities*, in *The Theory of Self-Determination*, in Tesón F.R. (eds.), Conceptions of Self-Determination, Cambridge, 2016.

Papa M.I., *Autodeterminazione dei popoli e terzi Stati*, in Distefano M (ed.), *Il principio di autodeterminazione dei popoli alla prova del nuovo millennio*, Wolters Kluwer/CEDAM, Padova, 2014.

Piirimäe P., *The Westphalian myth and the idea of external sovereignty*, in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept,* (eds.) Kalmo H. Skinner Q., Cambridge, 2010.

Phillimore R., *Commentaries upon International Law* vol I, Butterworths, London, 1879.

Pustorino P., *Introduction to International Human Rights Law*, Springler, The Hague, 2023.

Quadri R., *Diritto Internazionale Pubblico*, Liguori, Napoli, 1966.

Quaritsch H, *Souveränität: Entstehung und Entwicklung des Begriff in Frankreich und Deutschland vom 13. Jahrhundert bis 1806,* Duncker & Humblot, Frankfurt, 1986.

Ronzitti N., *Coercive Diplomacy, Sanctions and International Law*, Brill, Nijhoff, 2016.

Ronzitti N., *Diritto internazionale dei conflitti armati*, Giappichelli, Torino, 2017.

Ronzitti N., *Non-ingerenza negli affari interni di un altro Stato* in Digesto delle discipline pubblicistiche, vol X, UTET, Torino, 1995.

Ronzitti N., *Use of Force, Jus Cogens and State Consent*, in Cassese S. (ed), The Current Legal Regulation of the Use of Force, Nijhoff , Dordrecht, 1986.

Roscini M., *Cyber Operations and the Use of Force in International Law*, Oxford, 2014.

Roscini M., *Cyber operations as a use of force*, In Tsagourias N. and Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021.

Roscini M., *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, 2024.

Rousseau J.J., *Du Contrat Social ou Principes du droit politique*, 1758-1761 (*première version*), Bibliothéque publique et universitaire de Geneve.

Salmon J. *Dictionnaire de droit international public*, Bruylant, Bruxelles. 2001.

Salmon J., *Internal Aspects of the Right to Self-Determination: Towards a Democratic Legitimacy Principle?*, in Tomuschat (ed.), *Modern Law and Self-Determination*, Nijhoff, Dordrecht, Boston, London, 1993.

Salmon J., *Le droit des peuples a disposer d'eux-memes - Aspects juridiques et politiques*, in Le Nationalisme, Bruylant, Brussels, 1972.

Sapienza, R., *Conclusioni generali: Autodeterminazione e assetti geopolitici del terzo millennio. Principio Di Autodeterminazione Dei Popoli Alla Prova Del Nuovo Millennio*, CEDAM/Wolters Kluwer, Assago, Padova, 2014.

Sapienza R., *Il principio del non intervento negli affair interni. Contributo allo studio della tutela giuridica internazionale della potestà di governo*, Giuffrè, Milano, 1990.

Savigny F.C., *Geschichte des Römischen Rechts im Mittelalter* Mohr, Heidelberg, 1815.

Schaller C, *Siding with Rebels: Recognition of Opposition Groups and the Provision of Military Assistance in Libya and Syria* (*2011–2014*), in Heintze H.J., Thielbörger P. (ed.), *From Cold War to Cyber War: The Evolution of the International Law of Peace and Armed Conflict over the Last 25 Years*, Springer, Switzerland, 2016.

Schmitt M. N., in Ohlin J. D. Govern K. Finkelstein C. (eds), *Cyber War: Law and Ethics for Virtual Conflicts, Oxford, 2015.*

Senaratne K., *Internal Self-Determination in International Law: History, Theory, and Practice*, Cambridge, 2021.

Sereni A.P., *The Italian Conception of International Law*, Columbia University Press, New York, 1943.

Stiano A., *Attacchi informatici e la responsabilità internazionale dello Stato*, Cacucci, Bari, 2023

Shaw M. N., *International Law*, Cambridge, 2021.

Sparks T., *Self-Determination in the International Legal System*: *Whose Claim, to What Right*?, Hart/Bloomsbury, Oxford, London, New York, New Delhi, Sydney, 2024.

Sperduti G., *Il dominio riservato*, Giuffrè, Milano, 1970.

Tanoviceano J., *Droit international: de l'intervention*, La rose et Forcel, Paris, 1884.

Thiirer D., *Das Selbstbestimmungsrecht der Völker: mit einem Exkurs zur Jurafrage*, Stämpfli, Bern, 1976.

Tomuschat C., *From 'Negative' to Positive Duties—The Different 'Generations' of Human Rights, Human Rights: Between Idealism and Realism,* 2014, Oxford.

Tsagourias N., *The legal status of\ cyberspace: sovereignty redux?*, In Tsagourias N. Buchan R. (eds.), *Research Handbook on International Law and Cyberspace*, Elgar, Reading, 2021.

Tsagourias N., *Electoral Cyber Interference, Self-Determination and the Principle of Non-Intervention in Cyberspace*, in Broeders D. van den Berg B. (eds.), *Governing Cyberspace Behavior, Power and Diplomacy*, Rowman/Littlefield, Lanham, Boulder, New York, London, 2020.

Tuck R., "*Hobbes and Democracy*," *Rethinking the Foundations of Modern Political Thought*, (eds.) Brett A. Tully J. Hamilton-Bleakley H., Cambridge, 2006.

Van Wynen Thomas A. and Thomas A.J. Jr, *Non-Intervention: The Law and Its Import in the Americas,* Southern Methodist University Press, Dallas, 1956.

Vattel E., *Le Droit Des Gens ou Principes de la Loi Naturelle*, *appliques à la Conduite et aux Affaires des Nations et des Souverains,* 1758, (tr) Kapossy B. Whatmore R., *The Law of Nations, Or, The Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with three Early Essays on the Origin and Nature of Natural Law and on Luxury*, Liberty Fund, Indianapolis, 2008.

Vincent R. J*., Nonintervention and International Order*, Princeton, 1974.

Vinogradoff P., *Roman Law in Medieval Europe*, Clarendon, Oxford, 1929.

Waldron J., *Two Conceptions of Self-Determination*, in Besson S. Tasioulas J. (eds), *The Philosophy of International Law*, Oxford, 2010.

Watts S, *Low-Intensity Cyber Operations and the Principle of Non-Intervention*, in (eds.) Ohlin J. D. Govern K. Finkelstein C., *Cyber War: Law and Ethics for Virtual Conflicts, Oxford, 2015.*

Wheatley, S. *Democracy, Minorities and International Law*, Cambridge, 2005.

Wheaton H., *History of the Law of Nations in Europe and America: From the Earliest Times to the Treaty of Washington*, Gould/Banks, New York, 1845.

White N., *The Cuban Embargo under International Law: El Bloqueo*, Routledge/Francis, London, New York, 2015.

Wight M, *Systems of States*, Bull, H, (ed.), Leicester, 1977.

Wolff C., *Jus gentium methodo scientifica pertractatum*, 1749, (tr.) Drake J. H., *The Law of Nations: Treated According to a Scientific Method* vol II, Clarendon Press/Humphrey Milford, Oxford, 1934,

Woltag JC., *Cyber Warfare: Military Cross-Border Computer Network Operations under International Law*, Intersentia, Cambridge, Antwerp, Portland, 2014.

Wouters J., Duquet S., and Meuwissen K., *The Vienna Conventions on Diplomatic and Consular Relations*, in Cooper A.F., Heine J., and Thakur R. (eds), *The Oxford Handbook of Modern Diplomacy*, Oxford, 2013

Wood S. *Identifcation of Custom International Law*, Oxford, 2024.

Ziolkowski K., *Peacetime Cyber Espionage - New Tendencies in Public International Law*, in (ed.) Ziolkowski K., *Peacetime Regime for State Activities in Cyberspace: International Law, International Relations and Diplomacy*, CCDCoE, Tallinn, 2013.

Journal Articles

Alfaro R.J., *The Rights and Duties of States*, RCADI 97, 1959, 95-176.

Amerasinghe, C.F., *The Charter Travaux Préparatoires and United Nations Powers to Use Armed Force*. The Canadian yearbook of international law : Annuaire canadien de droit international 4, 1966, 81-101.

Amoroso D, *Il ruolo del riconoscimento degli insorti nella promozione del principio di autodeterminazione interna: considerazioni alla luce della "Primavera Araba"*, in Federalismi.it 21, 2013, 1-43.

Ando C., *The Origins and Import of Republican Constitutionalism*, in Cardozo Law Review 34:3, 2013, 917–36.

Baker C. D., *Tolerance of International Espionage: A Functional Approach,* in American University International Law Review 19:5, 2003, 1091-1113.

Barkham, J., *Information Warfare and International Law on the Use of Force*, in New York University Journal of International Law and Policy 34, 2001, 57-114.

Barret M. J., *Honorabòle Espionage,* in Journal of Defence and Diplomacy 2:2, 1984, 13-25.

Benneh E.Y., *Economic Coercion, the Non-Intervention Principle and the Nicaragua Case*, Afr. J. Int'l & Comp. L. 6, 1994.

Benwich N. Martin A, *A commentary f the Charter of the United Nations*, Routledge, London, 1950

Besson S., *Sovereignty, International Law and Democracy*, European Journal of International Law 22:2, 2011, 373–387.

Bianchi A., *Le recenti sanzioni unilaterali adottate dagli Stati Uniti nei confronti di Cuba e la loro liceità internazionale*, in Rivista Diritto Internazionale 81, 1998.

Bhuta N., *The Antinomies of Transformative Occupation*, in European Journal of International Law 16:4, 2005, 721-740.

Bowett, *Economic Economic Coercion and Reprisals by States*, in Vancouver Journal of International Law, 13:1, 1972.

Bronk C. Tikk-Ringas E, *The Cyber Attack on Saudi Aramco, Survival* 55:2, 2013, 81-96.

Brosche H., *The Arab Oil Embargo*, Case Western Reserve JIL 7:1, 1974, 3-35.

Brown G. Poellet K., *The Customary International Law of Cyberspace*, Strategic Studies Quarterly 6:3, 2012, 126-145.

Brown P.M., *The Aaland Islands Question*, American Journal of International Law 15, 1921, 268-72

Buchan R., Cyber Attacks: *Unlawful Uses of Force or Prohibited Interventions*? In Journal of Conflict and Security Law 17:2, 2012, 211-227.

Butchard P.M., *Territorial Integrity, Political Independence, and Consent: The Limitations of Military Assistance on Request under the Prohibition of the Use of Force*m, 2020, in JUFIL 7:35.

Chesterman S., *The Spy Who Came in From the Cold War: Intelligence and International Law*, in Michigan Journal of International Law 27, 2006, 1077-1126.

Corn G. P. Taylor R., *Sovereignty in the Age of Cyber*, in AJIL UNBOUND, Vol. 111, 2017, 207-212.

Corthay, E.,'*The ASEAN Doctrine of Non-Interference in Light of the Fundamental Principle of Non-Intervention*', in Asian-Pacific Law & Policy Journal 17:2, 2016, 1-44.

Czapnik, B., Mercurio, B., *The Use of Trade Coercion and China's Model of 'Passive-Aggressive Legalism*, in Journal of International Economic Law 26:2, (2023). 322–342.

Dapray Muir J., *The Boycott in International Law*, in JILE 9:2, 1974, 187–204.

Donati, S.. *La dottrina di Egidio Romano sulla materia dei corpi celesti. Discussioni sulla natura dei corpi celesti alla fine del tredicesimo secolo,* in Medioevo 12, 1986, 229-280.

Efrony, D. Shany, Y., *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, American Journal of International Law, 112:4, 2018, 583 – 657.

Egan B.J., *International Law and Stability in Cyberspace*, Berkeley JIL 35:1, 2017, 167-180.

Farer T.J., *Political and Economic Coercion in Contemporary International Law*, AJIL 79, 1985, 405-413.

Forsberg T., *Beyond Sovereignty, Within Territoriality: Mapping the Space of Late-Modern (Geo)Politics,* in Cooperation and Conflict 31:43, 1996, 355-386.

Franzese, P.W., Sovereignty in cyberspace: can it exist Air Force Law Review 64:1, 2009, 1-42.

Friedmann W., *Intervention, Civil War and the Role of International Law*, ASIL Proceedings 59, 1965, 67-75.

Goldsmith J., Against cyberanarchy, in University of Chicago Law Review 65:4, 1998, 1199-1250.

Graham T. Russell D., *Addressing the Elephant in the Room: The Non-Intervention Principle and Fiduciary Duties of Full and Frank Disclosure Following Lehtimäki v Cooper.* Trusts & trustees 28:1, 2022, 3–14.

Guide J., *New China and International Law: Practice and Contribution in 70 Years*, CJIL 18:4, 2019, 727-750.

Halttu K. Oinas-Kukkonen, H., Susceptibility to social influence strategies and persuasive system design: exploring the relationship', Behaviour & Information Technology, 41:12, 2021, 2705-2726..

Hall Stewart J.*, The Imprisonment of Napoleon: A Legal Opinion by Lord Eldon,* in American Journal of International Law 45, 1951, 571-577.

Helmersen S.T., *The use of force against neutral ships outside territorial waters*, Leiden Journal of International Law 35, 2023, 315–335.

Humphreys S., *Legalizing Lawlessness: On Giorgio Agamben's State of Exception,* The European Journal of International Law 17:3, 2006, 677-687.

Iovane M, *L'Organizzazione per la Sicurezza e la Cooperazione in Europa e la tutela del principio di autodeterminazione interna*, La Comunità internazionale 53, 1998, 460-528.

Jennings R. Y., '*The Caroline and McLeod Cases'*, in American Journal of International Law 32:1, 1938, 82-99.

Johnson D. R., Post D., *Law and Borders-The Rise of Law in Cyberspace,* in Stanford Law Review 48:5, 1996, 1367-1402.

de Jong H.G., *Coercion in the Conclusion of Treaties: A Consideration of Articles 51 and 52 of the Convention on the Law of Treaties*, 1984, 15 in Netherlands Yearbook of International Law 15, 1984, 209-247.

Kaplan M.A., *How Sovereign Is Hobbes' Sovereign?*, in The Western Political Quarterly 9;2, 956, 389-405,

Kelsen H., *The Draft Declaration on Right and Duties of States*, in American Journal of International Law 44:2, 1950, 259–276.

Kilovaty I., *Politically Motivated Leaks and the Future of the Norm on Non-Intervention in the Era of Weaponized Information*, Harvard National Security Journal 9, 2018, 146-179.

Komarnicki T., *L'intervention en droit international modern,* 60 RGDIP, 1956, 521-568.

Koskenniemi M., *National Self Determination Today: Problems of Legal Theory and Practice*, ICLQ 43, 1994, 241-269.

Kwast P., *Maritime Law Enforcement and the Use of Force: Reflections on the Categorisation of Forcible Action at Sea in the Light of the Guyana/Suriname Award*, Journal of Conflict and Security Law 13:1, 2008, 49-91.

Lahmann H, On the Politics and Ideologies of the Sovereignty discourse in cyberspace, Duke Journal of Comparative & International Law 32:6, 2021, 61-107.

Lenin V. I., *The Socialist Revolution and the Right of Nations to Self-Determination*, (Printed in Russian), Sotsial-Demokrata, Sbornik No. 1., October 1916.

Lissitzyn O., Editorial Comment, *Some Legal Implications of the U-2 and RB-47 Incidents*, AJIL 56, 1962, 135-142.

Marston G., *Is Intervention Ever Justified?*, in *United Kingdom Materials on International Law 1986*, British Yearbook of International Law 57:1, 1986.

Mackie J.L., *Evil and Omnipotence,* in Mind 64:254, 1955.

McConkey M., *Anarchy, Sovereignty, and the State of Exception: Schmitt's Challenge*, The Independent Review 17:3, 2013 415–28.

McDougal M. S. and Feliciano F. P., *International Coercion and World Public Order: The General Principles of the Law of War*, 1958, Yale Law Journal 67:5, 771-845.

Michaelides-Mateou, S., *Customary International Law in Aviation: A Hundred Years of Travel through the Competing Norms of Sovereignty and Freedom of Overflight*, in B.D. Lepard (ed.) *Reexamining Customary International Law*. Cambridge, 2017.

Milner H., The assumption of anarchy in international relations theory: a critique, in Review of International Studies 17:1, 1991, 67–85.

Noone J. B., The *Social Contract and the Idea of Sovereignty in Rousseau*, in Journal of Politics 32:3, 1970.

Nye J.S. Goldsmith J.L., *The Future of Power* in Bulletin of the American Academy of Arts and Sciences 64:3, 2011, 45-52,

Quirk S., *Lawfare in the Disinformation Age: Chinese Interference in Taiwan's 2020 Elections*, Harvard International Law Journal 62:2, 2021, 525-567.

Pelican L., *Peacetime Cyber-Espionage*: A Dangerous But Necessary Game, CommLaw Conspectus 20, 2012, 363-390.

Pomson O., *The Prohibition on Intervention Under International Law and Cyber Operations,* , ILS 99, 2022, 180-218.

Post G., *Two Notes on Nationalism in the Middle Ages*, Traditio 9, 1953, 281-320.

Reisman W. M., *Sovereignty and Human Rights in Contemporary International Law*, American Journal of International Law 84:4, 1990, 866-876.

Rolin H., *Projet de règlement sur le régime des représailles en temps de paix* and *Observations de Henri Rolin*, AIDI 38:7, 1934.

Ruggie J.G., *Territoriality and beyond: Problematising modernity in international relations*, in International Organization 47:1, 1993, 139-174.

Ruys T. Rodriguez Silvestre F., L'Union contre-attaque—La proposition d'instrument anti-coercition (IAC) vue sous l'angle du droit international, AFDI 67, 2021, 143-171.

Sadurska R., *Threats of Force*, AJIL 82:2, 1988, 239-268.

Saluzzo S., *The Principle of Non-Intervention and the Battle over Hong Kong,* Quest Intl L 79, 2021, 27-51.

Seidl-Hohenveldern I., *The United Nations and Economic Coercion,* RBDI 18, 1984.

Shackelford, S.J., *From Net War to Nuclear War: Analogizing Cyber Attacks in International Law*, Berkeley Journal of International Law 25, 2009, 191-250.

Shambaugh B.F., *History of the Theory of Sovereignty Since Rousseau*, in Annals of the American Academy of Political and Social Science 17, 1901, 123–124.

Shihata I.F., *Arab Oil Policies and the New International Economic Order,* in Va J Intl L 16, 1975.

Shullenberger G., *The Crisis of the Crisis*, in The New Atlantis 67, 2022, 28–31.

Siboni G. Kronenfeld, S, *Iran and Cyberspace Warfar, in* Military and Strategic Affairs in 4:3, 2012, 77-99.

Slaughter A., *International Law in a World of Liberal States*, in European Journal of International Law 6:3, 1995, 503-538.

Sulmasy G. Yoo J., *Counterintuitive: Intelligence Operations and International Law*, in Mich. J. Int'l L 28:3, 2007, 625-638

Thomason K.K., *If Everything is Genocide, Nothing Is: Scepticism and the Concept of Genocide*, in Journal of Genocide Research vol 20, 2018, 412-416.

Tzanakopoulos A., *The Right to Be Free from Economic Coercion*, Cambridge J Int'l & Comp L 4, 2015, 616-633.

Ward R., *An Enquiry into the Foundation and History of the Law of Nations*, vol I, Butterworth, London, 1795.

Verhoeven J., *La reconnaissance internationale: déclin ou renouveau?,* AFDI 39, 1993, 7-40.

Visser L., *Intervention by invitation and collective self-defence: two sides of the same coin?*, Journal on the Use of Force and International Law 7:2, 292-316.

Watts S., *Low-Intensity Cyber Operations and the Principle of Non*-Intervention, in (eds,) Maldoon T. and Mälksoo L., Ziemele I., Žalimas D., Baltic Yearbook of International Law Vol. 14 (2014), 2015.

Waxman M., *Cyber-Attacks and the Use of Force: Back to the Future of Article 2(4)*, in 36 The Yale Journal of International Law, 2011, 421-458.

Willmer L., *Does Digitalization Reshape the Principle of Non-Intervention?*, German Law Journal 24, 2023, 508–521, p. 521.

Woolsey T.S., *Self-Determination*, American Journal of International Law 13:2, 1919, 302-305.

Wheatley S., *Election hacking, the rule of sovereignty, and deductive reasoning in customary international law*, in Leiden Journal of International Law, 36:3, 2023, 675-698.

Yang, D.W. *Countering the Cyber-Crime Threat, American Criminal Law Review* 43, 2006, 201-215.

Yang F., The Emergence of the State in Cyberspace and Its Theoretical Bases: Cyber-Sovereignty from the Perspective of Layer Model '(国家的'浮现'与'正名'—网络空间主权的层级理论模型释义)', in Journal of International Law Study (国际法研究) vol. 4, 2018, 31–47.

Zhang X. and Xu K., A Study on Cyberspace Sovereignty, China Legal Science 4:5, 2016, 35–75.

Ziolkowski K., *Computer Network Operations and the Law of Armed Conflict*, Military Law and Law of War Review 49:1, 2010, 47-94.

Other Sources

2001 Digest of United States Practice in International Law.

Ago R., *Addendum to the Eighth Report on State Responsibility*, 1980, II/1 Yearbook.

Antolin-Jenkins M., *Defining the Parameters of Cyberwar Operations: Looking for Law in All the Wrong Places*?, Naval Law Review 51, 2005, 132-174.

Barlow J. P., "*A Declaration of the Independence of Cyberspace"*, 1996, Davos Switzerland, February 8 1996.

Besson S., *Sovereignty*, in Wolfrum R. (ed), Max Planck Encyclopedia of Public International Law, 2014.

Blay S.K.N., *Territorial Integrity and Political Independence* in Wolfrum R. (ed)., MPEPIL, 2010

Britannica Encyclopedia, *The social contract, The social contract in Rousseau*, last updatate 2025.

Capurso A., *The Non-Appropriation Principle: A Roman Interpretation*, 69th International Astronautical Congress, Bremen, 2018.

Center for Strategic and International Studies, *Chinese Interference in Taiwan's 2024 Elections and Lessons Learned*, 10 April 2024.

Center for Strategic and International Studies, *Significant Cyber Incidents Since 2006* – monthly updating.

Corn G. P., *Covert Deception, Strategic Fraud, and the Rule of Prohibited Intervention*, Hoover Working Group on National Security, Technology, and Law, Aegis Series Paper No 2005, 18 September 2020.

Delerue F., Zhu L., Wrange P., Yang F., *Working Paper: The principle of sovereignty and the application of international law in cyberspace*, April 2024.

Democracy Institute, *Democracy Facing Global Challenges: V-Dem Annual Democracy Report 2019*.

Doublethink Lab, Full Report Launch: Deafening Whispers China's Information Operation and Taiwan's 2020 Election.

Fox G. H., *Democracy, Right to, International Protection*, in Wolfrum R. (ed), MPEPIL, 2008.

Garner B.A. (ed.), in *Black's Law Dictionary*, Thomson-West, 2009.

Koh H., *International law in cyberspace*, Speech at the USCYBERCOM, 18 September 2012, in Guymon CL. D. (ed), *Digest of United States Practice in International Law*, United States Department of State, 2012.

Kuo N. Staats J., United States Incident of Peace, *Taiwan's Democracy Prevailed Despite China's Election Interference*, 24 January 2024.

Li Z., *Why the Leviathan Is a Mortal God: From Nominalism to Mortalism*, in The Asian Conference on the Social Sciences 2023: Official Conference Proceedings, 2023, 31-41.

International Law Commission, Document A/*6309*/ Rev.1, *Reports of the International Law Commission on the second part of its seventeenth and on its eighteenth session*, Yearbook of the International Law Commission Vol. II, 1966.

Global Taiwan Institute, Recruitment of Online Influencers Reveals a New Tactic of China's United Front Global Taiwan Brief, 10:1.

Helmersen, S.T. The Sui Generis Nature of Flag State Jurisdiction, Oslo University, 2015.

Human Rights Watch, *Off target. The conduct of the war and civilian casualties in Iraq*, 2003.

Kajander A., *A Tale of Two Draft Resolutions, A Report on the Polarising International Law Discussions at the 2023 OEWG Substantive Sessions*, NATO Cooperative Cyber Defence Centre of Excellence, Tallinn, 2023.

Kajander A., *Unnecessary Repetition: Russia's Latest Attempt at a New UN Convention on Cyberspace*, NATO Cooperative Cyber Defence Centre of Excellence, Tallinn.

Joyner C.C., *Boycott,* in (ed.) Wolfrum R., Max Planck Encyclopedia of Public International Law, 2009.

Marcellino W. Beauchamp-Mustafaga N. Kerrigan A. Navarre Chao L. Smith J., *The Rise of Generative AI and the Coming Era of Social Media Manipulation 3.0 Next-Generation Chinese Astroturfing and Coping with Ubiquitous AI*, 2023.

Moynihan H., The Application of International Law to State Cyberattacks Sovereignty and Non-intervention, Research Paper, Chatham House, 2019.

Melzer N., *Cyberwarfare and International Law*, UNIDIR Resources, 2011.

ODNI*, Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution*, 6 January 2017.

Owens W. A. Dam K. A. Lin H. S., *Technology, Policy, Law, and Ethics Regarding U.S. Acquisition and Use of Cyberattack Capabilities,* in National Academies Press, Washington, 2009.

Piaia G., *Marsilio da Padova, Il Contributo italiano alla storia del Pensiero: Filosofia*, in Treccani, 2012.

Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, September 2009, vol II.

Roscini M., *World Wide Warfare - Jus ad bellum and the Use of Cyber Force*, in Max Planck yearbook of the United Nations law 14:1, 2010, 85-130.

Schmitt M.N., *"Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law, Chicago Journal of International Law 19:1*, 2018, 30-67,

SektorCERT, *The attack against Danish critical infrastructure*, November 2023.

Steiger D., *Civilian objects*, in Wolfrum R. (ed), Max Planck Encyclopedia of Public International Law, 2011.

Thürer D. Burri T., *Self-Determination*, in Wolfrum R. MPEPIL, 2008

Taiwan FactCheck Center, 2024 Presidential Election: Combating Disinformation with Fact-Checks, Media Collaboration, and Public Empowerment.

Taiwan FactChecking Center, Foreign Forgeries – an analysis of disinformation tactics leveraging Taiwan's diplomatic events, 4 September 2023.

Taiwan FactCheck Center, **錯誤】網傳文件「賴清德出席巴拉圭新任總統潘尼亞就職典禮，雙方簽署議事錄，台灣未來要幫助巴國建造社宅** ?.

Taiwan FactCheck Center, **謠言風向球】外交假公文事件簿 查核中心帶你一起洞察造謠手法**.

Taiwan FactCheck Center, **【錯誤】網傳「在美國司法部網站看到一份文件，看到一家政治公關公司幫助我國聯繫遊**說裴洛西多達16**次，共花**9400**萬元」？**

Taiwan FactCheck Center, **【錯誤】網傳搭配圖卡文件稱「哈德遜研究所頒給總統蔡英文全球領導力獎，是台灣用**15**萬美元的價格買下來」**?

Talmon S., *Iran Condemns German Ambassador's Tweets as Interference in Internal Affairs*, German Practice in International Law, 13 July 2021.

US Department of Homeland Security NCCIC, *ICS-CERT INCIDENT ALERT IR-ALERT-H-16-043-01AP CYBER-ATTACK AGAINST UKRAINIAN CRITICAL INFRASTRUCTURE, UPDATE A*, 7 March 2016.

US Department of Transportation – Maritime Administration, *2019-012-Persian Gulf, Strait of Hormuz, Gulf of Oman, Arabian Sea, Red Sea-Threats to Commercial Vessels by Iran and its Proxies*, July 2019.

W32. Stuxnet Dossier: Version 1.4 (February 2011), Falliere N., Murchu Lo., Chien E.. Symantec Corporation, 2011.

Wu H., *China's Approach to Military 5G Networks and Related Military Applications*, Piret Pernik (ed.), NATO Cooperative Cyber Defence Centre of Excellence, Tallinn, 2023.

Blog Posts and Media Posts

AA, Rocha J.A., *Mexico's defense ministry was target of foreign cyberattack, says president.Lopez Obrador calls out foreign intervention over 6 terabytes of stolen information*, 30 September 2022.

BBC News, *East-West Summit in Tatters After Spy Plane Row*, 17 May 1960.

BBC News, *Hollande: Bugging Allegations Threaten EU-US Trade Pact*, 1 July 2013.

BBC News, *Merkel Calls Obama about "US Spying on Her Phone*", 23 October 2013.

BBC News, Lee D., *The Tactics of a Russian Troll Farm*, 16 February 2018.

BBC News, *Russia was behind German parliament hack*, 13 May 2016.

Brazilian President: US surveillance a 'breach of international law', in The Guardian, 24 September 2013.

CNN, Starr B. Browne R. Fox K., *Iran announces capture of British-flagged oil tanker; US officials say two ships seized*, 19 July 2019.

Corn G.P., *Tallinn Manual 2.0-Advancing the Conversation*, in JUST SECURITY, 15 February 2017.

Counterpounch, Leupp G., *A Chronology of the Sony Hacking Incident*, 29 December 2014.

Der Spiegel, Baumgartner M. Beuth P. Diehl J. Esch C., The Breach from the East, 18 March 2018.

DigWatch, Alleged cyberattacks mar online voting in Ecuador, 22 Aug 2023.

Focus Taiwan, ELECTION 2024/DPP lawmaker claims to have fallen victim to deep fake porn, 3 January 2024.

Mexico Daily News, MND Staff, *Hackers leak thousands of Defense Ministry documents*; AMLO confirms revelations of health issues, 30 September 2022.

N.Y. Times, Eddy M., After a Cyberattack, Germany Fears Election Disruption, 8 December 2016.

N.Y. Times, *Full Transcript and Video: James Comey's Testimony on Capitol Hill*, 8 June 2017.

Politico, China bombards Taiwan with fake news ahead of election. China uses fabricated polls and outlandish claims on social media to bolster its camp in Taiwan's election., 10 January 2024.

Reuters, Morland S., *Mexican government suffers major data hack, president's health issues revealed*, 30 September 2022..

Schmitt M.N., *Foreign Cyber Interference in Elections: An International Law Primer, Part I*, in EJIL:Talk!, 2020.

Schmitt M.N. Biller J, *The NotPetya Cyber Operation as a Case Study of International Law*, in EJIL:Talk !, 2017.

Shu-Ching Yang E., *Cyber Election Interference and Self-Determination - Elections in Taiwan*, Digital Law Asia, 2023.

Swissinfo, *El sistema de voto telemático en el exterior de Ecuador sufrió ciberataques desde 7 países*, 20 August 2023.

Taipei Times, China is posting fake videos of president: sources, 11 January 2024.

Taipei Times, Reporter detained for disseminating fake opinion polls, 23 December 2023.

The Guardian, *China Demands Halt to 'Unscrupulous' US Cyber-Spying*, 27 May 2014.

The Hill, Uchill J., *New Guccifer 2.0 dump highlights 'wobbly Dems' on Iran deal*, 18 July 2016.

VOCO NEWS, *Taiwan Green Camp Legislator Zhao Tianlin announced his withdrawal from the candidacy after photos of passionately kissing a Chinese woman were exposed*, 24 October 2023.